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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0268; Project Identifier MCAI–2020–01382–T; Amendment 39–21505; AD 2021–08–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of one or both roll control input modules (RCIMs) being incorrectly installed. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate certain aircraft maintenance manual (AMM) tasks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 27, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 27, 2021.

The FAA must receive comments on this AD by May 27, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0268.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0268; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for the Docket Operations office is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–35, dated October 7, 2020 (referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. You may examine the MCAI at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0268.

This AD was prompted by reports of one or both RCIMs being incorrectly installed. An investigation determined that it is physically possible for an RCIM to be installed and zeroed at 180 degrees from its intended orientation. One in-service report involved a near-accident with damage incurred on the airplane at landing. The FAA is issuing this AD to prevent incorrect installation of one or both RCIMs, which results in a misrigging condition, causing the multi-function spoilers to deploy opposite to the roll command, and could lead to loss of control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information. This service information describes procedures for properly installing and maintaining the RCIMs. These documents are distinct since they apply to different airplane configurations.

- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 89, dated February 22, 2021. (For obtaining the tasks for Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.)
- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 70, dated February 22, 2021. (For obtaining the tasks for Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, use

Document Identification No. GL 5000 AMM.)

- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 37, dated February 22, 2021.
- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 6, dated February 22, 2021.
- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 38, dated February 22, 2021.
- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 7, dated February 22, 2021.
- Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 67, dated February 22, 2021. (For obtaining the tasks for Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.)

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate certain AMM tasks.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because incorrect installation of one or both RCIMs results in a misrigging condition, causing the multi-function spoilers to deploy opposite to the roll command, and could lead to loss of control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0268; Project Identifier MCAI–2020–01382–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email

commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 397 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–08–11 Bombardier, Inc.: Amendment 39–21505; Docket No. FAA–2021–0268; Project Identifier MCAI–2020–01382–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, having serial numbers 9002 through 9998 inclusive, 60005 through 60007 inclusive, 60013, and 60015 through 60019 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of one or both roll control input modules (RCIMs) being incorrectly installed. The FAA is issuing this AD to address incorrect installation of one or both RCIMs, which results in a misrigging condition, causing the multi-function spoilers to deploy opposite to the roll command, and could lead to loss of control of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 10 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information in Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the applicable document specified in paragraphs (g)(1) through (7) of this AD.

(1) Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 89, dated February 22, 2021.

Note 1 to paragraph (g)(1): For obtaining the tasks for Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.

(2) Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 70, dated February 22, 2021.

Note 2 to paragraph (g)(2): For obtaining the tasks for Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 5000 AMM.

(3) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 37, dated February 22, 2021.

(4) Bombardier Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 6, dated February 22, 2021.

(5) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 38, dated February 22, 2021.

(6) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 7, dated February 22, 2021.

(7) Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 67, dated February 22, 2021.

Note 3 to paragraph (g)(7): For obtaining the tasks for Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.

(h) Maintenance Prohibition

As of the effective date of this AD, no person may perform maintenance on any RCIM using a version of Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation''), 27–11–13–720–801, ''Function Test of the Roll Control Input-Module,'' or 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' dated before February 21, 2020.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Tasks 27–11–13–400–801, ''Installation of the Roll Control Input-Module,'' 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module,'' and 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module,'' of Subject 27–11–13, ''Roll Control Input-Module,'' of Chapter 27, ''Flight Controls,'' in Part II of the applicable service information specified in paragraphs (i)(1) through (30) of this AD.

(1) Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 85, dated February 21, 2020.

Note 4 to paragraph (i)(1): For obtaining the tasks for Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.

(2) Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 86, dated May 21, 2020.

(3) Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 87, dated August 17, 2020.

(4) Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 88, dated November 11, 2020.

(5) Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 66, dated February 21, 2020.

Note 5 to paragraph (i)(5): For obtaining the tasks for Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 5000 AMM.

(6) Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 67, dated May 21, 2020.

(7) Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 68, dated August 17, 2020.

(8) Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, Revision 69, dated November 11, 2020.

(9) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 33, dated February 21, 2020.

(10) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 34, dated May 21, 2020.

(11) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 35, dated August 17, 2020.

(12) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Publication No. GL 5000 GVFD AMM, Revision 36, dated November 11, 2020.

(13) Bombardier Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 2, dated February 21, 2020.

(14) Bombardier Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 3, dated May 21, 2020.

(15) Bombardier Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 4, dated August 17, 2020.

(16) Bombardier Global 5500 Aircraft Maintenance Manual, Publication No. GL 5500 AMM, Revision 5, dated November 11, 2020.

(17) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 33, dated February 21, 2020.

(18) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 34, dated May 21, 2020.

(19) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 35, dated August 17, 2020.

(20) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 36, dated August 26, 2020.

(21) Bombardier Global 6000 Aircraft Maintenance Manual, Publication No. GL 6000 AMM, Revision 37, dated November 11, 2020.

(22) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 2, dated February 21, 2020.

(23) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 3, dated May 21, 2020.

(24) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 4, dated August 17, 2020.

(25) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 5, dated August 26, 2020.

(26) Bombardier Global 6500 Aircraft Maintenance Manual, Publication No. GL 6500 AMM, Revision 6, dated November 11, 2020.

(27) Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 63, dated February 21, 2020.

Note 6 to paragraph (i)(27): For obtaining the tasks for Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.

(28) Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 64, dated May 21, 2020.

(29) Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 65, dated August 17, 2020.

(30) Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, Revision 66, dated November 11, 2020.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–35, dated October 7, 2020, for related information. This MCAI may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0268.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Global Express Aircraft Maintenance Manual, Part II, Publication No. BD–700 AMM, Revision 89, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input–Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(ii) Bombardier Global 5000 Aircraft Maintenance Manual, Part II, Publication No. BD–700 AMM, Revision 70, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input–Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(iii) Bombardier Global 5000 Featuring Global Vision Flight Deck Aircraft Maintenance Manual, Part II, Publication No. GL 5000 GVFD AMM, Revision 37, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(iv) Bombardier Global 5500 Aircraft Maintenance Manual, Part II, Publication No. GL 5500 AMM, Revision 6, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(v) Bombardier Global 6000 Aircraft Maintenance Manual, Part II, Publication No. GL 6000 AMM, Revision 38, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(vi) Bombardier Global 6500 Aircraft Maintenance Manual, Part II, Publication No. GL 6500 AMM, Revision 7, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module—Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(vii) Bombardier Global Express XRS Aircraft Maintenance Manual, Part II, Publication No. BD–700 XRS AMM, Revision 67, dated February 22, 2021, Chapter 27, ''Flight Controls,'' Subject 27–11–13, ''Roll Control Input-Module'':

(A) Task 27–11–13–400–801, ''Installation of the Roll Control Input-Module'' (including Figure 401, ''Roll Control Input-Module-Removal/Installation'');

(B) Task 27–11–13–720–801, ''Functional Test of the Roll Control Input-Module''; and

(C) Task 27–11–13–820–801, ''Adjustment of the Roll Control Input-Module.''

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

Note 7 to paragraph (l)(3): For obtaining the tasks for Bombardier Global Express Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.

Note 8 to paragraph (l)(3): For obtaining the tasks for Bombardier Global 5000 Aircraft Maintenance Manual, Publication No. BD–700 AMM, use Document Identification No. GL 5000 AMM.

Note 9 to paragraph (l)(3): For obtaining the tasks for Bombardier Global Express XRS Aircraft Maintenance Manual, Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on April 2, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07536 Filed 4–8–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0991; Project Identifier AD–2020–00478–Q; Amendment 39–21509; AD 2021–08–15]

RIN 2120–AA64

Airworthiness Directives; Garmin International GMN–00962 GTS Processor Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Garmin International (Garmin) GMN–00962 GTS processor units (GTS 825, GTS 855, GTS 8000). This AD was prompted by reports of GTS processor units issuing resolution advisories (RAs) when no risk of collision or loss of separation exists between the airplanes involved. This AD requires updating the software version of the affected GTS Processor units. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 17, 2021.

ADDRESSES: For service information identified in this final rule, contact Garmin International, Garmin Aviation Support 1200 E. 151st Street, Olathe, KS 66062; phone: (866) 739–5687; website: *https://fly.garmin.com/fly-garmin/support/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St., Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0991; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: (316) 946–4107; email: *paul.rau@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Garmin GMN–00962 GTS processor units (GTS 825, GTS 855, GTS 8000) with part number 011–02571–0( ) and software version 3.13 or earlier (except version 3.12.1). The NPRM published in the **Federal Register** on December 14, 2020 (85 FR 80696). The NPRM was prompted by seven reports of false RAs involving aircraft equipped with Garmin GMN–00962 GTS processor configured for traffic collision avoidance system II (TCAS II)

(configuration marketed as GTS–8000 units). The Garmin GMN–00962 GTS processor units are marketed by Garmin as the GTS 825, GTS 855 or GTS 8000, with the marketing name representing the traffic system configuration.

A false RA occurs when there is no risk of collision or loss of separation of the airplanes. These false RAs result from the GTS Processor software potentially calculating incorrect range rates. This results in traffic advisories or RAs being generated when targets are greater than 10 nautical miles (NM) away. A TCAS event involving three or more airplanes can result in mid-air collision by increasing the risk that the TCAS, in resolving the false RA with the initial airplane, will create an actual loss of separation with a third airplane. This condition, if not addressed, could result in an RA being generated when no risk of loss of separation or risk of collision exists between the airplanes involved, which can lead to a mid-air collision with a third airplane.

In the NPRM, the FAA proposed to require updating the GTS processor unit software. The FAA is issuing this AD to address the unsafe condition on these products.

The affected GTS processor units were installed on the airplanes listed below during production and via an STC; however, the affected units may have been installed on other airplane models as a supplemental type certificate (STC). Although the names found in parenthesis may not be listed on the type certificate, the manufacturer may use those names as marketing names for the airplanes.

- Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 525 (Cessna Citation M2), Model 525B (Cessna Citation CJ3+), Model Model 680 Sovereign, Model 680A Latitude, and Model 700 (Cessna Citation Longitude);
- Embraer S.A. Model EMB–500 (Phenom 100) and Model EMB–505 (Phenom 300);
- Learjet Inc. Model 45 (Learjet 70) and Model 45 (Learjet 75); and
- Viking Air Limited (type certificate previously held by Shorts Brothers PLC, Shorts Brothers Limited) Model SD3–60 SHERPA, modified by Field Aerospace STC No. ST00865DE.

Discussion of Final Airworthiness Directive Comments

The FAA received comments from six commenters. The commenters were Garmin, Learjet Inc. (Learjet), Textron Aviation Inc. (Textron), NetJets, Field Aerospace, and an individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

Supportive

An individual commenter supported the NPRM without change.

Request Regarding Applicability

Garmin requested the FAA clarify the AD applicability, as the proposed AD applies to GTS 825 and GTS 855, which are not affected by the false RA issue. Garmin suggested that the FAA add a clarifying statement to the background section, and revise the applicability paragraph to remove references to the GTS 825 and GTS 855.

The FAA disagrees. This AD applies to the GTS Processor part number 011–02571–0( ) units with software version 3.13 or earlier, except software version 3.12.1. The GTS 825, GTS 855, and GTS 8000 marketing labels describe different installation configurations rather than different appliances. While the GTS Processor will not generate false RAs when configured as TAS (GTS 825) or TCAS I (GTS 855), the appliance itself is still susceptible to the issue, and the unsafe condition would occur if an operator enables the TCAS II option without also updating the software.

The FAA did not change this AD based on this comment.

Request Regarding Affected Aircraft

Field Aerospace stated that the proposed AD would affect Shorts Sherpa Model SD3–60 airplanes that have been modified under Field Aerospace STC No. ST00865DE.

The FAA agrees with this comment. The FAA issued this AD against the Garmin appliance because the unsafe condition exists in the appliance. The FAA has added Model SD3–60 SHERPA airplanes modified by Field Aerospace STC No. ST00865DE to the list of known affected aircraft in the background section. This is not an all-inclusive list; all operators must check their airplanes for the affected appliance, regardless of whether the model of their airplane is listed.

Request Regarding Unsafe Condition

Garmin requested the FAA add information relevant to the actual risk in the discussion of the unsafe condition in the background section. Specifically, Garmin stated that loss of separation with a third airplane is not inevitable when a false RA occurs. Garmin further stated that the TCAS II implemented by the GTS 8000 is capable of negotiating threats with more than one airplane and will adjust the RA in a situation should loss of separation to a third airplane result in a collision threat.

The FAA disagrees. The unsafe condition statement describes the condition the FAA is trying to prevent; as such, it does not describe all possible outcomes. The FAA assessed the likelihood of the unsafe condition in determining whether an AD or other action was warranted. While the FAA acknowledges that no loss of separation event has been associated with this issue on Garmin equipment, a similar issue with other TCAS II equipment has resulted in loss of separation events. Additionally, the rate of false RAs observed with GTS Processor-equipped aircraft far exceeds the acceptable probability of a false RA due to a failure of the system specified in Advisory Circular No. 20–151C, *Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II), Versions 7.0 & 7.1 and Associated Mode S Transponders,* dated July 21, 2017. Further, the potential for a loss of separation is not limited to the GTS Processor-equipped aircraft, as the second aircraft may also contain equipment that attempts to resolve the multi-threat encounter. Although the TCAS II is capable of resolving conflicts with more than one aircraft, since the current design of TCAS RAs is limited to vertical maneuvers, it is not able to provide conflict resolution for all encounters involving multiple aircraft.

The FAA did not change this AD based on this comment.

Request Regarding Required Actions and Compliance

Garmin requested the FAA revise the AD to require updating the affected software to version 3.12.1, or to version 3.14 or later. Garmin stated that, as proposed, the AD would not allow update of software to version 3.12.1, which is not affected by the issue.

The FAA agrees with this comment. The unsafe condition is also resolved in version 3.12.1. The FAA has changed the Required Actions and Compliance paragraph to also allow updating the GTS processor software to version 3.12.1.

Learjet, Textron, and NetJets requested the FAA extend the compliance time to allow adequate time for the certification and deployment of the required changes to all affected products. Learjet requested a compliance time of 18 months, while Textron requested a compliance time of 24 months.

The FAA agrees. In addition to the reasons provided by the commenters, the FAA's risk assessment, in consideration of the ongoing pandemic and resulting reduction in air traffic,

supports extending the compliance time from 12 to 24 months.

Request Regarding Costs

Textron requested the FAA update the estimated cost information to include additional work for Textron aircraft. Textron stated it has prior agreements with Garmin to accomplish this software change as part of a package of other product improvements, for a per-aircraft cost of approximately $3,000.

The FAA disagrees with this comment. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD. This AD does not mandate the entire package of changes for Textron aircraft.

The FAA has not made changes to this AD based on this comment.

Request Regarding Certificate of Airworthiness

Learjet requested the FAA revise the AD to allow initial Certificates of Airworthiness to be issued to newly-manufactured aircraft prior to complying with the AD. Learjet stated that certification of new software to comply with the AD (software later than version 3.13) will take a minimum of 9 months.

The FAA disagrees with this comment. The AD does not prohibit the issuance of a Certificate of Airworthiness to eligible aircraft. Newly-manufactured aircraft need to comply with the AD actions within the same timeframe as aircraft in the current U.S. fleet.

The FAA has not made changes to this AD based on this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information

The FAA reviewed Garmin Service Bulletin No. 2065, Revision A, dated May 7, 2020; and Garmin Service Bulletin No. 1948, Revision B, dated March 26, 2020. These service bulletins contain procedures for uploading the software update to the GMN–00962 GTS Processor units (GTS 825, GTS 855, GTS 8000).

Costs of Compliance

The FAA estimates that this AD affects 700 appliances installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update GTS Processor software	4.00 work-hours × $85 per hour = $340	$0	$340	$238,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–08–15 Garmin International: Amendment 39–21509; Docket No. FAA–2020–0991; Project Identifier AD–2020–00478–Q.

(a) Effective Date

This airworthiness directive (AD) is effective May 17, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Garmin International GMN–00962 GTS processor units, part number 011–02571–0( ), with software version 3.13 or earlier, except software version 3.12.1, installed on airplanes certificated in any category. These units are marketed as the GTS 825, GTS 855, or GTS 8000.

(d) Subject

Joint Aircraft System Component (JASC) Code 3445, AIR COLLISION AVOIDANCE SYSTEM (TCAS).

(e) Unsafe Condition

This AD was prompted by the GTS processor unit issuing false resolution advisories (RAs) when no risk of collision or loss of separation exists between the airplanes involved. A traffic collision avoidance system (TCAS) event involving

three or more airplanes can result in mid-air collision by increasing the risk that the TCAS, in resolving the false RA between the initial airplane, will create an actual loss of separation with a third airplane. The FAA is issuing this AD to prevent these false RAs, which can lead to a mid-air collision with a third airplane.

(f) Required Action and Compliance

Within 24 months after the effective date of this AD, update the GTS processor software to a version that is not 3.13 or earlier, except 3.12.1. Software version 3.12.1 does not contain the unsafe condition.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

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

(h) Related Information

(1) For more information about this AD, contact Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: (316) 946–4107; email: *paul.rau@faa.gov* or *Wichita-COS@faa.gov.*

(2) For service information identified in this AD contact Garmin International, Garmin Aviation Support 1200 E. 151st Street, Olathe, KS 66062; phone: (866) 739–5687; website: *https://fly.garmin.com/fly-garmin/support/.* You may also view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St., Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on April 7, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07422 Filed 4–9–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0823; Airspace Docket No. 20–AAL–49]

RIN 2120–AA66

Amendment To Separate Terminal Airspace Areas From Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the following Offshore Airspace Areas in Alaska: Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L. The FAA found an error with the Offshore Airspace Legal Descriptions containing airspace descriptions not related to the need to apply IFR en route Air Traffic Control services in international airspace. This action corrects that error by removing terminal airspace, airspace associated with geographic coordinates, and airspace associated with NAVAIDs from the Offshore Airspace legal descriptions.

DATES: Effective date 0901 UTC, June 17, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 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 Rules and Regulations 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: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would correct the Offshore Airspace legal descriptions as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0823 in the **Federal Register** (85 FR 59220; September 21, 2020) reversing the final rule for Docket No. FAA–2006–25852 in the **Federal Register** (72 FR 31714; June 8, 2007; as corrected 72 FR 37430, July 10, 2007) that amended the offshore airspace areas, including: Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska, to include terminal airspace previously thought to be excluded in the Code of Federal Regulations. The exclusionary language was misinterpreted including all airspace West of Longitude 160°. The FAA found this interpretation to be in error, as the exclusion only pertains to the area West of Longitude 160° for the Alaskan Peninsula. The Alaskan Peninsula does not include the Aleutian Islands, nor preclude the establishment of airspace under CFR 71.71(c). Additionally, this final rule corrects the final rule for Docket No. FAA–2006–26164 in the **Federal Register** (72 FR 5611; February 7, 2007) that revoked Class E Airspace for Adak, ATKA, Cold Bay, Nelson Lagoon, Saint George Island, Sand Point, Shemya, St. Paul Island, and Unalaska, AK as it was thought that because these locations were within Control 1234L, they should be contained in the offshore airspace description. This was in error, as offshore airspace cannot be established within 12 nautical miles (NM) of a coastline of the United States (U.S.). This action corrects these errors. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the

proposal. No significant comments were received.

Offshore Airspace Areas are published in 6007, and Class E Airspace Areas Designated as Surface Areas, and Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth, are published in paragraph 6002 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 Offshore Airspace Areas, Class E Airspace Areas Designated as Surface Areas, and Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth listed in this document will be subsequently published in the Order.

Differences From the NPRM

In the NPRM published in the **Federal Register** (85 FR 59220; September 21, 2020) proposal and amendment sections, the FAA proposed a technical amendment to 33 terminal facilities, five navigational aids (NAVAIDS), and three sets of geographic coordinate assigned airspace in the Offshore Airspace areas legal descriptions contained in FAA Order 7400.11 Section 6007, 6002, and 6005. After further review, the FAA identified that 10 facilities (Chevak, AK; Chignik, AK; King Salmon, AK; Kodiak, AK; Manokotak, AK; Nome, AK; Perryville, AK; Shaktoolik, AK; St. Michael, AK; and Tooksook Bay, AK) and five navigation aids (Biorka Island, AK; Glacier River, AK; Middleton Island, AK; Nome, AK; and Kotzebue, AK) contained language in the legal description excluding airspace beyond 12 NM from the coastline. The FAA determined that Air Traffic Facilities are using Terminal Arrival Areas (TAA) for most of the approaches associated with these locations. These TAAs cover 30 NM from an established waypoint and extend into offshore airspace beyond 12 NM from the coastline. If the exclusionary language were allowed to take effect, these areas would be without controlled airspace. In addition, some of these locations are further constrained because the airspace beyond 12 NM provides airspace for Missed Approach holding and vectoring of aircraft from an airway to the Initial Approach Fix and the terminal environment. The FAA determined that these locations should be retained in the associated Offshore Airspace Areas to provide the airspace needed for these operations until an airspace review can be conducted and these procedures safely be brought into compliance, while maintaining the required controlled airspace. This rule corrects this error in the Rule section.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending the technical language contained in the legal descriptions for the Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace areas by removing the terminal facilities, NAVAIDS, and geographic coordinate assigned airspace contained in FAA Order 7400.11. The vertical and lateral boundaries will remain as published.

Additionally, the FAA defines the legal descriptions of the terminal facilities in section 6002 and 6005 in FAA Order 7400.11. The Airspace actions are described below.

Shemya, AK: Shemya is currently published in Control 1234L as Eareckson AS. This action removes Eareckson AS description from Control 1234L legal description and adds it to section 6005 in FAA Order 7400.11, labeled under the correct identifier as Shemya, AK. The action will retain the same legal description for the Class E5 airspace.

Adak, AK: Adak, AK is currently published in the Control 1234L legal description. This action removes the Class E legal description from Control 1234L and relocates it to section 6005 with no change to the boundaries.

Atka, AK: Atka, AK is currently published in the Control 1234L legal description. This action removes the Atka, AK Class E legal description from Control 1234L and relocates it in section 6005 with no change to the boundaries.

Cold Bay, AK: Cold Bay, AK is currently published in the Control 1234L legal description. This action removes the Cold Bay Class E2 and E5 legal descriptions from Control 1234L and relocates them to sections 6002 and 6005 with no changes to the boundaries.

Nikoloski, AK: Nikoloski, AK is currently published in the Control 1234L legal description. This action removes the Nikoloski, AK Class E legal description from Control 1234L and relocates it to section 6005 with no change to the boundaries.

Manokotak, AK: Manokotak, AK is currently published in the Norton Sound Low, and Control 1234L legal descriptions. It is also published in section 6005 twice, and one contains inaccurate information in the legal description. This action removes the duplicate and inaccurate legal description and amends the text header to remove the word New from Manokotak/New Airport and reflects the proper airport identification.

Clarks Point, AK: Clarks Point, AK is currently published in the Norton Sound Low, and Control 1234L legal descriptions. This action removes the Clarks Point, AK Class E legal description from the Norton Sound Low and Control 1234L and retains it to section 6005 with no change to the boundaries.

Port Heiden, AK: Port Heiden, AK is currently published in the Norton Sound Low, Woody Island Low, and Control 1234L legal description. This action removes the Port Heiden, AK Class E legal description from Norton Sound Low, Woody Island Low, and Control 1234L and retains it to section 6005 with no change to the boundaries.

St. George, AK: St. George, AK is currently published in the Control 1234L legal description. This action removes the St. George, AK Class E legal description from Control 1234L and relocates it to section 6005 with no change to the boundaries.

St. Paul Island, AK: St. Paul Island, AK is currently published in the Control 1234L legal description. This action removes the St. Paul Island Class E legal description from Control 1234L and relocates it to section 6005 with no change to the boundaries.

Unalaska, AK: Unalaska, AK is currently published in the Control 1234L legal description. This action removes the Unalaska Class E legal description from Control 1234L and relocates it to section 6005 with an administrative change correcting the word ''bearing'' to ''radial'' and adding the reference for the Dutch Harbor Non-directional Beacon (NDB), AK. The rest of the airspace legal description remains unchanged.

Sand Point, AK: Sand Point, AK is currently published in the Control 1234L legal description. This action removes the Sand Point Class E legal description from Control 1234L and relocates it to section 6005 with administrative changes correcting ''either'' to ''each'', ''mail'' to ''mile'', and adding the reference to Borland NDB/Distance Measuring Equipment (DME). The rest of the legal description remains unchanged.

King Cove, AK: King Cove, AK is currently published in the Control 1234L legal description. This action

removes the King Cove Class E legal description from Control 1234L and relocates it to section 6005 with an administrative correction, changing ''either'' to ''each'', with no change to the boundaries.

Nelson Lagoon, AK: Nelson Lagoon, AK is currently published in the Control 1234L legal description. This action removes the Nelson Lagoon Class E legal description from Control 1234L and relocates it to section 6005 with no change to the boundaries.

Elim, AK: Elim, AK is currently published in the Norton Sound Low legal description. This action removes the Elim, Class E legal description from the Norton Sound Low and relocates it to section 6005 with no change to the boundaries.

Hooper Bay, AK: Hooper Bay, AK is currently published in the Norton Sound Low legal description. This action removes the Hooper Bay Class E legal description from Norton Sound Low and relocates it to section 6005 with no change to the boundaries.

Kivalina, AK: Kivalina, AK is currently published in the Norton Sound Low legal description. This action removes the Kivalina Class E legal description from Norton Sound Low and corrects the legal description contained in section 6005, replacing the word either to each, removing the duplicate name header in line two, with no changes to the boundaries.

Kwethluk, AK: Kwethluk, AK is currently published in the Norton Sound Low legal description. This action removes the Kwethluk Class E legal description from Norton Sound Low and corrects the legal description located in section 6005 with an administrative change, removing the duplicate name header in line two, with no change to the boundaries.

Napakiak, AK: Napakiak, AK is currently published in the Norton Sound Low legal description. This action removes the Napakiak Class E legal description from Norton Sound Low and corrects the legal description located in section 6005 with an administrative change, correcting duplicate name in heading line two with no change to the boundaries.

New Stuyahok, AK: New Stuyahok, AK is currently published in the Norton Sound Low legal description. This action removes the New Stuyahok Class E legal description from Norton Sound Low and corrects the legal description contained in section 6005 with an administrative change, removing the duplicate name in heading line two with no change to the boundaries.

Noatak, AK: Noatak, AK is currently published in the Norton Sound Low legal description. This action removes the Noatak Class E legal description from Norton Sound Low and retains it in section 6005 with no change to the boundaries.

Red Dog, AK: Red Dog, AK is currently published in the Norton Sound Low legal description. This action removes the Red Dog Class E legal description from Norton Sound Low and corrects the legal description contained in section 6005 with an administrative change correcting the word ''either'' to ''each'' with no change to the boundaries.

Scammon Bay, AK: Scammon Bay, AK is currently published in the Norton Sound Low legal description. This action removes the Scammon Bay Class E legal description from Norton Sound Low and corrects the legal description located in section 6005 with an administrative change correcting the word ''either'' to ''each'' with no change to the boundaries.

Selawik, AK: Selawik, AK is currently published in the Norton Sound Low legal description. This action removes the Selawik Class E legal description from Norton Sound Low and corrects the legal description located in section 6005 with an administrative change removing the duplicate name in heading line two with no change to the boundaries.

Homer, AK: Homer, AK is currently published in the Control 1487L legal description. This action removes the Homer Class E legal description from Control 1487L and retains the legal description located in section 6005 with an administrative change correcting the word ''either'' to ''each'' with no change to the boundaries.

Anchorage, AK: Anchorage, AK is currently published in the Control 1487L legal description. This action removes the Anchorage Class E from Control 1487L and retains the legal description in section 6005 with no change to the boundaries.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending legal descriptions for certain Offshore Airspace Areas in Alaska to separate Terminal Airspace Areas from Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 et seq) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 6007—Offshore Airspace Areas.

* * * * *

Control 1234L, AK [Amended]

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N, long. 160°00′00″ W, then south along 160°00′00″ W longitude, until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along the Anchorage ARTCC boundary to lat. 62°35′00″ N, long. 175°00′00″ W, to lat. 59°59′57″ N, long. 168°00′08″ W, to lat. 57°45′57″ N, long. 161°46′08″ W, to the point of beginning.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 56°42′59″ N, long. 160°00′00″ W, then north along a line 12 miles from and parallel to the U.S. coastline to the intersection with 164°00′00″ W, longitude near the outlet to Kotzebue Sound, then north to the intersection with a point 12 miles from the U.S. coastline, then north along a line 12 miles from and parallel to the shoreline to lat. 68°00′00″ N, long. 168°58′23″ W, to lat. 65°00′00″ N, long. 168°58′23″ W, to lat. 62°35′00″ N, long. 175°00′00″ W, to lat. 59°59′57″ N, long. 168°00′08″ W, to lat. 57°45′57″ N, long. 161°46′08″ W, to lat. 58°06′57″ N, long. 160°00′00″ W, to the point of beginning; and that airspace extending upward from 1,200 feet MSL north of the Alaska Peninsula and east of 160° W longitude within an 81.2-mile radius of the Perryville Airport, AK, and north of the Alaska Peninsula and east of 160° W longitude and within a 35-mile radius of lat. 60°21′17″ N, long. 165°04′01″ W, and within a 73-mile radius of the Chevak Airport, AK, and within a 73-mile radius of the King Salmon Airport, AK, and within a 74-mile radius of the Kotzebue VOR/DME, AK, and within a 74-mile radius of the Manokotak Airport, AK, and within a 77.4-mile radius of the Nome VORTAC, AK, and within a 73-mile radius of the Shaktoolik Airport, AK, and within a 73-mile radius of the St. Michael Airport, AK, and within a 73-mile radius of the Toksook Bay Airport, AK.

* * * * *

Woody Island Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within the area bounded by a line beginning at lat. 53°30′00″ N, long. 160°00′00″ W, to lat. 56°00′00″ N, long. 153°00′00″ W, to lat. 56°45′42″ N, long. 151°45′00″ W, to lat. 58°19′58″ N, long. 148°55′07″ W, to lat. 59°08′34″ N, long. 147°16′06″ W, then clockwise via the 149.5-mile radius from the Anchorage VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline, then southwest by a line 12 miles from and parallel to the U.S. coastline to the intersection with 160°00′00″ W longitude, to the point of beginning; and that airspace extending upward from 1,200 feet MSL, extending south and east of the Alaska Peninsula within a 72.8-mile radius of Chignik Airport, AK, and outside (south) of the 149.5-mile radius of the Anchorage VOR/DME, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and south and east of the Alaska Peninsula within an 81.2-mile radius of Perryville Airport, AK.

* * * * *

Control 1487L [Amended]

That airspace extending upward from 8,000 feet MSL within 149.5 miles of the Anchorage VOR/DME clockwise from the 090° radial to the 185° radial of the Anchorage VOR/DME, AK; and that airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N, long. 148°55′07″ W; to lat. 59°08′34″ N, long. 147°16′06″ W; thence counterclockwise via the 149.5-mile radius of the Anchorage VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32′57″ N, long. 133°11′29″ W; to lat. 54°00′00″ N, long. 136°00′00″ W; to lat. 52°43′00″ N, long. 135°00′00″ W; to lat. 56°45′42″ N, long. 151°45′00″ W; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33′25″ N, long. 141°03′22″ W; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56′18″ N, long. 138°45′19″ W; to lat. 58°40′00″ N, long. 139°30′00″ W; to lat. 59°00′00″ N, long. 141°10′00″ W; to the point of beginning, and within an 85-mile radius of the Biorka Island VORTAC, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and within a 30-mile radius of the Glacier River NDB, AK, and within a 149.5-mile radius of the Anchorage VOR/DME, AK and within a 73-mile radius of the Kodiak Airport, AK; and that airspace extending upward from 700 feet MSL within 14 miles of the Biorka Island VORTAC, AK, and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending to 16 miles southwest of the Biorka Island VORTAC, AK.

* * * * *

Paragraph 6002—Class E Airspace Areas Designated as Surface Areas.

* * * * *

AAL AK E2 Cold Bay, AK [New]

Cold Bay, AK
(Lat. 55°12′21″ N, long. 162°43′35″ W)

That airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from the airport, extending from the 4.6-mile radius to 7.7 miles southeast and within 3 miles west and 4 miles east of the 335° bearing from the airport extending from the 4.6-mile radius to 12.2 miles northwest.

* * * * *

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

* * * * *

AAL AK E5 Shemya, AK [New]

Eareckson AS, AK
(52°42′44″ N, long. 174°06′49″ E)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK and that airspace extending upward from 1,200 feet above the surface within a 26.2-mile radius of Eareckson Air Station, AK.

* * * * *

AAL AK E5 Adak, AK [New]

Adak Airport, AK
(Lat. 51°53′01″ N, long. 176°38′33″ W)
Mount Moffett NDB/DME
(Lat. 51°52′19″ N, long. 176°40′334″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Adak Airport, AK and within 5.2 miles northwest and 4.2 miles southeast of the 061° radial from the Mount Moffett NDB/DME extending from the 7-mile radius to 11.5 miles northeast and that airspace extending upward from 1,200 feet above the surface within an 11-mile radius of Adak Airport, AK and within 16 miles of Adak Airport extending clockwise from the 033° radial to the 081° radial from the Mount Moffett NDB/DME.

* * * * *

AAL AK E5 Atka, AK [New]

Atka Airport, AK
(Lat. 52°13′14″ N, long. 174°12′22″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Atka Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 10-mile radius of Atka Airport, AK.

* * * * *

AAL AK E5 Cold Bay, AK [New]

Cold Bay, AK
(Lat. 55°12′21″ N, long. 162°43′35″ W)

That airspace extending upward from 1,200 feet above the surface within a 10.6-mile radius of Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from the Airport extending from the 10.6-mile radius to 20 miles northwest, and that airspace 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast,

* * * * *

AAL AK E5 Nikolski, AK [New]

Nikolski AS, AK
(Lat. 52°56′30″ N, long. 168°50′57″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile

radius of the Nikolski AS, AK and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Nikolski AS, AK.

* * * * *

AAL AK E5 Manokotak, AK [Removed]

* * * * *

AAL AK E5 Manakotak, AK [Amended]

Manakotak Airport, AK
(Lat. 58°55′55″ N, long. 158°54′07″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Manokotak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Manokotak Airport, AK, excluding that airspace extending beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 St. George, AK [New]

St. George Airport, AK
(Lat. 56°34′39″ N, long. 169°39′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the St. George Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 10-mile radius of St. George Airport, AK.

* * * * *

AAL AK E5 St. Paul Island, AK [New]

St. Paul Island, Airport, AK
(Lat. 57°09′59″ N, long. 170°13′21″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK, to 15 miles south of St. Paul Island Airport, AK, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of St. Paul Island Airport, AK.

* * * * *

AAL AK E5 Unalaska, AK [New]

Unalaska Airport, AK
(Lat. 53°53′56″ N, long. 166°32′42″ W)

Dutch Harbor NDB
(Lat. 53°54′19″ N, long. 166°32′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Unalaska Airport, AK and within 2.9 miles each side of the 360° radial from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° radial from the Dutch Harbor NDB, AK, to the 075° radial from the Dutch Harbor NDB, AK,

* * * * *

AAL AK E5 Sand Point, AK [New]

Sand Point Airport, AK
(Lat. 55°18′49″ N, long. 160°31′17″ W)

Borland NDB/DME
(Lat. 55°18′56″ N, long. 160°31′6″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Sand Point Airport, AK and within 3 miles each side of the 172° radial from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK and within 5 miles each side of the 318° radial from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK and within 5 miles either side of the 324° radial from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of the Sand Point Airport, AK, and that airspace extending upward from 1,200 feet above the surface and west of 160° W. longitude within a 25-mile radius of the Borland NDB/DME, AK.

* * * * *

AAL AK E5 King Cove, AK [New]

King Cove Airport, AK
(Lat. 55°06′59″ N, long. 162°15′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles each side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles.

* * * * *

AAL AK E5 Nelson Lagoon, AK [New]

Nelson Lagoon Airport, AK
(Lat. 56°0′27″ N, long. 161°9′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Nelson Lagoon Airport, AK.

* * * * *

AAL AK E5 Kivalina, AK [Amended]

Kivalina Airport, AK
(Lat. 67°44′10″ N, long. 164°33′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kivalina Airport, AK, and 3.9 miles each side of the 317° bearing from the Kivalina Airport, AK, extending from the 6.5-mile radius to 11.1 miles northwest of the Kivalina Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kivalina Airport, AK.

* * * * *

AAL AK E5 Kwethluk, AK [Amended]

Kwethluk Airport, AK
(Lat. 60°47′25' N, long. 161°26′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kwethluk Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kwethluk Airport, AK.

* * * * *

AAL AK E5 Napakiak, AK [Amended]

Napakiak Airport, AK
(Lat. 60°41′25″ N, long. 161°58′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Napakiak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within an 84-mile radius of the Napakiak Airport, AK.

* * * * *

AAL AK E5 New Stuyahok, AK [Amended]

New Stuyahok Airport, AK
(Lat. 59°27′06″ N, long. 157°22′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the New Stuyahok Airport; and that airspace extending upward from 1,200 feet above the surface within a 71-mile radius of the New Stuyahok Airport.

* * * * *

AAL AK E5 Red Dog, AK [Amended]

Red Dog, AK
(Lat. 68°01′56″ N, Long. 162°53′57″ W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Red Dog Airport, AK, and within 4 miles each side of the 219° bearing from the Red Dog Airport, AK, extending from the 11-mile radius to 14.5 miles southwest of the Red Dog Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 72.5-mile radius of the Red Dog Airport, AK.

* * * * *

AAL AK E5 Scammon Bay, AK [Amended]

Scammon Bay Airport, AK
(Lat. 61°50′40″ N, long. 165°34′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Scammon Bay Airport, and within 4 miles each side of the 099° bearing of Scammon Bay Airport extending from the 6.3-mile radius to 11 miles east of the airport; that airspace extending upward from 1,200 feet above the surface with a 73-mile radius of Scammon Bay Airport, AK.

* * * * *

AAL AK E5 Selawik, AK [Amended]

Selawik Airport, AK
(Lat. 66°36′01″ N, long. 159°59′09″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Selawik Airport.

* * * * *

AAL AK E5 Homer, AK [Amended]

Homer Airport, AK
(Lat. 59°38′44″ N, long. 151°28′36″ W)

Kachemak NDB
(Lat. 59°38′29″N, long. 151°30′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Homer Airport, AK, and within 4 miles each side of the 055° bearing from the Homer Airport, AK, to 12-miles northeast of the Homer Airport, AK, and within 8-miles north and 4.2-miles south of the Kachemak NDB 235° bearing extending from the Kachemak NDB to 16 miles southwest of the Kachemak NDB; and that airspace extending upward from 1,200 feet above the surface

within a 73-mile radius of the Homer Airport, AK.

* * * * *

Issued in Washington, DC, on April 7, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–07432 Filed 4–9–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Adjustment of Applicable Schedule Amount

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to make a technical amendment to the definition of ''applicable schedule amount'' in its regulations. In recent years, OFAC has adjusted its civil monetary penalties (CMPs) as required by the Federal Civil Penalties Inflation Adjustment Act, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. While OFAC's ''applicable schedule amount'' values are not civil monetary penalties that are required to be adjusted pursuant to such statute, OFAC is making a technical change to this definition to ensure the applicable schedule amount values continue to correspond appropriately to OFAC's CMPs.

DATES: This rule is effective April 12, 2021.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On September 8, 2008, OFAC issued as an interim final rule the ''Economic Sanctions Enforcement Guidelines'' (Enforcement Guidelines) as appendix A to the Reporting, Procedures and Penalties Regulations at 31 CFR part 501 (73 FR 51933, September 8, 2008). On November 9, 2009, OFAC re-issued as a final rule the Enforcement Guidelines (74 FR 57593, November 9, 2009). OFAC's Enforcement Guidelines provide a general framework for the enforcement of all economic sanctions programs administered by OFAC. Section V.B.2.a.ii. of the Enforcement Guidelines states that the base amount of a proposed civil penalty in a Pre-Penalty Notice shall be the ''applicable schedule amount,'' subject to certain caps noted in that section, where the case is deemed non-egregious and the apparent violation has come to OFAC's attention by means other than a voluntary self-disclosure. Section I.B. of the Enforcement Guidelines provides a definition of ''applicable schedule amount.''

Separately, as required by the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (the FCPIA Act), OFAC has adjusted its CMPs six times since the Federal Civil Penalties Inflation Adjustment Act Improvements Act went into effect on November 2, 2015: An initial catch-up adjustment on August 1, 2016 (81 FR 43070, July 1, 2016); an additional initial catch-up adjustment related to CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records (''recordkeeping CMPs'') that were inadvertently omitted from the August 1, 2016 initial catch-up adjustment on October 5, 2020 (85 FR 54911, September 3, 2020); and annual adjustments on February 10, 2017 (82 FR 10434, February 10, 2017); March 19, 2018 (83 FR 11876, March 19, 2018); June 14, 2019 (84 FR 27714, June 14, 2019); and April 9, 2020 (85 FR 19884, April 9, 2020).

OFAC's applicable schedule amount values in the Enforcement Guidelines, while not required to be adjusted pursuant to the FCPIA Act, correspond in certain ways with OFAC's CMPs. As a result, on August 11, 2020, OFAC issued a final rule amending the definition of ''applicable schedule amount'' in section I.B. of appendix A to 31 CFR part 501 to adjust applicable schedule amount values for transactions valued at $100,000 or more to correspond with OFAC's recent CMP adjustments required by the FCPIA Act (85 FR 48474, August 11, 2020).

By a separate rule, OFAC has published its annual adjustment of CMPs pursuant to the FCPIA Act for 2021. Related to that action, today OFAC is again amending the definition of ''applicable schedule amount'' in section I.B. of appendix A to 31 CFR part 501 to adjust the applicable schedule amount value for transactions valued at $200,000 or more to correspond with OFAC's recent CMP adjustments. Specifically, OFAC is amending section I.B.7. such that in the case of transactions valued at $200,000 or more, the applicable schedule amount is now $311,562, which corresponds with the current maximum CMP amount for a violation of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706, at 1705). This change is not required pursuant to the FCPIA Act; however, OFAC is making this change to ensure the applicable schedule amount value continues to correspond appropriately to OFAC's CMPs as the CMPs are adjusted pursuant to the FCPIA annually.

Public Participation

Because this final rule imposes no obligations on any person, but only amends OFAC's enforcement policy and procedures based on existing substantive rules, provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Further, this final rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 501 as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341.

Appendix A to Part 501 [Amended]

■ 2. In section I.B. 7. of appendix A to part 501, remove ''$307,922'' and add in its place ''$311,562''.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–07427 Filed 4–9–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0445]

RIN 1625–AA87

Security Zone; San Juan, Puerto Rico

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is revising an existing, moving security zone for the Port of San Juan, San Juan, Puerto Rico. The revision expands the existing moving security zone to a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan. While the cruise ships are moored at the Port of San Juan, the security zone remains a 50-yard radius around the cruise ships. This action continues to prohibit persons and vessels from entering, anchoring, mooring or transiting in the security zone, unless authorized by the Coast Guard Captain of the Port of San Juan or a designated representative. This action is necessary to better meet the safety and security needs of the Port of San Juan.

DATES: This rule is effective May 12, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0445 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Randy Johnston, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email *ssjwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The existing regulation in 33 CFR 165.758 contains a moving security zone of 50-yards around all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. On May 27, 2020, the Coast Guard received a request from Coast Guard Station San Juan to adjust the security zone to 200-yards to provide an adequate reaction zone for maritime security threats and hazards and to match similar security zones in other ports. In response, on November 2, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Security Zone; San Juan, Puerto Rico'' (85 FR 69299). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the adjustment of the security zone. During the comment period that ended December 2, 2020, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Juan (COTP) has determined that adjusting the security zone is necessary to better meet the safety and security needs of the Port of San Juan. The purpose of this rule is to ensure the safety and security of cruise ships in the Port of San Juan while they are entering, departing, moored, and anchored in port.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on November 2, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule finalized the proposed revisions to the existing moving security zone in § 165.758 from a 50-yard to a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan, San Juan, Puerto Rico. Increasing the security zone from 50-yards to 200-yards while the cruise ships are in transit or anchored provides law enforcement assets with more sufficient time to react in case of potential terrorist acts, sabotage, or other subversive acts, accidents, or hazards of a similar nature. While the cruise ships are moored, the security zone remains at a 50-yard radius around the cruise ships. No vessel or person is permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, available exceptions to the enforcement of the security zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor, San Juan, Puerto Rico. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the security zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a revision to an existing security zone to establish a 200-yard radius around all cruise ships entering, departing, moored or anchored in the Port of San Juan, San Juan, Puerto Rico. While cruise ships are moored, the security zone remains at a 50-yard radius around the cruise ships. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.758 to read as follows:

§ 165.758 Security Zone; San Juan, Puerto Rico.

(a) *Regulated area.* A moving and fixed security zone is established in the following area:

(1) The waters within a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan, Puerto Rico beginning one mile north of the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28′17.8″ N, 066°07′36.4″ W and continuing until the vessel passes this buoy on its departure from the port. All coordinates are North American Datum 1983.

(2) The waters within a 50-yard radius around all cruise ships moored in the Port of San Juan, Puerto Rico.

(b) *Regulations.* (1) No person or vessel may enter, transit, or remain in the security zone unless authorized by the Captain of the Port San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those operating in the security zone with the Captain of the Port's authorization must comply with all lawful orders or directions given to them by the Captain of the Port or a designated representative.

(2) Vessels encountering emergencies, which require transit through the moving security zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the security zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast

Guard Patrol Commander enforcing the security zone can be contacted on VHF–FM channels 16 and 22A.

(4) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the security zone will be in effect by providing advance notice of scheduled arrivals and departure of cruise ships via a Marine Broadcast Notice to Mariners.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

Dated: April 6, 2021.

Gregory H. Magee,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2021–07439 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–428; RM–11870; DA 21–268; FR ID 17580]

Television Broadcasting Services; Columbia, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 4, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by The Curators of the University of Missouri (University), the licensee of KOMU–TV, channel 8 (NBC/CW), Columbia, Missouri, requesting the substitution of channel 27 for channel 8 at Columbia in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau substitutes channel 27 for channel 8 at Columbia.

DATES: Effective April 12, 2021.

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

SUPPLEMENTARY INFORMATION: The University filed comments in support of the petition reaffirming its commitment to applying for channel 27. The Bureau believes the public interest would be served by the substitution and will permit KOMU–TV to better serve its viewers, who have experienced reception problems with VHF channel 8.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 20–428; RM–11870; DA 21–268, adopted March 4, 2021, and released March 4, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan.

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

§ 73.622 Digital television table of allotments.

■ 2. In § 73.622 in paragraph (i), amend the Post-Transition Table of DTV Allotments, under Missouri, by revising the entry for Columbia to read as follows:

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
MISSOURI	
* * * * *	
Columbia	17, 27
* * * * *	

[FR Doc. 2021–06391 Filed 4–9–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 20–89; FCC 21–24; FRS 17581]

COVID–19 Telehealth Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes the next steps in funding the COVID–19 Telehealth Program (Program) by expanding the administrative responsibilities of the Universal Service Administrative Company (USAC). The Commission finds it in the public's interest to direct USAC to administer the remainder of Round 1 and all of Round 2 of the Program under the Commission's oversight.

DATES: Effective April 12, 2021 and applicable February 2, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Minnock, Wireline Competition Bureau, 202–418–7400 or by email at *Stephanie.Minnock@fcc.gov.* We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report and Order in WC Docket No. 20–89; FCC 21–24, adopted on February 2, 2021 and released on February 2, 2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The

full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-21-24A1.pdf.*

I. Introduction

1. In the Report and Order, the Commission takes the next step towards committing funding through the COVID–19 Telehealth Program by finding it is in the public interest to expand the administrative responsibilities of the Universal Service Administrative Company to include the Program. The ongoing COVID–19 pandemic has caused unprecedented stress on the Nation's health care system. As health care providers have struggled to provide urgently needed care, telehealth has emerged as an essential resource to combatting the pandemic. In March 2020, Congress allocated $200 million to the Commission to establish a program to help health care providers offer telehealth and connected care services and connected devices to patients at their homes or mobile locations in response to the COVID–19 pandemic. The Commission established the Program and committed this funding to health care providers across the country. In December 2020, Congress appropriated an additional $249.95 million for a second round of funding for the Program under the Consolidated Appropriations Act, 2021.

II. Discussion

2. After careful review of the record, and consideration of the Commission's staff resources and the need to expeditiously implement Round 2 of the Program, the Commission adopted the proposal to direct USAC to administer the remainder of Round 1, which includes, but is not limited to, conducting an initial review of invoices, providing outreach and guidance to stakeholders about the invoicing processes, and processing post-program feedback reports. The Commission similarly directs USAC to administer all of Round 2 of the Program, which includes, but is not limited to, updating the portal that will be used by applicants, reviewing applications consistent with the metrics to be established by the Commission in a subsequent order, conducting an initial review of invoices, providing outreach and guidance to stakeholders about the application and invoicing processes, and administering any required audit and reporting requirements. For both the remainder of Round 1 and all of Round 2 of the Program, the Commission will retain the final funding decision-making authority.

3. The CARES Act, which authorized the Commission to create the Program, allows the Commission to rely on its rules under Part 54, *i.e.,* to use the services of USAC, if the Commission determines that doing so is in the public interest. During Round 1 of the Program, the Commission made this public interest finding and directed USAC to help administer a narrow portion of the Program by processing eligibility determinations and promoting the Program to interested stakeholders. Based on the lessons learned during Round 1, the need to complete Round 1 and swiftly implement Round 2 of the Program, USAC's extensive experience, and the support of commenters in the record, the Commission finds it is in the public interest to direct USAC to administer the remainder of Round 1 and all of Round 2 of the Program under the Commission's oversight.

4. USAC has more than 20 years of expertise developed from administering the Commission's Universal Service Fund Programs, which includes, but is not limited to, conducting applicant outreach, developing application systems, reviewing funding requests, and processing requests for disbursement. Given USAC's long-standing, successful record of administering the Universal Service Fund Programs, directing USAC to administer this Program would ensure the expeditious implementation of Round 2 of the Program and efficient continuation of the remaining work of Round 1 of the Program. In addition, using USAC in this manner will allow for more efficient allocation of Commission staff resources.

5. The record further supports using USAC for the administration of the remainder of Round 1 and all of Round 2 of the Program. Commenters that opined on this matter supported the proposal to have USAC administer the Program, and at least one commenter noted USAC's successful administration of the Rural Health Care Program. Although another commenter noted that USAC would need additional resources to accommodate this work, the Commission intends to allocate a sufficient amount of administrative expenses from the COVID–19 Telehealth appropriation to USAC so that it can successfully mobilize the necessary resources to administer the Program.

6. Consistent with its role in administering the Universal Service Fund Programs, USAC's role for the Program will be limited to program administration; USAC will not have authority to make policy decisions for the Program. As indicated, the full Commission will establish award metrics in a subsequent order. Thereafter, Commission staff will provide USAC with additional guidance as necessary regarding remaining Round 1 responsibilities, the Round 2 application review process, the Round 2 application prioritization criteria, the Round 2 invoice review process, and any other related administrative functions required to implement the Program. Given the ongoing nature of the pandemic, and the urgent need for the Program, the Commission finds that it is in the public interest to designate USAC as the administrator for the Program at this time so that it can expeditiously put into place any necessary administrative resources and processes while the Commission and its staff continue to evaluate policy questions.

7. The Commission delegates financial oversight of the Program to the Commission's Managing Director and direct the Office of the Managing Director (OMD) to work in coordination with the Wireline Competition Bureau (Bureau) to ensure that all financial aspects of the program have adequate internal controls. These duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance. Such financial oversight must be consistent with the metrics to be established by the Commission in a subsequent order, and any Commission rules and policies to the extent these are applicable to the Program. OMD performs this role with respect to USAC's administration of the Commission's Universal Service Programs and the Commission anticipates that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 903 of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 to ensure the efficient and effective management of the Program. The Commission anticipates that among the first acts, OMD will perform to ensure satisfaction of its financial management obligations is the execution of a memorandum of understanding, or similar agreement, with USAC. Finally, the Commission notes that OMD is required to consult with the Bureau on any policy matters affecting the Program, consistent with § 0.91(a) of the Commission's rules.

8. In USAC's administration of the Program, it is directed to comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security standards and requirements, such as the Privacy Act, relevant provisions in the Federal Information Security

Modernization Act of 2014, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

9. The Commission finds that the Public Notice, DA 21–14 rel. Jan 6, 2021 provided sufficient notice and allowed for suitable public comment on our proposal to allow USAC to administer the Program. However, out of an abundance of caution, the Commission also determines that using additional notice and comment procedures for the administration of the emergency relief Program, and thereby delaying its effectiveness by at least several months, would be impracticable and contrary to the public interest. The good cause exception to the notice and comment procedures of the Administrative Procedure Act ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' ''In determining whether good cause exists, an agency should 'balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.' ''

10. As a general matter, the Commission believes that public notice and comment requirements are an essential component of our rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, the Commission finds there is good cause for forgoing a formal Notice of Proposed Rulemaking. Delaying USAC's ability to prepare for the administration of the Program would result in a delay in the commitment and use of Program funds. In light of the continued spread and devastating impact of COVID–19, and the continued urgent need to address this public health crises, any further delay in the use of Program funds to assist health care providers in meeting the health care needs of their patients could impede efforts to mitigate the spread of the disease, and would also frustrate Congress's decision to declare an ''emergency period'' when it appropriated $200 million for Round 1 of the Program. This emergency relief imposes a minimal regulatory burden on any parties and serves to expedite the commitment of appropriated funds to help health care providers combat this global pandemic. For the same reasons, and because USAC must begin preparations as soon as practicable to handle the tasks the Commission has assigned to it, the Commission also finds good cause to make the rules granting this relief effective immediately upon release of the Report and Order.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

11. This document contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

B. Congressional Review Act

12. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs that the rules adopted herein are ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). Because the Commission finds for good cause that notice and public procedure on the rules adopted herein is impracticable, unnecessary, or contrary to the public interest, the Report and Order will become effective February 2, 2021 pursuant to 5 U.S.C. 808(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 201, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 254, 303(r), and 403, DIVISION B of the Coronavirus Aid, Relief, and Economic Security Act, Public Law No 116–136, 134 Stat. 281, and DIVISION N of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, the Report and Order *is adopted.*

14. *It is further ordered* that, pursuant to the authority contained in section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), the Report and Order *shall become effective* February 2, 2021.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–06153 Filed 4–9–21; 8:45 am]

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Proposed Rules

Federal Register

Vol. 86, No. 68

Monday, April 12, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0003]

RIN 1904–AF13

Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') proposes to revise the Department's ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' (''Process Rule''), revising the process the Department follows to develop energy conservation standards and test procedures for covered products and equipment. The proposed revisions are consistent with longstanding DOE practice and would remove unnecessary obstacles to DOE's ability to meet its statutory obligations under the Energy Policy and Conservation Act (''EPCA'').

DATES: *Comments:* DOE will accept comments, data, and information regarding all aspects of this notice of proposed rulemaking on or before May 27, 2021. DOE will hold a webinar on Friday, April 23, 2021, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov/docket/EERE-2021-BT-STD-0003.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *processrule2021STD0003@ee.doe.gov.* Include ''2021 Process Rule NOPR'' and docket number EERE–2021–BTD–STD–0003 and/or RIN number 1904–AF13 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) of this document.

Docket: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at: *http://www.regulations.gov/docket/EERE-2021-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Summary of Proposal

On February 14, 2020, the United States Department of Energy (''DOE'' or ''the Department'') published a final rule (''February 2020 Final Rule'') in the **Federal Register** that made significant revisions to its ''Procedures, Interpretations, and Policies for

Consideration of New or Revised Energy Conservation Standards for Consumer Products'' found in 10 CFR part 430, subpart C, appendix A. 85 FR 8626. DOE also published a companion final rule on August 19, 2020 (''August 2020 Final Rule''), that clarified how DOE would conduct a comparative analysis across all trial standard levels when determining whether a particular trial standard level was economically justified. *See* 85 FR 50937. These rules collectively modified the Process Rule that DOE had originally issued on July 15, 1996 [1] into its current form. *See* 10 CFR part 430, subpart C, appendix A (2021). While the 1996 Process Rule acknowledged that the guidance would not be applicable to every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices,[2] the revisions made in the February 2020 Final Rule sought to create a standardized rulemaking process that was binding on the Department. 85 FR 8626, 8634. In creating this one-size-fits-all approach, the February 2020 Final Rule and the August 2020 Final Rule also added additional steps to the rulemaking process that are not required by any applicable statute.

Subsequent events have caused DOE to reconsider the merits of a one-size-fits-all rulemaking approach to establishing and amending energy conservations standards and test procedures. Two of these events are particularly salient. First, on October 30, 2020, a coalition of non-governmental organizations filed suit under EPCA alleging that DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.[3] On November 9, 2020, a coalition of States filed a virtually identical lawsuit.[4] In response to these lawsuits, DOE has had to reconsider whether the benefits of a one-size-fits-all rulemaking approach outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As mentioned previously, the 1996 Process Rule allowed for ''case-specific deviations and modifications of the generally applicable rule.'' [5] This allowed DOE to tailor rulemaking procedures to fit the specific circumstances of a particular rulemaking. For example, under the 1996 Process Rule, minor modifications to a test procedure would not automatically result in a 180-day delay before DOE could issue a notice of proposed energy conservation standards. Eliminating these unnecessary delays would better enable DOE to meet its obligations and deadlines under EPCA. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Second, on January 20, 2021, the White House issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. *Id.* at 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review ''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, [these policies].'' *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.* Under that same section, for certain explicitly enumerated agency actions, including the February 2020 and the August 2020 Final Rules, the Order directs agencies to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within a specific time frame. Under this mandate, DOE is directed to propose any major revisions to these two rules by March 2021, with any remaining revisions to be proposed by June 2021. *Id.* at 7038. DOE believes today's proposed revisions will help the United States meet the goals in section 1 of Executive Order 13990 by allowing DOE to fulfill its responsibilities under EPCA to issue energy conservation standards that result in significant conservation of energy and are technologically feasible and economically justified in a more timely and effective manner, thereby allowing for more rapid realization of energy savings and reductions in greenhouse gas emissions through future energy conservation standards.

In light of these events, DOE has identified several aspects of the February 2020 and the August 2020 Final Rules (together, representing the current Process Rule) that present obstacles to DOE's ability to meet its obligations under EPCA, and thus appear to merit revision. Revision of the Process Rule would also support the goals in section 1 of Executive Order 13990. In accordance with the time frame specified in that Executive Order, DOE proposes major revisions to the current Process Rule in this document and may propose additional revisions in a subsequent NOPR.

In this document, DOE proposes to: (1) Restore DOE's discretion to depart from the Process Rule's general guidance; (2) remove the recently-added threshold for determining when the significant energy savings criterion is met; (3) remove the recently-added requirement to conduct a comparative analysis in addition to DOE's analysis of economic justification under the factors listed in 42 U.S.C. 6295(o)(2)(B)(i); (4) revert to DOE's 1996 guidance regarding completion of test procedure rulemakings prior to issuance of a NOPR for an energy conservation standards rulemaking; (5) clarify that DOE may make modifications to industry test procedure standards to comply with the requirements of EPCA, as well as for certification, compliance, and enforcement purposes; (6) revert to DOE's prior practice on direct final rules; and (7) clarify that DOE will conduct negotiated rulemakings in accordance with the Negotiated Rulemaking Act. These revisions are summarized in the following table.

LIST OF PROPOSED REVISIONS IN THIS DOCUMENT

Section	Proposed revisions
1. Objectives	Revise language to be consistent with the newly proposed Section 3.

[1] ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products,'' 61 FR 36974 (July 15, 1996) (''1996 Process Rule'').

[2] *Id.* at 36979.

[3] *Natural Resources Defense Council* v. *DOE,* Case No. 20–cv–9127 (S.D.N.Y. 2020).

[4] *State of New York* v. *DOE,* Case No. 20–cv–9362 (S.D.N.Y. 2020).

[5] 61 FR 36974, 36979.

LIST OF PROPOSED REVISIONS IN THIS DOCUMENT—Continued

Section	Proposed revisions
2. Scope	No revisions proposed in this document.
3. Mandatory Application of the Process Rule	Replace with new Section 3, ''Application of the Process Rule.''
4. Setting Priorities for Rulemaking Activity	No revisions proposed in this document.
5. Coverage Determination Rulemakings	Eliminate the 180-day period in paragraph (c) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.
6. Process for Developing Energy Conservation Standards	Eliminate paragraph (b), ''Significant Savings of Energy.''
7. Policies on Selection of Standards	Eliminate text in paragraph (e)(2)(i) requiring DOE to conduct a comparative analysis when determining whether a proposed standard level is economically justified.
8. Test Procedures	Clarify in paragraph (c) that DOE may revise consensus industry test procedure standards for compliance, certification, and enforcement purposes; eliminate the 180-day period in paragraph (d) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.
9. ASHRAE Equipment	No revisions proposed in this document.
10. Direct Final Rules	Revise section to clarify that DOE will implement its direct final rule authority on a case-by-case basis.
11. Negotiated Rulemaking Process	Eliminate section.
12. Principles for Distinguishing Between Effective and Compliance Dates.	No revisions proposed in this document.
13. Principles for the Conduct of the Engineering Analysis	No revisions proposed in this document.
14. Principles for the Analysis of Impacts on Manufacturers	Eliminate incorrect cross reference.
15. Principles for the Analysis of Impacts on Consumers	No revisions proposed in this document.
16. Consideration of Non-Regulatory Approaches	No revisions proposed in this document.
17. Cross-Cutting Analytical Assumptions	No revisions proposed in this document.

* As part of the proposed revisions, DOE will renumber sections and subsections as required.

II. Authority and Background

A. Authority

Title III, Parts B [6] and C [7] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for Consumer Products and Certain Industrial Equipment.[8] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) certification and enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293; 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314(a); and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life-cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6); and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions.

B. Background

DOE conducted an effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved reaching out to many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, State agencies, utilities, and other interested parties for input. The result was the publication of a final rule in the **Federal Register** on July 15, 1996, titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer

[6] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[7] Part C was added by Public Law 95–619, Title IV, § 441(a). For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[8] All references to EPCA in this document refer to the statute as amended through Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

Products'' (''1996 Process Rule''). 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and it became known colloquially as the ''Process Rule.'' The goal of the Process Rule was to elaborate on the procedures, interpretations, and policies that would guide the Department in establishing new or revised energy conservation standards for consumer products. The rule was issued without notice and comment under the Administrative Procedure Act's (''APA'') exception for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' (5 U.S.C. 553(b)(A))

On December 18, 2017, DOE issued a request for information (''RFI'') on potential revisions to the Process Rule. 82 FR 59992. DOE subsequently published a NOPR regarding the Process Rule in the **Federal Register** on February 13, 2019. 84 FR 3910. After considering the comments it received DOE then published a final rule in the **Federal Register** on February 14, 2020, which significantly revised the Process Rule. 85 FR 8626.

While DOE issued the 1996 Process Rule without notice and comment as an interpretative rule, general statement of policy, or rule of agency organization, procedure, or practice, the February 2020 Final Rule was issued as a legislative rule subject to notice and comment. For several reasons, as stated throughout this document, DOE believes the Process Rule is best described and utilized as generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The revisions proposed in this document are intended to clarify this point. In accordance with Executive Order 13990, DOE is using a notice and comment process to propose revisions to the Process Rule. 86 FR 7037.

III. Discussion of Proposed Revisions to the Process Rule

The following sections discuss the proposed revisions to the Process Rule and request comment on those proposals. In addition to those specific requests for comment, DOE requests comment, data, and information regarding all aspects of this notice of proposed rulemaking.

A. Restoring the Department's Discretion To Depart From the Process Rule's General Guidance

One of the most significant changes made to the Process Rule in the February 2020 Final Rule was to turn what had been guidance on usual practices for issuing new or amended energy conservation standards and test procedures into binding requirements. The July 1996 Final Rule contained procedures, interpretations, and policies that DOE believed would be appropriate for general use in conducting energy conservation standard and test procedure rulemakings. 61 FR 36974, 36979. DOE also acknowledged the possibility that the usual practices would not be appropriate for every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices, subject to public notice explaining any such deviations. *Id.*

In making the Process Rule binding, DOE determined at the time it issued the February 2020 final rule that ''promoting a rulemaking environment that is both predictable and consistent'' outweighed the need for ''flexibility to fit the appropriate process to the appliance standard or test procedure at issue.'' February 2020 Final Rule, 85 FR 8626, 8633–8634. Additionally, in response to comments that mandatory application of the Process Rule could conflict with DOE's statutory obligations under EPCA (*e.g.,* rulemaking deadlines), DOE stated that the Process Rule had been drafted to closely follow and implement EPCA. *Id.* at 8634.

As discussed earlier in this document, DOE is reconsidering whether mandatory application of the Process Rule would have a negative effect on DOE's ability to meet the statutory deadlines established under EPCA and other applicable requirements. DOE acknowledges it has often been unable to meet its rulemaking deadlines. The Process Rule, however, mandates procedural steps that make the rulemaking process lengthier than EPCA requires. Under EPCA, DOE is required to review energy conservation standards for covered products and equipment at least once every six years to determine if a more-stringent standard would result in significant conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6295(m)(1); 42 U.S.C. 6313(a)(6)(C); 42 U.S.C. 6316(a)) Similarly, DOE is also required to review test procedures for covered products and equipment at least once every seven years to determine if improvements can be made. (42 U.S.C. 6293(b)(1); 42 U.S.C. 6314(a)(1)(A)) DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time. As a result, any modifications or additions to the procedural requirements laid out in EPCA may affect DOE's ability to meet the rulemaking deadlines in EPCA.

For instance, EPCA does not require DOE to issue any rulemaking documents in advance of a NOPR. The February 2020 Final Rule, on the other hand, mandates use of an early assessment RFI and either an advanced notice of proposed rulemaking (''ANOPR'') or a framework document with a preliminary analysis. DOE recognizes the importance of gathering early stakeholder input and has used RFIs and ANOPRs in the past. But an RFI followed by a ANOPR may not be the most efficient method for gathering early stakeholder input in all rulemakings. For instance, EPCA requires DOE to revisit a determination that standards do not need to be amended within three years. (42 U.S.C. 6295(m)(3)(B)) In such cases, particularly with respect to covered products and equipment that have gone through multiple rounds of rulemakings, a notice of data availability (''NODA'') that updates the analysis from the previous determination, as opposed to an early assessment RFI and an ANOPR, may be best suited for gathering early stakeholder input and establishing an adequate rulemaking record. As a result, mandatory application of the Process Rule requirement for early assessment RFIs and ANOPRs could in some circumstances make it more difficult for DOE to meet its statutory deadlines, while adding little to no value to the rulemaking process.

The February 2020 Final Rule also required that DOE identify any necessary modifications to established test procedures prior to initiating the standards development process and finalize those modifications, if any, 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. DOE stated that this requirement would allow stakeholders to provide more effective comments on the proposed energy conservation standards. 85 FR 8626, 8676. That being said, this requirement is not found in EPCA, where energy conservation standards and test procedures are under different review cycles (*i.e.,* six and seven years, respectively). By requiring test procedure modifications to be identified and finalized 180 days prior to proposing new or amended energy conservation standards, the Process Rule has effectively mandated a six-year review cycle for test procedures. Further, this requirement would apply regardless of the complexity of the modifications made to the test

procedure. Application of this provision could restrict DOE's ability to meet its statutory obligations while offering little benefit in situations where DOE makes minor modifications or adjustments to a test procedure. This proposed change is discussed in greater detail in section III.E.

These examples illustrate what was clearly understood in the July 1996 Final Rule. While the procedures, interpretations, and policies laid out in the Process Rule are generally applicable to DOE's rulemaking program, application of these guidelines to a specific rulemaking should be determined on a case-by-case basis. 61 FR 36974, 36979. Accordingly, DOE proposes to revert the Process Rule back to its original, non-binding status. DOE requests comments, information, and data on whether the Process Rule should be non-binding or, alternatively, whether the rule should remain binding but with revised provisions.

In addition, consistent with this proposal to revert the Process Rule back to its original form as non-binding guidance, DOE also proposes to clarify that the Process Rule does not create legally enforceable rights. DOE does not intend for departures from the generally applicable guidance contained in the Process Rule to serve as the basis for potential procedural legal challenges. It is noted, however, that this proposed clarification, which is similar to the general approach contained in the 1996 Process Rule, would not impact the ability of a party to raise a challenge regarding the substantive merits of a given rulemaking or the procedural steps delineated under EPCA or the APA. *See* 42 U.S.C. 6306 (applying judicial review to EPCA's consumer product provisions) and 42 U.S.C. 6316(a)–(b) (extending the application of 42 U.S.C. 6306 to commercial and industrial equipment). DOE seeks comment on this proposed clarification.

B. Significant Energy Savings Threshold

EPCA provides that the Secretary of Energy may not prescribe an amended or new energy conservation standard if the Secretary determines that such standard will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6)(A)(ii)(II); and 42 U.S.C. 6316(a)) Congress did not define the statutory term ''significant conservation of energy,'' and, for several decades prior to the February 2020 Process Rule, DOE also did not provide specific guidance or a numerical threshold for determining what constitutes significant conservation of energy. Instead, DOE determined on a case-by-case basis whether a particular rulemaking would result in significant conservation of energy.

In a departure from this practice, DOE adopted a numerical threshold for significant conservation of energy in the February 2020 Process Rule, which presently applies to all energy conservation standards rulemakings for both covered products and equipment. Specifically, the new threshold requires that an energy conservation standard result in a 0.30 quad reduction in site energy use over a 30-year analysis period or a 10-percent reduction in site energy use over that same period. In explaining the benefits of the new threshold, DOE stated that it would ensure that economically-justified standards would be developed, while also making the rulemaking process more predictable. 85 FR 8626, 8670.

DOE is reconsidering whether the numerical threshold established in the February 2020 Final Rule allows DOE to fully consider whether an energy conservation standard would result in significant conservation of energy. In particular, DOE is reevaluating whether the significance of energy savings offered by a new or amended energy conservation standard can be determined without knowledge of the specific circumstances surrounding a given rulemaking. For example, the United States has now rejoined the Paris Agreement and will exert leadership in confronting the climate crisis.[9] These actions have placed an increased emphasis on the importance of energy savings that reduce greenhouse gas emissions, but the threshold established in the February 2020 Final Rule does not allow DOE to account for the increased significance of energy savings that may help mitigate the climate crisis. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. For example, consumer refrigerators operate 24 hours per day, 365 days per year. Residential air conditioners, on the other hand, typically operate during peak demand, *e.g.,* during hot summer days. Reducing energy use during periods of peak demand helps reduce stress on energy infrastructure. As a result, a 0.3 quad reduction in energy use for residential air conditioners will have a greater impact on reducing the stress on U.S. energy infrastructure than a 0.3 quad reduction in energy use for consumer refrigerators. These differences can also be exacerbated by geographical and population differences. Lastly, establishing a set, numerical site energy threshold for all covered products and equipment does not allow DOE to account for differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. For example, according to *Annual Energy Outlook 2021,* 1 quad of site electricity energy consumption in 2022 corresponds to approximately 3.05 quads of FFC energy consumption (for a generic end-use load shape).[10] By contrast, 1 quad of site natural gas or oil energy consumption in 2022 corresponds to 1.11 and 1.17 quads of FFC energy consumption, respectively. These are just some examples of any number of factors that cannot be fully accounted for when using DOE's current, static threshold for significant conservation of energy.

Accordingly, DOE proposes to eliminate the current threshold for determining significant conservation of energy and to revert to its prior practice of making such determinations on a case-by-case basis. DOE requests comments, information, and data on whether its proposed approach is appropriate for determining significant conservation of energy or on any suggested alternatives.

C. Determinations of Economic Justification

Under EPCA, any new or amended standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) To ensure that DOE meets this statutory mandate, DOE employs a walk-down process to select energy conservation standard levels. As a first step in the process, DOE screens out technologies for improving energy efficiency that are not feasible. DOE then uses the remaining technologies to create a range of trial standard levels (''TSLs''). These TSLs typically include:

[9] *See* Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

[10] Available at: *https://www.eia.gov/outlooks/aeo/.*

(1) The most-stringent TSL that is technologically feasible (*i.e.,* the ''max-tech'' standard); (2) the TSL with the lowest life-cycle cost; (3) a TSL with a payback period of not more than three years; and (4) any TSLs that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other TSLs. Beginning with the max-tech TSL, DOE then determines whether a specific TSL is economically justified. In making that determination, DOE determines, after reviewing public comments and data, whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven factors described in 42 U.S.C. 6295(o)(2)(B)(i). If DOE determines that the max-tech TSL is economically justified, the analysis ends, and DOE adopts the max-tech TSL as the new or amended standard. However, if DOE determines that the max-tech TSL is not economically justified, DOE walks down to consider the next-most-stringent TSL. This walk-down process continues until DOE determines that a TSL is economically justified or that none of the TSLs are economically justified.

In the August 2020 Final Rule, DOE modified this process to require that determinations of economic justification include a comparison of the benefits and burdens of the selected TSL against the benefits and burdens of the baseline case and all other TSLs. 85 FR 50937, 50944. DOE stated its belief that such approach would allow for more reliable determinations that a specific TSL is economically justified. *Id.* at 50939. While the requirement to conduct a comparative analysis affected DOE's process for determining whether a TSL is economically justified, it did not dictate any particular outcome or require DOE to modify its general approach of walking down from the max-tech TSL.

DOE's decision to add a comparative analysis to the process for determining whether a TSL is economically justified generated considerable confusion amongst DOE's stakeholders. Perhaps the greatest confusion stemmed from whether the requirement to conduct a comparative analysis would conflict with DOE's statutory mandate to select the TSL that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified. Several stakeholders were concerned that DOE would use the comparative analysis to select a TSL that maximizes net benefits, as opposed to the TSL that maximizes energy savings and is technologically feasible and economically justified. *Id.* While DOE reiterated its commitment to follow the requirements in EPCA in the August 2020 Final Rule, the Department also stated that ''the purpose of EPCA's seven factors is not to select the standard that achieves the maximum improvement in energy efficiency, *no matter how minute an estimated cost savings.*'' 85 FR 50937, 50939 (emphasis added). In retrospect, DOE has come to understand that these statements are somewhat contradictory and generate uncertainty regarding how DOE would use a comparative analysis to determine whether a specific TSL is economically justified.

In light of this uncertainty, DOE proposes to eliminate the requirement to conduct a comparative analysis when determining whether a specific TSL is economically justified. DOE has tentatively concluded that the process and criteria laid out in 42 U.S.C. 6295(o)(2)(B)(i) for determining economic justification is already sufficiently robust. And, any improvement to that process that may result from the use of a comparative analysis is outweighed by the uncertainty it casts over DOE's statutory obligation to select a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified and the additional burden the comparative analysis imposes on DOE. DOE requests comments, information, and data on whether this proposal offers an appropriate approach for determining whether a TSL is economically justified.

D. Adoption of Industry Test Standards

The February 2020 Final Rule amended the Process Rule to require adoption, without modification, of industry standards as test procedures for covered products and equipment, unless such standards do not meet the EPCA statutory criteria for test procedures. 85 FR 8626, 8678–8682, 8708. In essence, DOE sought to explain and codify its established practice, which is to analyze the appropriate consensus standard, with the input of stakeholders and the interested public, to: (1) Determine that the EPCA statutory criteria are met and use it as the Federal test procedure; (2) modify it so that it complies with the statutory criteria, or (3) reject it and develop an entirely new test procedure.

On further review, DOE has come to see that its attempt at clarification may have had the opposite effect, creating the false impression that DOE had put in place a new presumption for an ''as-is'' adoption of industry consensus standards without meaningful review. The resulting confusion led to complaints that DOE was being overly deferential to industry and abdicating its responsibilities under the statute to ensure that any industry consensus standards adopted as Federal test procedures comport with the relevant requirements of EPCA. Such outcome was never DOE's intention, and accordingly, the Department proposes to clarify that while DOE will first consider applicable industry consensus standards, such standards must first undergo a thorough agency review to ensure that they meet the requirements of the statute, either with or without modification. The following discussion explains DOE's process for consideration of industry consensus standards as Federal test procedures. *See* 85 FR 8676–8682.

As an initial matter, the requirement at section 8(c) of the Process Rule applies to covered products and equipment where use of a specific consensus standard is not otherwise mandated by EPCA. In all other cases, it has been DOE's established practice to routinely adopt consensus standards as Federal test procedures, which is consistent with both EPCA and other relevant statutory provisions. However, in order to adopt any such test procedure, the Department must apply certain statutory criteria contained in two provisions of EPCA—42 U.S.C. 6293(b)(3)–(4) or 42 U.S.C. 6314(a)(2)–(3), depending upon the specific covered product or covered equipment to which the test procedure would apply. Both of these sections contain similar language describing two statutory criteria for the promulgation of a test procedure: (1) That the test procedure shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and (2) that the test procedure shall not be unduly burdensome to conduct.[11]

Furthermore, the National Technology Transfer and Advancement Act (''NTTAA'') and OMB Circular A–119,

[11] The language in 42 U.S.C. 6314(a)(2)–(3) differs slightly from its parallel sections in 42 U.S.C. 6293(b)(3)–(4). 42 U.S.C. 6314(a)(2) reads as follows: ''(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.'' Subparagraphs (3) for each of these two statutory provisions referenced above address test procedures for determining estimated annual operating costs have similar language but are not identical in order to reflect differences in criteria for covered products and covered commercial equipment.

''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' together direct Federal agencies to adopt voluntary, private sector, consensus standards to meet agency needs during standards development activities, thereby supporting the use of technical standards that are developed or adopted by voluntary, private sector, consensus standards bodies (rather than government-unique standards), unless such standards are inconsistent with applicable law or otherwise impractical. (National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, Section 12 (March 7, 1996) and revised Circular A–119, 81 FR 4673 (January 27, 2016)) The NTTAA codified the policies in OMB Circular A–119. The 2016 revised version of OMB Circular A–119 is available and can be accessed via PDF download at *https://www.whitehouse.gov/omb/information-for-agencies/circulars/.* These provisions seek to promote a number of public policy objectives, including the intention to enhance technological innovation for commercial public purposes, to promote the adoption of technological innovations, to encourage long-term growth for U.S. enterprises, to promote efficiency and economic competition through harmonization of standards, and to eliminate the cost to the Federal government of developing its own standards and decrease the burden of complying with agency regulation. DOE agrees that consideration of industry consensus standards furthers these objectives and also facilitates compliance and reduces burdens, because the regulated industry is already familiar with these procedures.

While it is true that EPCA does not require the use of consensus standards for test procedures for certain equipment, neither does it prohibit such use, and again, the NTTAA and OMB Circular A–119 favor the use of consensus standards by agencies, unless there is a conflict with applicable law, or it is otherwise impractical. Clearly, nothing in EPCA prevents DOE from using consensus standards in test procedure rulemakings as long as DOE can demonstrate that these consensus standards meet the EPCA statutory criteria. Consensus standards are a logical foundation from which to begin the Federal test procedure process. Accordingly, DOE finds that the current Process Rule implements both the underlying purpose of EPCA with respect to test procedures, as well as the NTTAA and OMB Circular A–119 with respect to consensus standards, and ultimately, it is a reasonable exercise of the agency's discretion in its test procedure rulemaking activity. As such, DOE is not proposing to change this aspect of the Process Rule.

Turning from DOE's authority to consider industry consensus standards to the Department's process for considering such standards as a Federal test procedure, DOE notes that because industry consensus test procedures are not generally developed for regulatory purposes, a careful review by the agency is necessary and appropriate to ensure that the relevant statutory criteria are met, with modifications as necessary. Accordingly, when DOE considers promulgating either a new or amended test procedure, DOE will evaluate the applicable consensus standard to determine whether such consensus standard meets the applicable above-referenced EPCA requirements. DOE will also assess whether an industry consensus standard would generate consistent and repeatable results that are compatible with the Department's compliance, certification, and enforcement (''CC&E'') regulations. Failure to generate such results would render such test procedure impractical for regulatory purposes, a key consideration under both the NTTAA and OMB Circular A–119.

If the consensus standard does not meet both relevant statutory criteria (as detailed earlier) and CC&E requirements, DOE will not adopt the consensus standard without modification. It will then be necessary for DOE and stakeholders, during the notice and comment rulemaking process, to determine what specific modifications, if any, will bring the consensus standard into compliance with the statutory criteria and CC&E requirements. If the consensus standard cannot be modified to meet the statutory criteria and CC&E requirements, DOE will not use it and will need to craft its own test procedure. As with all test procedure rules, all of these issues, including whether the consensus standard meets the EPCA statutory criteria, will be discussed and decided in the regular notice and comment rulemaking process. To the extent that modifications to these industry consensus standards impose costs on industry (*i.e.,* DOE modifications require different testing equipment or facilities), DOE must weigh whether such costs present an undue burden on manufacturers. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

While DOE believes that the above discussion should dispel any lingering confusion regarding the application of the Process Rule to DOE's consideration of industry consensus standards in setting Federal test procedures and that no modifications to the current text are necessary, DOE remains open to providing further clarification. In that vein, DOE proposes to include additional language at paragraph 8(c) of the Process Rule, stating that DOE may also make further modifications as necessary to ensure industry test standards are compatible with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

DOE invites comment and suggestions on this aspect of its proposal.

E. Finalization of Test Procedures Prior to Issuance of a Standards Proposal

In the February 14, 2020 Final Rule, DOE adopted at section 8(d) of the Process Rule, a requirement that Federal test procedures establishing methodologies used to evaluate new or amended standards will be finalized at least 180 days before publication of a NOPR proposing new or amended energy conservation standards. 85 FR 8626, 8678, 8708. DOE explained that this approach would allow interested parties to gain some experience with such test procedure, thereby allowing additional insight into and effective comments on proposed standards. One commenter (Zero Zone) also cautioned that, due to EPCA's anti-backsliding provision, energy conservation standards improperly set due to an incomplete understanding of test procedure amendments cannot be adjusted downwards. DOE also acknowledged past deviations from this preferred, sequential approach in which it conducted test procedure and standards rulemakings concurrently. 85 FR 8626, 8676.

After further reflection, DOE has determined that while sequencing of test procedure and energy conservation standards rulemakings may be sensible, competing considerations call into doubt the agency's decision to require an inflexible 180-day pause between those rulemaking activities. Accordingly, for the reasons that follow, DOE proposes to remove the requirement for a 180-day pause between completion of a test procedure final rule and proposal of an energy conservation standard and revert to the guidance used in the 1996 Process Rule, *i.e.,* that test procedure rulemakings ''will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards,'' thereby providing the agency flexibility in individual rulemaking proceedings. DOE seeks comment on whether there

are situations where it may be beneficial to maintain a 180-day period, or some other timeframe, between finalization of a test procedure and issuance of a proposed energy conservation standard.

Further reflection regarding the implications of following the approach set out in the February 2020 Final Rule has led DOE to tentatively conclude that the rule inadvertently painted with too broad a brush in addressing certain stakeholders' concerns about appropriate spacing of test procedure and energy conservation standards rulemakings. Not every test procedure rulemaking would be expected to involve the same level of complexity. For example, on September 21, 2018, DOE amended the test procedure for integrated light-emitting diode lamps to allow manufacturers to conduct ''time to failure'' testing at elevated temperatures. 83 FR 47806. The prior DOE test procedure specified that such testing had to be conducted at 25 degrees Celsius with a 5 degree tolerance, while the amended test procedure stated that manufacturers could continue to test under those conditions or use a higher temperature with the same 5 degree tolerance. *Id.* at 47809. This was a simple modification to one test condition in the entire test procedure. Further, the change in the test procedure did not require manufacturers to make any adjustments as they were allowed to continue to use the original temperature condition specified in the test procedure. In contrast to this simple test procedure modification, on December 29, 2016, DOE amended the test procedures for consumer and commercial water heaters to translate multiple performance metrics into a single uniform efficiency metric, as required by EPCA. 81 FR 96204. This test procedure amendment required DOE to develop a mathematical conversion, based on test data, that would convert existing energy efficiency metrics to the uniform efficiency metric for a wide variety of consumer and commercial water heater models. Further, manufacturers had to either use this mathematical conversion to recertify their water heaters by converting existing efficiency and performance ratings or retest their models. *Id.* at 96227. The February 2020 Final Rule removed DOE's ability to effectively distinguish between these two different situations, by imposing the same 180-day pause upon a minor technical modification as it does on a wholesale test procedure revision. It also created new uncertainty surrounding the impact that a later-discovered error in the test procedure would have on a related standards rulemaking (*i.e.,* must the standards rulemaking be paused until or entirely restarted after the requisite test procedure change is made?). Once again, DOE has tentatively concluded that it should have flexibility to address such situations on a case-by-case basis as they arise. DOE's proposed revisions are designed to remove the rigidity of a one-size-fits-all approach to the sequencing of test procedure and energy conservation standards rulemakings, in favor of an approach that allows the agency to move more nimbly as circumstances warrant, while still recognizing the importance of resolving test procedure issues in advance of a notice of proposed rulemaking for energy conservation standards.

Finally, DOE proposes making these changes regarding the sequencing of test procedure and standards rulemakings after reevaluating the potential delays that may ensue from the mandatory 180-day spacing requirement. DOE currently has a number of outstanding energy conservation standards rulemakings subject to statutory or judicial deadlines. DOE is sensitive to the negative impact that the rigid application of a mandatory 180-day spacing requirement could have in certain circumstances, not only upon the Department's ability to expeditiously satisfy these legal deadlines, but also in terms of EPCA's mandate to pursue significant energy and cost savings for the benefit of individual consumers and the Nation, which in those circumstances may outweigh the informational and public notice benefits the 180-day period offers. As noted previously, there may also be circumstances where such data and input may materially inform the rulemaking process and in those instances, a longer rulemaking timeline may be justified.

DOE seeks further comment on its proposal to eliminate the required 180-day period between finalization of a test procedure rulemaking and issuance of a standards NOPR. DOE also seeks comments on any alternatives that it might consider to balance the interests identified in this discussion, including whether DOE should consider retaining a set period between the finalization of a test procedure and the issuance of a standards NOPR.

F. Direct Final Rules

The Energy Independence Security Act of 2007, Public Law 110–140 (Dec. 19, 2007), amended EPCA, in relevant part, to grant DOE authority to issue a ''direct final rule'' (''DFR'') to establish energy conservation standards in appropriate cases. Under this authority, DOE may issue a DFR adopting energy conservation standards for a covered product or equipment upon receipt of a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates),'' provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o) or 6313(a)(6)(B), as applicable. (42 U.S.C. 6295(p)(4)(A)) While these two provisions contain many of the requirements DOE typically must satisfy in issuing an energy conservation standard, such as the prohibition against setting less-stringent standards (anti-backsliding requirement), they do not adopt all the requirements of a typical energy conservation standard rulemaking. For example, 42 U.S.C. 6295(o) does not specify a mandatory time period between promulgation of an energy conservation standard and the compliance date for that standard (*i.e.,* lead time). DOE has looked to the joint proposals to fill in these necessary details. This process had been well-received by manufacturers, trade organizations, and energy efficiency advocates, as it allowed more room for negotiation, which in turn made it easier for stakeholders to reach a consensus agreement. February 2020 Final Rule, 85 FR 8626, 8682–8683.

In a departure from this practice, DOE clarified in the February 2020 Final Rule that 42 U.S.C. 6295(p)(4) is a procedure for issuing a DFR and not an independent grant of rulemaking authority. As such, under the current Process Rule, any joint proposal submitted to DOE under the DFR provision must identify a separate rulemaking authority such as 42 U.S.C. 6295(m) (amendment of standards) or 42 U.S.C. 6295(n) (petition for amended standard) and comply with the requirements (*e.g.,* compliance periods) listed in that provision. *Id.* DOE also provided additional guidance on the Department's interpretation of ''fairly representative'' and obligations upon receipt of an adverse comment. *Id.* at 85 FR 8683–8685.

DOE is reconsidering whether these clarifications regarding the DFR process are appropriate or necessary. This reconsideration begins with the language of the statute. The language in 42 U.S.C. 6295(p)(4) is clear on when DOE may issue standards recommended by interested persons that are fairly representative of relative points of view as a DFR, and that is when the

recommended standards are in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. There are no other requirements listed, which is unsurprising considering the unique circumstances of rules issued under the DFR provision. DOE's overarching statutory mandate in issuing energy conservation standards is to choose a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified—a requirement found in 42 U.S.C. 6295(o).

Many of the other requirements found in EPCA constrain DOE's discretion in setting standards for the benefit of stakeholders. For example, mandatory compliance periods give manufacturers enough time to design new products and shift manufacturing capacity as necessary. Similarly, EPCA provides that manufacturers shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period. (42 U.S.C. 6295(m)(4)(B)) But, if manufacturers agree to a shorter compliance period or two tiers of standards as part of a consensus agreement submitted under the DFR provision, it would be odd if DOE were then forced to deny such a proposal based upon requirements designed to protect the interests of those same manufacturers. That being said, DOE will still deny such a proposal if it is not fairly representative of manufacturers' points of view. (42 U.S.C. 6295(p)(4)(A)) Similarly, DOE will also deny such a proposal if it does not meet applicable criteria in 42 U.S.C. 6295(o), which, among other things, require DOE to consider the economic impact on manufacturers (including small manufacturers) and any possible lessening of competition that may result from imposition of the proposed standard. As to this latter point, DOE receives a written determination from the Attorney General as to the anti-competitive effects from a proposed standard. See 42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii).

Issuing standards through a consensus agreement among stakeholders is different from DOE's normal rulemaking process. And, there is a corresponding difference in the statutory criteria that DOE must apply to each process, one that is made clear by the language in 42 U.S.C. 6295(p)(4). Accordingly, DOE proposes to eliminate the requirement that DFR submittals identify a separate rulemaking authority and revert to the Department's prior practice of evaluating DFR submittals based on the criteria laid out in 42 U.S.C. 6295(p)(4). DOE requests comments, information, and data on whether its proposed approach for evaluating DFR submittals is appropriate.

As discussed previously, DOE also provided additional guidance on the Department's interpretation of ''fairly representative'' and obligations upon receipt of an adverse comment. Upon reconsideration, DOE believes that the additional guidance may be overly prescriptive in some circumstances. For instance, the February 2020 Final Rule required a group submitting a DFR proposal to include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities (as appropriate for the given covered product or equipment), consumers, and States. 85 FR 8626, 8683. While this list may be appropriate for some DFR proposals, it is not universally applicable. For instance, some of DOE's regulated industries do not have small business manufacturers (*e.g.,* external power supplies).[12] DOE also stated it would publish in the **Federal Register** any DFR proposal to obtain feedback as to whether the proposal was submitted by a group that is fairly representative of relevant points of view. *Id.* Once again, this may be good practice for some DFR proposals (*e.g.,* those concerning newly covered products or equipment), but it may be unnecessary for most DFR proposals. The bulk of DOE's covered products and equipment have gone through multiple rounds of rulemakings, and DOE has become very familiar with the relevant points of view for these covered products and equipment.

With respect to DOE's discussion of adverse comments in the February 2020 Final Rule, DOE largely repeated the requirements listed in 42 U.S.C. 6295(p)(4)(C). Namely, DOE will withdraw a DFR if one or more adverse comments may provide a reasonable basis for withdrawing the rule under 42 U.S.C. 6295(o), 42 U.S.C. 6313(a)(6)(B), or any other applicable law. The one clarification DOE offered was that the Department may consider comments as adverse, even if the issue was brought up previously during the rulemaking process. *Id.* at 85 FR 8685. However, this clarification does not offer any insight into how DOE will determine whether an adverse comment provides a reasonable basis for withdrawing the rule.

DOE is considering whether the guidance contained in the February 2020 Final Rule concerning DFRs is unnecessary or redundant to the statutory language in 42 U.S.C. 6295(p)(4) and is proposing to add ''where appropriate'' to clarify that DOE retains the ability to determine what ''fairly representative'' means for a given DFR submission on a case-by-case basis. DOE requests comments on the merits of its proposed revisions to the DFR section, as well as any alternative approaches, such as deletion of or amendments to the section or retention of aspects of this section. Regardless of whether the DFR section in the Process Rule is retained, deleted, or revised, DOE will continue to evaluate DFR proposals in accordance with 42 U.S.C. 6295(p)(4). Additionally, DOE seeks comment regarding small business perspectives and related impacts as to the proposed application of the DFR provision of EPCA.

G. Negotiated Rulemaking

As part of the February 2020 Final Rule amending DOE's Process Rule, the Department adopted a new section 11, *Negotiated Rulemaking Process,* to set forth the procedures that DOE would follow when using negotiated rulemaking under the Appliance Standards Program. 85 FR 8626, 8708–8709. These provisions discussed DOE's historical use of negotiated rulemaking, along with a few modifications to the agency's past approach. 85 FR 8626, 8685–8686. As the final rule explained, negotiated rulemaking is a process by which an agency attempts to develop a consensus proposal for regulation in consultation with interested parties, thereby addressing salient comments from stakeholders before issuing a proposed rule. This process is conducted in accordance with the requirements of the Negotiated Rulemaking Act (''NRA''), Public Law 104–320 (5 U.S.C. 561–570). To facilitate potential negotiated rulemakings, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') to comply with the Federal Advisory Committee Act, Public Law 92–463 (1972) (codified at 5 U.S.C. App. 2). As part of the DOE process, working groups have been established as subcommittees of ASRAC, from time to time, for specific products, with one member from the ASRAC committee attending and participating in the meetings of the specific working group. Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement. The negotiated rulemaking process allows real-time adjustments to the analyses as the working group is considering them. Furthermore, it allows parties with differing viewpoints

[12] *See* 85 FR 30636, 30648 (May 20, 2020).

and objectives to negotiate face-to-face regarding the terms of a potential standard. Additionally, it encourages manufacturers to provide data for the analyses in a more direct manner, thereby helping to better account for manufacturer concerns. DOE has recognized the value of this process and encouraged submission of joint stakeholder recommendations. *Id.*

The February 2020 Final Rule also discussed the following key points related to negotiated rulemaking at 85 FR 8626, 8685 (Feb. 14, 2020):

- Negotiated rulemakings will go through the ASRAC process outlined above, and the appropriateness of a negotiated rulemaking for any given rulemaking will be determined on a case-by-case basis.
- In making this determination, DOE will use a convener to ascertain, in consultation with relevant stakeholders, whether review for a given product or equipment type would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter.
- The following five factors militate in favor of a negotiated rulemaking: (1) Stakeholders have commented in favor of negotiated rulemaking in response to the initial rulemaking notice; (2) the rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data; (3) the current standards have already been amended one or more times; (4) stakeholders from differing points of view are willing to participate; and (5) DOE determines that the parties may be able to reach an agreement.
- If a negotiated rulemaking is initiated, a neutral and independent facilitator, who is not a DOE employee or consultant, shall be present at all ASRAC working group meetings.
- DOE will set aside a portion of each ASRAC working group meeting to receive input and data from non-members of the ASRAC working group.
- Finally, a negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR, and further, any potential term sheet upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule is authorized.

After further consideration, DOE has tentatively determined that further changes to its approach to negotiated rulemaking are necessary and appropriate. Although section 11 of the Process Rule largely mirrors the process DOE has followed when the Department has determined, on a case-by-case basis, that such alternative rulemaking procedures would be useful to supplement the normal notice-and-comment rulemaking process, DOE proposes to make certain modifications to the process articulated in that section. On a number of points, DOE seeks to revert to the approach it employed prior to promulgation of the February 2020 Final Rule. The following paragraphs outline these proposed changes.

First, DOE would clarify that although the Department has frequently used facilitators and considered whether to use convenors in past negotiated rulemakings, the use of such individuals is not required under the Negotiated Rulemaking Act (*see* 5 U.S.C. 563(b)). A ''convenor'' performs the task of canvassing various interested parties regarding the potential and feasibility of achieving consensus in a particular matter. In contrast, a ''facilitator'' helps guide the discussion among the participants to a negotiated rulemaking. While DOE recognizes the value of using a convenor and/or a facilitator in certain cases, there are also instances where DOE can adequately assess whether a given situation is ripe for a consensus-based approach through negotiated rulemaking. These instances may occur where DOE has accumulated years or decades of experience with setting standards with a particular product or equipment, or where DOE is approached by concerned stakeholders. In those instances, it may not be necessary to expend the time and/or resources associated with the use of a convenor. Consequently, DOE proposes to eliminate the requirement for use of a convenor and a facilitator and to instead retain discretion to utilize the services of such individuals in appropriate cases. This change in approach would allow the agency to conserve resources and avoid delay where such services are not necessary.

Second, DOE proposes that the list of factors militating in favor of a negotiated rulemaking, as currently articulated at section 11(a)(3) of the Process Rule, are neither mandatory nor exclusive. The NRA already sets forth factors for consideration at 5 U.S.C. 563(a). Because the factors set forth in section 11(a)(3) of the Process Rule may not be appropriate in all cases, DOE proposes to no longer be bound by this list when determining whether it is appropriate to convene a negotiated rulemaking. Instead, the Department proposes to consider the factors articulated under 5 U.S.C. 563(a), as well as any other considerations relevant to the specific product/equipment proceeding in question.

Third, DOE proposes to revert to its prior approach, which would allow for a negotiated rulemaking to result in a term sheet recommending promulgation of a DFR under 42 U.S.C. 6295(p)(4). (*See* section III.F. of this document for a more complete discussion of DFRs.) DOE has tentatively concluded that the approach adopted in the February 2020 Final Rule (*i.e.,* that a negotiated rulemaking must result in a proposed rule followed by a final rule) was an overly restrictive reading of the NRA. While 5 U.S.C. 563(a) discusses issuance of a proposed rule and a final rule, 42 U.S.C. 6295(p)(4) (under EPCA) already mandates publication of a proposed rule simultaneously with a DFR—and in the event of an adverse comment that may provide a reasonable basis for withdrawal, DOE is required to conduct further rulemaking under the proposed rule, proceeding to a final rule, if appropriate. (42 U.S.C. 6295(p)(4)(C)(i)(II)) Furthermore, at 5 U.S.C. 561, *Purpose,* the NRA states, ''Nothing in this subchapter shall be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.'' In light of the above, DOE has tentatively concluded that these relevant legal authorities can be read in harmony and do not preclude the possibility of a negotiated rulemaking that results in a recommendation to implement the body's consensus through a DFR. Accordingly, DOE proposes to revert to its prior position on this topic.

In light of these proposed modifications, DOE has tentatively concluded that section 11 of the revised Process Rule would become largely redundant of the NRA requirements to which the agency is already subject, and therefore, the Department finds section 11 to be unnecessary and proposes its removal. DOE notes, however, that its proposal to remove this section from the Process Rule in no way reflects a change in the Department's perception of the value of negotiated rulemaking or its intention to use negotiated rulemaking in appropriate cases. Similarly, this proposal is not expected to affect DOE's practice of providing opportunities for public comment and access to working group documents and meetings/webinars throughout the negotiated rulemaking process. DOE requests comments on the merits of this proposed approach including comments regarding the proposed complete removal of section 11, as well as any

alternatives to this proposal, such as amendments or revisions to the section or retention of aspects of section 11.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a significant regulatory action under section 3(f)(4) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The revisions contained in this proposed regulatory action are procedural changes designed to improve DOE's ability to meet its rulemaking obligations and deadlines under EPCA. These proposed revisions would not impose any regulatory costs or burdens on stakeholders, nor would they limit public participation in DOE's rulemaking process. Instead, these proposed revisions would allow DOE to tailor its rulemaking processes to fit the facts and circumstances of a particular rulemaking for a covered product or equipment.

DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time. Further, these rulemakings are all subject to deadlines. Typically, review cycles for energy conservation standards and test procedures for covered products are 6 and 7 years, respectively. (42 U.S.C. 6295(m)(1); 42 U.S.C. 6293(b)(1)) Additionally, if DOE decides not to amend an energy conservation standard for a covered product, the subsequent review cycle is shortened to 3 years. (42 U.S.C. 6295(m)(3)(B)) It is challenging to meet these cyclical deadlines for more than 60 categories of covered products and equipment. In fact, as previously discussed, DOE is currently facing two lawsuits that allege DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment. In order to meet these rulemaking deadlines, DOE cannot afford the inefficiencies that come with a one-size-fits-all rulemaking approach. For example, having to issue an early assessment RFI followed by an ANOPR to collect early stakeholder input when a NODA would accomplish the same purpose unnecessarily lengthens the rulemaking process and wastes limited DOE resources. Similarly, having to delay issuance of a proposed energy conservation standard for 180 days because of a minor modification to a test procedure makes it more difficult for DOE to meet rulemaking deadlines, while offering no benefit to stakeholders. The revisions proposed in this document would allow DOE to eliminate these types of inefficiencies that lengthen the rulemaking process and waste DOE resources, while not affecting the ability of the public to participate in the rulemaking process. Eliminating inefficiencies that lengthen the rulemaking process allows DOE to more quickly develop energy conservation standards that deliver the environmental benefits, including reductions in greenhouse gas emissions, that DOE is directed to implement under E.O. 13990. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Further, the revisions proposed in this document would not dictate any particular rulemaking outcome in an energy conservation standard or test procedure rulemaking. DOE will continue to calculate the regulatory costs and benefits of new and amended energy conservation standards and test procedures issued under EPCA in future, individual rulemakings.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

This proposed rule details generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The proposed revisions are intended to improve DOE's ability to meet the obligations and deadlines outlined in EPCA by allowing DOE to tailor its rulemaking procedures to fit the specific facts and circumstances of a particular covered product or equipment, while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Because this proposed rule imposes no regulatory obligations on the public, including small entities, and does not affect the ability of any interested person, including small entities, to participate in DOE's rulemaking process, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no initial regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this proposed rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 and A6 because it is amending a rule and because it is a procedural rulemaking, it does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each Executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the

Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this proposed rule.

L. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. The results from that review are expected later in 2021.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www.energy.gov/eere/buildings/process-rule.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to the Appliance and Equipment Standards Program, *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and

until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signing Authority

This document of the Department of Energy was signed on March 30, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal

Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register.**

Signed in Washington, DC, on March 30, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix A to subpart C of part 430 is revised to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

1. Objectives
2. Scope
3. Application of the Process Rule
4. Setting Priorities for Rulemaking Activity
5. Coverage Determination Rulemakings
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1. Objectives

This appendix establishes procedures, interpretations, and policies to guide the Department of Energy (''DOE'' or the ''Department'') in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act (EPCA). This appendix applies to both covered consumer products and covered commercial/industrial equipment. The Department's objectives in establishing these procedures include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. DOE will be able to seek early input from interested parties in determining whether establishing new or amending existing energy conservation standards will result in significant savings of energy and is economically justified and technologically feasible. In the context of test procedure rulemakings, DOE will be able to seek early input from interested parties in determining whether—

(1) Establishing a new or amending an existing test procedure will better measure the energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product/equipment during a representative average use cycle or period of use (for consumer products); and

(2) Will not be unduly burdensome to conduct.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards and test procedure development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. Further, DOE will offer the opportunity to provide input on the prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

(c) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. DOE will be able to eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will have a material adverse impact on the utility of the product, or if the design option will have a material adverse impact on safety or health. DOE will also be able to eliminate from consideration proprietary design options that represent a unique pathway to achieving a given efficiency level. This screening will be done at the outset of a rulemaking.

(d) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary programs can be used most effectively. DOE will continue to be able to support voluntary efforts by manufacturers, retailers, utilities, and others to increase product/equipment efficiency.

(e) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate social and private costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers, and others, as well as the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. DOE will be able to consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate social and private costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers. The Department will also be able to conduct appropriate analyses to assess the impact that new or amended test procedures will have on manufacturers and consumers.

(f) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible.

(g) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the various interests affected by such standards.

2. Scope

The procedures, interpretations, and policies described in this appendix apply to rulemakings concerning new or revised Federal energy conservation standards and test procedures, and related rule documents (*i.e.,* coverage determinations) for consumer products in Part A and commercial and industrial equipment under Part A–1 of the Energy Policy and Conservation Act (EPCA), as amended, except covered ASHRAE equipment in Part A–1 are governed separately under section 9 in this appendix.

3. Application of the Process Rule

(a) This appendix contains procedures, interpretations, and policies that are generally applicable to the development of energy conservation standards and test procedures. The Department may, as necessary, deviate from this appendix to account for the specific circumstances of a particular rulemaking.

(b) This appendix is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity.

4. Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;
(4) Incremental DOE resources required to complete the rulemaking process;
(5) Other relevant regulatory actions affecting the products/equipment;
(6) Stakeholder recommendations;
(7) Evidence of energy efficiency gains in the market absent new or revised standards;
(8) Status of required changes to test procedures; and
(9) Other relevant factors.
(b) DOE will offer the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

5. Coverage Determination Rulemakings

(a) DOE has discretion to conduct proceedings to determine whether additional consumer products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292 and 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312 for commercial/industrial equipment)
(b) If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.
(c) DOE will publish its final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking (*i.e.,* DOE will not issue any Requests for Information (RFIs), Notices of Data Availability (NODAs), or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product/equipment prior to finalization of the coverage determination). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. Specifically, DOE will finalize coverage for a product/equipment at least 180 days prior to publication of a proposed rule to establish a test procedure.
(d) If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to expand or reduce the scope of coverage, a new coverage determination process will be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.
(a) *Early Assessment.* (1) As the first step in any proceeding to consider establishing or amending any energy conservation standard, DOE will publish a document in the **Federal Register** announcing that DOE is considering initiating a rulemaking proceeding. As part of that document, DOE will solicit submission of related comments, including data and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would be cost effective, economically justified, technologically feasible, or would result in a significant savings of energy. Based on the information received in response to the notice and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard or an amended test procedure. If DOE determines that a new or amended standard would not satisfy applicable statutory criteria, DOE would engage in notice and comment rulemaking to issue a determination that a new or amended standard is not warranted. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard, as discussed further in paragraph (a)(2) of this section.
(2) If the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a Framework Document and Preliminary Analysis, or an Advance Notice of Proposed Rulemaking (ANOPR). Requests for Information (RFI) and Notices of Data Availability (NODA) could be issued, as appropriate, in addition to these preliminary-stage documents.
(3) In those instances where the early assessment either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes the preliminary stages of a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy. Therefore, DOE will examine the potential costs and benefits and energy savings potential of a new or amended energy conservation standard at the preliminary stage of the rulemaking. DOE notes that it will, consistent with its statutory obligations, consider both cost effectiveness and economic justification when issuing a determination not to amend a standard.
(b) *Design options*—(1) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will typically identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-proposal stages of the rulemaking, interested parties may be consulted to provide information on key issues through a variety of rulemaking documents. The preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (ANOPR). Requests for Information (RFI) and Notice of Data Availability (NODA) could also be issued, as appropriate.
(2) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will typically develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (b)(3) of this section and the policies stated in section 7 of this Appendix (*i.e.,* Policies on Selection of Standards). The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR documents. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (c) of this section.
(3) *Factors for screening of design options.* The factors for screening design options include:
(i) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.
(ii) Practicability to manufacture, install and service. If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.
(iii) Adverse Impacts on Product Utility or Product Availability.
(iv) Adverse Impacts on Health or Safety.
(v) Unique-Pathway Proprietary Technologies. If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.
(c) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.
(1) *Identification of engineering analytical methods and tools.* DOE will select the

specific engineering analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (b) of this section, DOE will select the candidate standard levels for further analysis.

(d) *Pre-NOPR Stage*—(1) *Documentation of decisions on candidate standard selection.*

(i) If the early assessment and screening analysis indicates that continued development of a standard is appropriate, the Department will publish either:

(A) A notice accompanying a framework document and, subsequently, a preliminary analysis or;

(B) An ANOPR. The notice document will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(ii) If DOE determines at any point in the pre-NOPR stage that no candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, that conclusion will be announced in the **Federal Register** with an opportunity for public comment provided to stakeholders. In such cases, the Department will proceed with a rulemaking that proposes not to adopt new or amended standards.

(2) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For such documents, DOE will determine whether a public hearing is appropriate.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

(e) *Analysis of impacts and selection of proposed standard level.* After the pre-NOPR stage, if DOE has determined preliminarily that a candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(4) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) Impacts on manufacturers. The analysis of private manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, plant closures, and loss of capital investment.

(ii) Private Impacts on consumers. The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; consideration of changes to product utility, changes to purchase rate of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs; and loss of utility.

(iii) Impacts on competition, including industry concentration analysis.

(iv) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(v) National energy, economic, and employment impacts. The analysis of national energy, economic, and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(vi) Impacts on the environment. The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, and impacts on pollution control costs.

(vii) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(viii) New information relating to the factors used for screening design options.

(f) *Notice of Proposed Rulemaking*—(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket on *http://www.regulations.gov.* As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 75 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306).

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a Supplemental Notice of Proposed Rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(g) *Final Rule.* The Department will publish a Final Rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR, and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

7. Policies on Selection of Standards

(a) *Purpose.* (1) Section 6 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section. These policies are intended to elaborate on the statutory criteria provided in 42 U.S.C. 6295.

(2) The procedures described in this section are intended to assist the Department in making the determinations required by EPCA and do not preclude DOE's consideration of any other information consistent with the relevant statutory criteria. The Department will consider pertinent information in determining whether a new or

revised standard is consistent with the statutory criteria.

(b) *Screening design options.* These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially-viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost/benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options that have payback periods that exceed the median life of the product or which result in life-cycle cost increases relative to the base case, using typical fuel costs, usage, and private discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in this Appendix, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the pre-NOPR documents and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy-efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Pre-NOPR Stage.* New information provided in public comments on any pre-NOPR documents will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts.

(e)(1) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be both technologically feasible and economically justified.

(2) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A trial standard level will not be proposed or promulgated if the Department determines that it is not both technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) For a trial standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the factors listed in 42 U.S.C. 6295(o)(2)(B)(i). A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that interested persons have established by a preponderance of the evidence that a standard level is likely to result in the unavailability in the United States of any covered product/equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time of the determination, then that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether issuance of a new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings or whether any change to the proposed standard level is needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in this section, will be used to guide the selection of the final standard level or a determination that no new or amended standard is justified.

8. Test Procedures

(a) *General.* As with the early assessment process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure rulemakings. DOE will follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of amended energy conservation standards. Consequently, DOE will publish a notice in the **Federal Register** whenever DOE is considering initiation of a rulemaking to amend a test procedure. In that notice, DOE will request submission of comments, including data and information on whether an amended test procedure rule would:

(1) More accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use without being unduly burdensome to conduct; or

(2) Reduce testing burden. DOE will review comments submitted and, subject to statutory obligations, determine whether it agrees with the submitted information. If DOE determines that an amended test procedure is not justified at that time, it will not pursue the rulemaking and will publish a notice in the **Federal Register** to that effect. If DOE receives sufficient information suggesting an amended test procedure could more accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct, reduce testing burden, or the information received is inconclusive with regard to these points, DOE would undertake the preliminary stages of a rulemaking to amend the test procedure, as discussed further in the paragraphs that follow in this section.

(b) *Identifying the need to modify test procedures.* DOE will identify any necessary modifications to established test procedures prior to initiating the standards development process. It will consider all stakeholder comments with respect to needed test procedure modifications. If DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it would provide further opportunities for early public input through **Federal Register** documents, including NODAs and/or RFIs.

(c) *Adoption of Industry Test Methods.* DOE will adopt industry test procedure standards as DOE test procedures for covered products and equipment, but only if DOE determines that such procedures would not be unduly burdensome to conduct and would produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. DOE may also adopt industry test procedure standards with modifications, or craft its own procedures as necessary to ensure compatibility with the relevant

statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

(d) *Issuing final test procedure modification.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards.

(e) *Effective Date of Test Procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

(a) EPCA provides that ASHRAE equipment are subject to unique statutory requirements and their own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards and test procedures for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to standards and test procedures applicable to such equipment. Not later than 180 days after the amendment of the standard, the Secretary will publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, not later than 18 months after the date of publication of the amendment to ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, or amend the test procedure referenced in ASHRAE Standard 90.1 for the equipment at issue to be consistent with the applicable industry test procedure, respectively, unless—

(1) DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified; or

(2) The test procedure would not meet the requirements for such test procedures specified in EPCA. In such case, DOE must adopt the more stringent standard not later than 30 months after the date of publication of the amendment to ASHRAE/IES Standard 90.1 for the affected equipment.

(b) For ASHRAE equipment, DOE will adopt the revised ASHRAE levels or the industry test procedure, as contemplated by EPCA, except in very limited circumstances. With respect to DOE's consideration of standards more-stringent than the ASHRAE levels or changes to the industry test procedure, DOE will do so only if it can meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold. Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified, or, in the case of test procedures, that the industry test procedure does not meet the EPCA requirements. DOE will make this determination only after seeking data and information from interested parties and the public to help inform the Agency's views. DOE will seek from interested stakeholders and the public data and information to assist in making this determination, prior to publishing a proposed rule to adopt more-stringent standards or a different test procedure.

(c) DOE's review in adopting amendments based on an action by ASHRAE to amend Standard 90.1 is strictly limited to the specific standards or test procedure amendment for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. Thus, when undertaking a review as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined in this section, to issue a standard more stringent than the existing standard for the equipment at issue.

10. Direct Final Rules

In accordance with 42 U.S.C. 6295(p)(4), on receipt of a joint proposal that is submitted by interested persons that are fairly representative of relevant points of view, DOE may issue a direct final rule (DFR) establishing energy conservation standards for a covered product or equipment if DOE determines the recommended standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B) as applicable. To be ''fairly representative of relevant points of view'' the group submitting a joint statement must, where appropriate, include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.''

11. Principles for Distinguishing Between Effective and Compliance Dates

(a) *Dates, generally.* The effective and compliance dates for either DOE test procedures or DOE energy conservation standards are typically not identical, and these terms should not be used interchangeably.

(b) *Effective date.* The effective date is the date a rule is legally operative after being published in the **Federal Register**.

(c) *Compliance date.* (1) For test procedures, the compliance date is the specific date when manufacturers are required to use the new or amended test procedure requirements to make representations concerning the energy efficiency or use of a product, including certification that the covered product/equipment meets an applicable energy conservation standard.

(2) For energy conservation standards, the compliance date is the specific date upon which manufacturers are required to meet the new or amended standards for applicable covered products/equipment that are distributed in interstate commerce.

12. Principles for the Conduct of the Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product/equipment. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the reduction in energy use or improvement in energy efficiency that can be expected from individual design options as discussed in paragraphs (b) and (c) of this section. From this efficiency/cost relationship, measures such as payback, life-cycle cost, and energy savings can be developed. The Department will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information, and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. The Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying, or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product/equipment. A base case configuration or starting point will be established, as well as the order and combination/blending of the design options to be evaluated. DOE will then perform the engineering analysis and develop the cost-efficiency curve for the product/equipment. The cost efficiency curve and any necessary models will be available to stakeholders during the pre-NOPR stage of the rulemaking.

13. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely private impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. This section describes the principles that will be used in conducting future manufacturing impact analyses.

(b) *Issue identification.* In the impact analysis stage, the Department will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their current and historical relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product/equipment characteristics and retail markets including manufacturer market shares and market concentration; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total private cost impacts, including product/equipment-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product/equipment models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor, and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product/equipment sales, features, prices, and cost recovery.* In order to make manufacturer cash-flow calculations, it is necessary to predict the number of products/equipment sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products/equipment sold and on typical features of models sold. Past analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: Actual shipment and pricing experience; data from manufacturers, retailers, and other market experts; financial models, and sensitivity analyses. The possible impacts of candidate/trial standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate/trial standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, with input from interested parties, as appropriate. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices, and sales volumes;

(2) Cash flows, by year; and

(3) Other measures of impact, such as revenue, net income, and return on equity, as appropriate. DOE also notes that the characteristics of a typical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: Manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative Impacts of Other Federal Regulatory Actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products or equipment. DOE will analyze and consider the impact on manufacturers of multiple product/equipment-specific regulatory actions. These factors will be considered in setting rulemaking priorities, conducting the early assessment as to whether DOE should proceed with a standards rulemaking, assessing manufacturer impacts of a particular standard, and establishing compliance dates for a new or revised standard that, consistent with any statutory requirements, are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product or equipment manufacturers within approximately three years of the compliance date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products/equipment that are components of other products/equipment subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(1) Key modeling and analytical tools. In its assessment of the likely impacts of standards on manufacturers, the Department will use models that are clear and understandable, feature accessible calculations, and have clearly explained assumptions. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

(2) [Reserved]

14. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products/equipment to the consumer. See paragraph (b) of section 6.

(b) *Impacts on product/equipment availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products/equipment generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of Justice review.* As required by law, the Department will solicit the views of the Department of Justice on any lessening of competition likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of Justice at earlier stages in the standards development process to seek its preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and

sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate/trial standard levels among different subgroups of consumers. The Department will consider impacts on significant segments of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period, and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department also performs sensitivity and scenario analyses when appropriate. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate/trial standard level would result in a substantial increase in product/equipment first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will assess the likely impacts of such a standard on low-income households, product/equipment sales and fuel switching, as appropriate.

15. Consideration of Non-Regulatory Approaches

The Department recognizes that non-regulatory efforts by manufacturers, utilities, and other interested parties can result in substantial efficiency improvements. The Department intends to consider the likely effects of non-regulatory initiatives on product/equipment energy use, consumer utility and life-cycle costs, manufacturers, competition, utilities, and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers, and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities, or others to such non-regulatory efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing—where possible—appropriate compliance dates for new or revised standards, and in considering DOE support of non-regulatory initiatives.

16. Cross-Cutting Analytical Assumptions

In selecting values for certain cross-cutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current *Annual Energy Outlook* (*AEO*) published by the Energy Information Administration (EIA).

(b) *Analytic time length.* The appliance standards analyses will use two time lengths—30 years and another time length that is specific to the standard being considered such as the useful lifetime of the product under consideration. As a sensitivity case, the analyses will also use a 9-year regulatory timeline in analyzing the effects of the standard.

(c) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current *AEO.* The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(d) *Product/equipment-specific energy-efficiency trends, without updated standards.* Product/equipment-specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(e) *Price forecasting.* DOE will endeavor to use robust price forecasting techniques in projecting future prices of products.

(f) *Private Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE typically uses a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(g) *Social Discount Rates.* Social discount rates as specified in OMB Circular A–4 will be used in assessing social effects such as costs and benefits.

(h) *Environmental impacts.* (1) DOE calculates emission reductions of carbon dioxide, sulfur dioxide, nitrogen oxides, methane, nitrous oxides, and mercury likely to be avoided by candidate/trial standard levels based on an emissions analysis that includes the two components described in paragraphs (h)(2) and (3) of this section.

(2) The first component estimates the effect of potential candidate/trial standard levels on power sector and site combustion emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide. DOE develops the power sector emissions analysis using a methodology based on DOE's latest *Annual Energy Outlook.* For site combustion of natural gas or petroleum fuels, the combustion emissions of carbon dioxide and nitrogen oxides are estimated using emission intensity factors from the Environmental Protection Agency.

(3) The second component of DOE's emissions analysis estimates the effect of potential candidate/trial standard levels on emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide due to ''upstream activities'' in the fuel production chain. These upstream activities include the emissions related to extracting, processing, and transporting fuels to the site of combustion as detailed in DOE's Fuel-Fuel-Cycle Statement of Policy (76 FR 51281 (August 18, 2011)). DOE will consider the effects of the candidate/trial standard levels on these emissions after assessing the seven factors required to demonstrate economic justification under EPCA. Consistent with Executive Order 13783, dated March 28, 2017, when monetizing the value of changes in reductions in CO_2 and nitrous oxides emissions resulting from its energy conservation standards regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, DOE ensures, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A–4 of September 17, 2003 (Regulatory Analysis).

[FR Doc. 2021–06853 Filed 4–9–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0272; Project Identifier MCAI–2020–01485–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by a report that certain airplanes have navigation units with outdated magnetic variation (MagVar) tables. This proposed AD would require revising the existing airplane flight

manual (AFM) and applicable corresponding operational procedures to update the flight management system (FMS) limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 27, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0272; Project Identifier MCAI–2020–01485–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–33, dated September 29, 2020 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272.

This proposed AD was prompted by a report that certain airplanes have navigation units with outdated MagVar tables. The FAA is proposing this AD to address outdated MagVar tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the primary flight displays (PFDs) and multi-function displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs, and can lead to significantly inaccurate heading, course, and bearing calculations. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information. This service information describes procedures for revising the existing AFM to update the FMS limitations. These documents are distinct since they apply to different airplane configurations.

- Flight Management System (FMS) limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 58, dated January 15, 2020. (For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- FMS limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), Revision 58, dated January 15, 2020. (For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100–1 (Metric), use Document Identification No. CH 300 AFM–M.)

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA

evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 318 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$27,030

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2021–0272; Project Identifier MCAI–2020–01485–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20407 inclusive, equipped with FMC–5000 flight management computers.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report that certain airplanes have navigation units with outdated magnetic variation (MagVar) tables. The FAA is issuing this AD to address outdated MagVar tables inside navigation systems, which can affect the performance of the navigation systems and result in the presentation of misleading magnetic heading references on the primary flight displays (PFDs) and multi-function displays (MFDs), positioning the airplane outside of the terrain and obstacle protection provided by instrument flight procedures and flight route designs, and can lead to significantly inaccurate heading, course, and bearing calculations.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 60 days after the effective date of this AD: Revise the existing AFM and applicable corresponding operational procedures to incorporate the information specified in the Flight Management System (FMS) limitation in Section 02–04—Systems Limitations, of Chapter 02—Limitations, of the applicable AFM, specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *AFM Revision*

Bombardier, Inc., Model–	AFM–	Publication No.–	Revision–	Dated–
BD-100-1A10 airplanes	Bombardier Challenger 300 Airplane Flight Manual (Imperial Version)[1]	CSP 100-1	58	January 15, 2020
BD-100-1A10 airplanes	Bombardier Challenger 300 Airplane Flight Manual (Metric Version)[2]	CSP 100-1 (Metric)	58	January 15, 2020

[1] For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100-1, use Document Identification No. CH 300 AFM-I.

[2] For obtaining the FMS limitation for Bombardier Challenger 300 Airplane Flight Manual (Metric Version), Publication No. CSP 100-1 (Metric), use Document Identification No. CH 300 AFM-M.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–33, dated September 29, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0272.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 7, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07429 Filed 4–9–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2019–0001]

RIN 1218–AC93

Hazard Communication Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The period for submitting public comments is being extended by 30 days to allow stakeholders interested in the proposed rule additional time to review the proposed rule and collect information and data necessary for comment.

DATES: The comment period for the proposed rule that published at 86 FR 9576 on February 16, 2021, is extended. Comments on the NPRM (including requests for hearing) and other information must be submitted by May 19, 2021.

Informal public hearing: OSHA will schedule an informal public hearing on the proposed rule if requested during the comment period. If a hearing is requested, the location and date of the

hearing, procedures for interested parties to notify the agency of their intention to participate, and procedures for participants to submit their testimony and documentary evidence will be announced in the **Federal Register**.

ADDRESSES:

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2019–0001, electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2019–0001), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this document, and click the ''Comment Now'' link. When uploading multiple attachments to *www.regulations.gov,* please number all of your attachments because *www.regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *regulations.gov*.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2019–0001). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments and materials submitted in response to this **Federal Register** document, go to Docket No. OSHA–2019–0001 at *http://www.regulations.gov.* All comments and submissions are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.[1]

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information and technical inquiries: Contact Maureen Ruskin, Acting Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1950 or fax (202) 693–1678; email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION: On February 16, 2021, OSHA published a notice of proposed rulemaking (NPRM) to modify the Hazard Communication Standard (HCS) to align with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Revision 7, to address specific issues that have arisen since OSHA last updated the HCS in 2012, and to provide better alignment with other U.S. agencies and international trading partners, without lowering the overall protections of the standard.

The public comment period for this NPRM was to close on April 19, 2021, 60 days after publication of the NPRM. However, OSHA received comments from stakeholders requesting extensions of the public comment period (Document ID 0272 (requesting a minimum of 30 additional days), 0274 (requesting a minimum of 30 additional days), and 0276 (requesting extension of 60 days)). The comments state that due to the breadth and complexity of the technical issues involved in this rulemaking, more time is needed to gather data and information and to coordinate responses from organization members to develop more comprehensive and detailed comments.

OSHA agrees to an extension and believes a 30-day extension of the public comment period is sufficient and appropriate in order to address these stakeholder requests. Therefore, the public comment period will be extended until May 19, 2021.

Authority and Signature

This document was prepared under the direction of James S. Frederick, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549, reprinted at 29 U.S.C.A. 655 Note); section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); section 1031, Housing and Community Development Act of 1992 (42 U.S.C. 4853); section 126, Superfund Amendments and Reauthorization Act of 1986, as amended (reprinted at 29 U.S.C.A. 655 Note); Secretary of Labor's Order No. 8–2020 (85 FR 58383–94); and 29 CFR part 1911.

Signed at Washington, DC, on April 6, 2021.

James S. Frederick,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–07408 Filed 4–9–21; 8:45 am]

BILLING CODE 4510–26–P

[1] Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this notice by author name, publication year, and the last four digits of the Document ID.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0056]

RIN 1625–AA09

Drawbridge Operation Regulation; Fox River, Oshkosh, WI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to authorize the Canadian National Railroad Bridge, mile 55.72, across the Fox River to operate remotely. The request was made by the bridge owner. This proposed rule will re-establish remote operations of the bridge and will not change the operating schedule of the bridge.

DATES: Comments and related material must reach the Coast Guard on or before June 11, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0056 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Fox River is approximately 182 miles long and flows south then easterly through the town of Oshkosh, WI, then into Lake Winnebago before it turns north and flows to the Bay of Green Bay. The water levels on the Fox River, above De Pere, WI, are controlled by the Fox River Navigation Authority through a series of locks. The Canadian National Railroad Bridge is a single leaf bascule bridge that provides a horizontal clearance of 125 feet and a vertical clearance in the closed position of 6 feet and in the open position an unlimited clearance for a 62-foot width of the channel and 45 feet at the North Channel edge. The bridge is located near the west side of Lake Winnebago and because of the low clearance most vessels require it to open. During the summer, on average 100 recreational vessels request openings daily. The railroad bridge carries significant train traffic between the international border at Rainer, MN, and Chicago, IL.

III. Discussion of Proposed Rule

In 2010 we published a NPRM to solicit comments concerning allowing the Canadian National Railroad Bridge, mile 55.72 to operate remotely (75 FR 76322, December 8, 2010; USCG–2010–1029). The public requested the bridge owner to install and maintain additional warning lights. The NPRM was withdrawn because the railroad refused to install and maintain the additional warning lights the public requested (76 FR 13312, March 11, 2011). Recently, the Railroad has agreed that from April 27 through October 7 additional warning lights, specifically those alternating flashing red lights that mimic a Grade Crossing Signal commonly found at highway railroad crossing would be installed and maintained to warn mariners that the bridge was about to close. The remote operator shall also announce that the bridge is opening or closing on VHF–FM Marine Radiotelephone. The owners of the bridge shall maintain 2 board gauges in accordance with 33 CFR 118.160. The remote drawtender may be contacted by mariners at any time by radiotelephone or commercial phone number; this information shall be so posted on the bridge so that they are plainly visible to vessel operators approaching the up or downstream side of the bridge.

The current winter operating schedule requiring vessels to provide at least 12-hours advance notice for a bridge opening during the winter will remain in effect. Additionally, the clearance gauges would still be required to indicate to vessels the water levels and clearance while the bridge is in the closed position. During the comment period, a tender will be at the bridge to allow the public to observe the proposed bridge operations. On September 2, 2020, in **Federal Register** at 85 FR 54496, we solicited comments from the summer's test schedule that ran from April 26, 2020 through September 2, 2020. No comments were received.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge as if a tender was in attendance at the bridge.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator. The bridge will operate as it has for the past several years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.1087 by revising paragraph (c) to read as follows:

§ 117.1087 Fox River.

* * * * *

(c) The draw of the Canadian National Railroad Bridge at mile 55.72 shall open on signal, except from October 8 through April 26; the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures to indicate the vertical clearance under the closed draw at all water levels. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream. The bridge shall operate and maintain a VHF–FM Marine Radio. In addition to the required bridge lights, the owner's shall install and maintain alternating red lights in a horizontal line that mimic grade crossing lights and bell to warn mariners that the bridge is lowering.

* * * * *

Dated: April 5, 2021.

D.L. Cottrell,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2021–07437 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0658]

RIN 1625–AA09

Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the 63rd Street Bridge, across Indian Creek, mile 4.0, at Miami Beach, Florida. A request was made to place the drawbridge on a weekend operating schedule to alleviate vehicle congestion due to on-demand bridge openings. This proposed change would place the bridge on an operating schedule during the weekend at specified times. The Coast Guard is seeking comments from the public regarding this proposed change.

DATES: Comments and relate material must reach the Coast Guard on or before May 27, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0658 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida
FDOT Florida Department of Transportation
LNM Local Notice to Mariners

II. Background, Purpose and Legal Basis

The 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida is a double-leaf bascule bridge with an 11 foot vertical clearance at mean high water in the closed position. Navigation on the waterway is commercial and recreational.

A private citizen, with the support from the bridge owner, Florida Departement of Transportation (FDOT), requested the Coast Guard consider changing the drawbridge schedule due to an increase in vehicle traffic during the weekends. The operating schedule for the bridge is set forth in 33 CFR 117.293.

On December 3, 2020, the Coast Guard published a Test Deviation entitled ''Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL'' in the **Federal Register** (85 FR 77994). We received 31 comments.

Twenty-two comments were in favor of the proposed changes. The majority of commenters felt that placing the bridge on a specified operating schedule during the weekend eased vehicle traffic in a congested area and allowed for residents to plan outings accordingly. One commenter was in favor of the proposed weekend schedule but asked if the bridge opened all hours of the day and night. All bridges operate 24 hours a day, either on-demand or on a published schedule. One commenter in support of the proposed change stated the Coast Guard should monitor the no wake situation in Indian Creek during the weekends. The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for enforcing state boating rules and regulations. One commenter was in favor of the proposed schedule but felt that Federal holidays and the weekday curfew should not be included. The proposed change does not include Federal holidays nor will a curfew be added during the weekend.

Six comments were in favor of the proposed change but requested additional weekend restrictions be placed on the operation of the bridge. The additional restrictions included adding the weekday curfew, opening once an hour for vessels, adding a toll for vessels, extending the hours of the proposed schedule and removing the on-demand openings completely. The Coast Guard made the determination that adding additional restrictions on the bridge does not meet the reasonable needs of navigation for this area. Vessels have only one way to transit through Indian Creek at this location. Other modes of transportation have alternate routes to travel around this waterway.

One commenter submitted comments in favor of the proposed changes but is not in favor of including the weekday curfew during the weekend. This commenter was traversing the waterway after the Test Deviation was implemented and was unreasonably delayed by the draw tender. The draw tender was not following the Coast Guard approved Test Deviation. This error was corrected without further incident.

One commenter stated they needed to know the schedule of the bridge. The schedule for the bridge is published in 33 CFR 117.293 and the Test Deviation for the proposed changes was published in the regulation they were commenting on as well as in the Local Notice to Mariners (LNM).

III. Discussion of Proposed Rule

The proposed rule will allow the drawbridge to operate on a more predictable weekend schedule. Under this proposed regulation change, the draw of the 63rd Street Bridge would provide twice an hour openings from 7:00 a.m. to 7:00 p.m. on Saturdays and Sundays, while maintaining the weekday schedule and curfew hours. On Federal holidays and at all other times not designated, the bridge will operate on-demand. These proposed changes will improve the flow of vehicle traffic while meeting the reasonable needs of navigation.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. Vessels in distress and public vessels of the United States must be allowed to pass at any time.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the the fact that vessels can continue to transit the bridge at designated times throughout the day and vessels that can transit under the bridge without an opening may do so at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.293 by revising the introductory text and paragraph (a) to read as follows:

§ 117.293 Indian Creek.

The draw of the 63rd Street Bridge across Indian Creek, mile 4.0 at Miami Beach, shall open on signal except that:

(a) From 7:00 a.m. to 7:00 p.m., except Federal holidays, the draw need open only on the hour and half-hour.

* * * * *

Dated: March 25, 2021.

Eric C. Jones,

Rear Admiral, U.S. Coast Guard, Commander Seventh Coast Guard District.

[FR Doc. 2021–07430 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2021–0099]

RIN 1625–AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Seaboard System Railroad Bridge, across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida. This proposed change would allow the swing bridge to be remotely operated, change the start and end times for advance notification for an opening during the overnight hours and update the name of the bridge. The Coast Guard is seeking comments from the public regarding the proposed changes.

DATES: Comments and related material must reach the Coast Guard on or before June 11, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0099 using the Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida

II. Background, Purpose and Legal Basis

The Seaboard System Railroad Bridge across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida is a swing bridge with a seven foot vertical clearance at mean high water in the closed position. Navigation on the waterway is commercial and recreational. The operating schedule for the bridge is set forth in 33 CFR 117.317(e).

The bridge owner, CSX Transportation, requested the Coast Guard consider allowing the railroad swing bridge to be remotely operated, and modify the hours when the three hour advance notice is required for an opening. Additionally, the name of the swing bridge would be updated to reflect the current bridge owner.

On March 5, 2021, the Coast Guard published a Test Deviation entitled ''Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL'' in the **Federal Register** (86 FR 12821). The comment period for the Test Deviation expires on or before April 29, 2021. Zero comments have been received as of March 26, 2021.

III. Discussion of Proposed Rule

The proposed rule will allow the swing bridge to be remotely monitored and operated. The swing bridge will remain in the open to navigation position during daylight hours and close only for the passage of rail traffic. The start of the three hour advance notice for an opening will begin earlier each evening and end one hour later each morning. The time changes for the three hour advance notice would align with the operating schedule of the U.S. Army Corps of Engineers (USACE) Locks along this portion of the Okeechobee Waterway. The proposed changes will allow for the swing bridge to operate more efficiently while taking into account the reasonable needs of navigation. Additionally, the name of the swing bridge would be updated to reflect the current bridge owner.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time and vessels can still transit the bridge when advanced notice is given. Vessels in distress and public vessels of the United States must be allowed to pass at any time.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice and vessels that can transit under the bridge without an opening may do so at anytime.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National

Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.317 by revising paragraph (e) to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(e) *Seaboard System Railroad bridge, mile 28.2 at Indiantown.* The draw of the CSX Railroad Bridge, mile 28.2 at Indiantown, FL, shall operate as follows:

(1) The swing bridge is not tendered locally, but will be monitored and operated by a remote operator.

(2) Marine radio communication shall be maintained, by the remote operator, with mariners near the bridge for the safety of navigation. Visual monitoring of the waterway shall be maintained with the use of cameras. Detection sensors shall be installed for the detection of vessels entering the radius of the swing span of the bridge while in operation.

(3) From 7 a.m. to 7 p.m., the bridge will be maintained in the open to navigation position and will display green lights to indicate that the span is fully open.

(4) When a train approaches, the remote operator shall monitor for vessels in the vicinity of the bridge. Provided the sensors do not detect a vessel entering the swing radius of the bridge, the operator shall initiate the closing sequence, which includes the sounding of a horn. The span will remain in the closed position for the entire time the track circuit is occupied displaying red lights.

(5) After the train has cleared the track circuit, the span shall open and green lights will be displayed.

(6) From 7 p.m. to 7 a.m., the bridge will be in the closed to navigation position and will open if at least a three hour advance notice is requested via marine radio channel 9 VHF or telephone (813) 677–3974.

(7) The bridge shall not be operated from the remote location in the following events: Failure or obstruction of the detection sensors, remote actuation systems, cameras, or marine radio communications, or when directed by the Coast Guard. In these situations, a bridge operator must be on-site and locally operate the bridge.

* * * * *

Dated: April 6, 2021.

Eric C. Jones,

Rear Admiral, U.S. Coast Guard, Commander Seventh Coast Guard District.

[FR Doc. 2021–07434 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 18–89; DA 21–355; FRS 19427]

Wireline Competition Bureau Seeks Comment on a Report and Preliminary Cost Catalog and Replacement List To Help Providers Participate in the Supply Chain Reimbursement Program

AGENCY: Federal Communications Commission.

ACTION: Notification.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) invites interested parties to comment on the Supply Chain Reimbursement Program Study (Report) and a preliminary Catalog of Eligible Expenses and Estimated Costs (Catalog) to assist the Federal Communications Commission (Commission) with establishing the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).

DATES: Comments are due April 26, 2021.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before the date indicated on the first page of this document. Comments must reference WC Docket No. 18–89 and must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. The Commission encourages outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), the Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT: Christopher Koves, Wireline Competition Bureau, 202–418–7400 or by email at *SupplyChain@fcc.gov.* We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Public Notice (Notice) in WC Docket No. 18–89; DA 21–355, released on March 25, 2021. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-releases-preliminary-supply-chain-reimbursement-program-documents.*

1. By the Notice, the Bureau invites interested parties to comment on the Report and a preliminary Catalog, *https://docs.fcc.gov/public/attachments/DA-21-355A1.pdf,* to assist the Commission with establishing the Reimbursement Program. The Report and Catalog will help eligible providers of advanced communications services participate in the Reimbursement Program. The Bureau also seeks comment on a preliminary List of Categories of Suggested Replacement Equipment and Services (Replacement List) to aid with the replacement of communications equipment and services deemed to pose an unacceptable risk to U.S. national security or the security and safety of U.S. persons (*i.e.,* covered communications equipment or services).

2. Section 4 of the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), as amended, directs the Commission to establish a Reimbursement Program for the reimbursement of costs incurred by eligible providers of advanced communications services for the removal, replacement, and disposal of any covered communications equipment or services. Eligible providers include those providers that have previously obtained covered communications equipment or services, and, as recently amended, includes providers with up to 10 million or fewer customers. Eligible providers seeking reimbursement are required to submit an ''initial reimbursement cost estimate at the time of application, with supporting materials substantiating the costs.'' The Commission is required, as part of the Reimbursement Program, to develop a Replacement List to assist participants.

3. On December 11, 2020, the Commission adopted the *Supply Chain Second Report and Order,* 86 FR 2904, January 13, 2021, which, among other measures, promulgated rules for the Reimbursement Program and the Replacement List. The Commission interpreted ''providers of advanced communications service'' to mean those providers with a broadband connection to an end user with at least a speed of 200 kbps in one direction and promulgated a ''costs reasonably incurred'' standard to determine reimbursement expense eligibility. The Commission also directed the Bureau to develop and finalize a Catalog to ''identify reimbursable costs with as much specificity as possible, provide guidance to entities seeking reimbursement, streamline the reimbursement process, and increase accountability.''

4. The Bureau contracted with Widelity, Inc. (Widelity) to produce a report detailing the anticipated steps in removing, replacing, and disposing of covered communications equipment or services and an initial proposed version of the Catalog and Replacement List. Widelity conducted a series of confidential interviews with a broad range of communications industry stakeholders to understand the process and costs associated with removing, replacing, and disposing of covered communications equipment or services. The Bureau now seeks comment on the Report, Catalog, and Replacement List.

5. *Report: Supply Chain Reimbursement Program Study.* Widelity produced the Report detailing the ''requirements, timing, and costs involved in the removal, replacement, and disposal of covered communications equipment, or services, from the networks of advanced communications service providers'' participating in the Reimbursement Program. The Report provides an industry and technology overview and explains Widelity's methodologies used to develop the initial version of the proposed Catalog and Replacement List. In preparing the Report, Widelity focused on the removal, replacement, and disposal of communications equipment and services produced or provided by Huawei and ZTE. Widelity acknowledges that the reimbursement process will be ''complex and resource intensive'' but concludes that the Reimbursement Program ''can be achieved with the desired outcomes.''

6. The Bureau seeks comment from interested parties on the Report, including Widelity's methodologies, and how the Report should inform the Reimbursement Program. In particular, does the Report accurately capture all anticipated steps and categories of expenses associated with the removal, replacement, and disposal of covered communications equipment or services?

7. *Catalog of Eligible Expenses and Estimated Costs.* The Catalog is intended to ''help the Commission and applicants satisfy the Secure Networks Act's requirements[,] not only by helping applicants with transition planning and estimating costs for application submissions, but also with identifying potential replacement equipment and services and expediting the Commission's reimbursement request review process.'' When requesting funding from the Reimbursement Program, applicants ''can reference the final [Catalog], which will contain a list of many, but not necessarily all, of the relevant expenses in lieu of providing additional supporting documentation to justify the specific cost estimate.'' As the Commission said, ''[i]f an applicant believes the predetermined estimate does not fully account for its specific circumstances or a predetermined cost estimate is not provided in the [Catalog] for the cost identified by the applicant, the applicant can provide its own individualized cost estimate.''

8. Widelity produced the proposed Catalog, which includes a range of cost estimates, organized by category and subcategory of communications equipment and services, that may be eligible for reimbursement under the Reimbursement Program. These suggested costs are estimates only and are not meant to indicate that reimbursement will reflect the estimated costs. As the Commission explained, listing in the Catalog is not a guarantee of reimbursement for any individual expense under the Reimbursement Program. All claimed cost estimates submitted in a reimbursement application are subject to review by Commission staff to ensure each expense and request for reimbursement is reasonable. The Catalog is not exhaustive and inclusion or exclusion of a particular category of costs should not be read to state or imply that the expense will or will not be eligible for reimbursement. After considering public comments on the proposed Catalog, the Bureau will issue a public notice adopting a final version of the Catalog.

9. The Bureau seeks comment from interested parties on the proposed Catalog, including the suggested ranges of estimated costs and cost categories and subcategories, and how the Catalog should inform the Reimbursement Program. To what extent are the cost estimates included in the proposed Catalog reasonable? Are the suggested cost ranges likely to help carriers estimate the costs for application submissions and identify potential replacement equipment and services? Are there additional cost categories and subcategories that should be included in the final Catalog?

10. *List of Categories of Suggested Replacement Equipment and Services.* Section 4(d)(1) of the Secure Networks Act directs the Commission to establish a Replacement List that ''will identify categories of suggested replacements of real and virtual hardware and software equipment and services to guide providers removing covered communications equipment from their networks.'' The Commission explained that the Catalog would ''inform the Replacement List by helping to target the type of equipment that will be removed and replaced.'' The Commission found that the ''Replacement List should include equipment and services equipped, or upgradable to, be used in [Open Radio Access Networks (O–RAN)], or in virtualized networks.'' In adopting a rule for the Replacement List, however, the Commission declined ''to identify specific equipment and services'' or a ''list of manufacturers'' due to concerns about ''inadvertently overlooking some equipment or manufacturers,'' ''influenc[ing] purchases'' by appearing ''to convey that the Commission believes certain equipment meets quality and security metrics,'' and possibly leading to ''security threats.''

11. Widelity produced the proposed Replacement List which includes categories of replacement equipment and services that may be used to replace potentially covered equipment and services under the Reimbursement Program. Widelity relied on the network categories the Commission's Office of Economics and Analytics developed to identify Huawei and ZTE equipment and services potentially subject to replacement, removal, and disposal. Based on these network categories, Widelity analyzed core layer, distribution layer, access layer software, and services to prepare the proposed Replacement List. After considering public comments on the proposed Replacement List, the Bureau will release a public notice adopting the final version of the Replacement List which will be published on the Commission's website and annually updated to ensure that it remains current consistent with the *Supply Chain Second Report and Order.*

12. The Bureau seeks comment on the proposed Replacement List. Are there additional categories of equipment and services that could be used to replace potentially covered communications equipment and services that the Bureau should include in the Replacement List?

13. *Ex Parte Rules.* This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to

be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Cheryl Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2021–07173 Filed 4–8–21; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; Report No. 3170; FRS 19657]

Petition for Reconsideration of Action in Proceedings

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petition) have been filed in the Commission's proceeding by Mitchell N. Roth, on behalf of Enterprise Communications Advocacy Coalition and Mark W. Brennan, on behalf of ACA International *et al.*

DATES: Oppositions to the Petitions must be filed on or before April 27, 2021. Replies to an opposition must be filed on or before May 7, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, (717) 338–2797.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3170, released March 31, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, published 86 FR 11443, February 25, 2021, in CG Docket No 02–278. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–07360 Filed 4–9–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–54; RM–11879; DA 21–163; FR ID 17507]

Television Broadcasting Services Peoria and Oswego, Illinois

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking Four Seasons Peoria, LLC (Petitioner), licensee of television station WAOE, channel 10, Peoria, Illinois, requesting an amendment of the DTV Table of Allotments to delete channel 10 at Peoria, Illinois, and substitute channel 10 at Oswego, Illinois. Petitioner further requests modification of WAOE's license to specify Oswego as its community of license pursuant to the Commission's rules.

DATES: Comments must be filed on or before May 12, 2021 and reply comments on or before May 27, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 1776 Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, at (202) 418–2324 or *Shaun.Maher@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–54; RM–11879; DA 21–163, adopted February 12, 2021, and released February 12, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Petitioner does not propose any changes in WAOE's authorized facilities and will continue to provide a principal community coverage signal both Oswego and Peoria from its currently authorized transmission facilities. Petitioner maintains that the proposed community of license change is mutually exclusive with WAOE's current allotment and therefore its proposal satisfies the requirement that its proposed allotment be ''mutually exclusive with the licensee's present allotment.''

Petitioner asserts that Oswego qualifies as a community for allotment purposes. Petitioner maintains that Oswego, which, noted above, currently has no local television allotment, is the largest community within Kendall County, Illinois. Petitioner states that Oswego's population has increased almost ten-fold from 3,875 in 1990 to 34,383 today11 and is expected to double by 2040. Petitioner notes that Oswego has a fully autonomous municipal government led by a President and a seven-member Board of Trustees; as well as a professional management staff, led by a professional Village Administrator and a Village Clerk. Oswego has a full-service Police Department; schools, including six elementary schools, three junior high schools and two high schools; a Public Library District; and extensive Park District. Finally, Petitioner states that Oswego has its own ZIP Code; a local

newspaper (the Oswego Ledger-Sentinel); chamber of commerce; multiple medical facilities; and is part of a transit system dedicated to serving residents of Kendall County.

Petitioner argues that its proposal represents a preferential arrangement of allotments under the Commission's second allotment priority because it will result in a first local television station for Oswego, which is the largest community in Kendall County, Illinois. Petitioner notes that WAOE's existing community of license, Peoria, will continue to have four full power local television stations licensed to it following the reallotment, and because WAOE is not proposing to modify its technical facilities, the community of license change will not adversely affect the service provided to Peoria. Accordingly, Petitioner concludes that application of the Commission's television allotment priorities favors a reallotment of channel 10 to Oswego.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, paragraph (i) is amended in the Post-Transition Table of DTV Allotments under Illinois by adding an entry in alphabetical order for ''Oswego'' and revising the entry for ''Peoria'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
ILLINOIS	
* * * * *	
Oswego	10.
Peoria	19, 25, 30, *46.
* * * * *	

[FR Doc. 2021–07442 Filed 4–9–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 68
Monday, April 12, 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

April 7, 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 May 12, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

National Agricultural Statistics Service

Title: Water Use Surveys.

OMB Control Number: 0535–0262.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, value, and disposition, and resource use. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists.''

Need and Use of the Information: NASS will conduct a census of agricultural operations that likely use between 10,000 to 999,999 gallons of water in any one day for agricultural purposes in North Carolina. The universe size is around 3,700 operations. The operations will be asked to provide monthly or daily water use and the source (ground or surface water) by county. For operations that are unable to provide water use data, an estimation guide is included in the questionnaire that the respondents can use to estimate their water usage based on their agricultural production data.

The summarized and published information will be analyzed by the NCDACS and data users to investigate water use in North Carolina to include:

- Average number of days per month there was demand for 10,000 to 999,999 gallons of water per day.
- Average daily usage of water for operations that use 10,000 to 999,999 gallons of water in any one day.
- Aggregated statistics for operations that use 10,000 to 999,999 gallons of water in any one day by county and hydrologic unit code.

The program will help the North Carolina Department of Agriculture and Consumer Services and North Carolina Department of Environmental Quality fulfill requirements of North Carolina state legislation enacted in 2008. Collecting data less frequently would prevent the agriculture industry from being kept abreast of water use changes for North Carolina.

Description of Respondents: Farms; Businesses or other for-profit.

Number of Respondents: 3,700.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,773.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–07412 Filed 4–9–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 7, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (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; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 12, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Accounting Requirements for RUS Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Summary of Collection: Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture that makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas. This collection is primarily a recordkeeping requirement. 7 CFR parts 1767 and 1770 set forth basic accounting requirements for maintaining financial accounting records on an accrual basis that are unique to RUS borrowers. The agency is requiring borrowers to establish an index of records. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a daily basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

Need and Use of the Information: There are many important financial considerations for the retention and preservation of accounting records. One of the most important considerations to RUS is that documentation be available so that the borrower's records may be audited for proper disbursements of funds. The hours of burden to maintain this index are directly related to those portions of the accounting system that are unique to the Agency. RUS uses the information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans.

Description of Respondents: Business or other-for-profit; Not-for-profit institutions.

Number of Respondents: 1,000.

Frequency of Responses: Recordkeeping; Reporting: On Occasion.

Total Burden Hours: 27,000.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–07470 Filed 4–9–21; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2022 Census of Agriculture.

DATES: Comments on this notice must be received by June 11, 2021 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0226, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202)720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202)690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 8, 2021, FR Doc. 2021–04701, on page 13280, in the second column, under **SUPPLEMENTARY INFORMATION**, should read as follows:

Estimated Number of Respondents: 4,700,000.

Estimated Total Annual Burden on Respondents: 3,100,000 hours.

Signed at Washington, DC, April 6, 2021.

Yvette Anderson,

Federal Register Liaison Officer for ARS, ERS, NASS.

[FR Doc. 2021–07404 Filed 4–9–21; 8:45 am]

BILLING CODE 3410–20–P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing of the Massachusetts Advisory Committee to the Commission will convene by web conference on Thursday, May 6, 2021 at 2:00 p.m. (ET). The purpose of the briefing is to hear from presenters on hate crimes against Americans of Asian and Pacific Descent in Massachusetts.

DATES: Thursday, May 6, 2021 at 2:00 p.m. (ET).

Public WEBEX Conference Registration Link (video and audio): https://tinyurl.com/533t9psj.

To Join by Phone Only: Dial 1–800–360–9505; Access code: 199 774 3553.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be

received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, May 8, 2021; 2:00 p.m. (ET)

1. Welcome/Chair Statement
2. Briefing on Hate Crimes
3. Public Comment
4. Other Business
5. Adjourn

Dated: April 7, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–07453 Filed 4–9–21; 8:45 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold a meeting via WebEx on Friday, April 30, 2021 from 1:00–2:15 p.m. ET for the purpose of discussing the Committee's project and upcoming briefings on eviction policies and enforcement in New York.

DATES: The meeting will be held on Friday, April 30, 2021 from 1:00 p.m.–2:15 p.m. ET.

- To join by web conference please click the link below; password is USCCR: *https://civilrights.webex.com/civilrights/j.php?MTID=m4a684cb514bcba988b3d9163d9786122.*
- To join by phone only, dial: 1–800–360–9505; Access code: 199 786 7286.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmAAAQ* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Discussion: Committee's Project on Eviction Policy and Enforcement in New York
V. Public Comment
VI. Review Next Steps
VII. Adjournment

Dated: April 7, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–07458 Filed 4–9–21; 8:45 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, May 7, 2021 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss a proposal to study civil rights concerns related to IDEA implementation in the state.

DATES: The meeting will be held on Friday, May 7, 2021 at 1 p.m. Central time.

Web Access (audio/visual): Register at: *https://bit.ly/39L7OjY*

Phone Access (audio only): 800–360–9505, Access Code 199 986 9481

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they

become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion: IDEA Implementation (Project Proposal)
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: April 6, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–07383 Filed 4–9–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–69–2020]

Foreign-Trade Zone (FTZ) 46—Cincinnati, Ohio; Authorization of Production Activity; MANE, Inc. (Flavor Preparations and Seasonings); Cincinnati and Lebanon, Ohio

On December 8, 2020, MANE, Inc., submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 46H, in Cincinnati and Lebanon, Ohio.

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 (86 FR 81875, December 17, 2020). On April 7, 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: April 7, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–07449 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction

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

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published a document in the **Federal Register** of March 4, 2021, in which it initiated administrative reviews of antidumping duty (AD) and countervailing duty (CVD) orders and findings with January anniversary dates. That document was missing information regarding the AD administrative review of wooden bedroom furniture from the People's Republic of China (China). We are including the missing information in this correction notice.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of March 4, 2021, in FR Doc. 2021–04479,[1] on page 12600, in the second column, after the ''Respondent Selection'' section, Commerce should have included information regarding the AD administrative review of wooden bedroom furniture from China under the caption ''Respondent Selection—Wooden Bedroom Furniture from the People's Republic of China.'' We have included the necessary information below:

Respondent Selection—Wooden Bedroom Furniture From the People's Republic of China

In the event that Commerce limits the number of respondents for individual examination in the AD administrative review of wooden bedroom furniture from China, for the purposes of this segment of the proceeding, *i.e.,* the 2020 review period, Commerce intends to select respondents based on volume data contained in responses to a quantity and value (Q&V) questionnaire. All parties are hereby notified that they must timely respond to the Q&V questionnaire. Commerce's Q&V questionnaire along with certain additional questions will be available in a document package on Commerce's website at *https://enforcement.trade.gov/download/prc-wbf/index.html* on the date that this correction notice is published in the **Federal Register**. Responses to the Q&V questionnaire and the additional questions must be received by Commerce by no later than 30 days after the date of publication of this correction notice in the **Federal Register**. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for AD administrative reviews, Commerce does not intend to grant any extensions for the submission of responses to the Q&V questionnaire.

In the **Federal Register** of March 4, 2021, in FR Doc. 2021–04479, on pages 12600–12601, in the ''Separate Rates'' section, Commerce should have included information regarding the AD administrative review of wooden bedroom furniture from China. We have included the necessary information below:

Separate Rates

All firms that wish to qualify for separate-rate status in the AD administrative review of wooden bedroom furniture from China must complete, as appropriate, either a separate rate certification or a separate rate application and respond to the additional questions and the Q&V questionnaire on Commerce's website at *https://enforcement.trade.gov/download/prc-wbf/index.html.* The separate rate certification and separate rate application forms are available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html.* For additional information regarding separate rates, the separate rate certification, and the separate rate application, *see* the *Initiation Notice.* Separate rate certifications and separate rate applications are due to Commerce no later than 30 calendar days after publication of this correction notice in the **Federal Register**.

Furthermore, this correction notice constitutes public notification to all firms for which an AD administrative review of wooden bedroom furniture from China has been requested, and that are seeking separate rate status in the review, that they must submit a timely separate rate application or separate rate certification, as appropriate, as described above, and a timely response to the Q&V questionnaire and the additional questions in the document package on Commerce's website in order to receive consideration for separate-rate status. In other words,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 12599 (March 4, 2021) (*Initiation Notice*).

Commerce will not give consideration to any timely separate rate certification or separate rate application made by parties who failed to respond in a timely manner to the Q&V questionnaire and the additional questions. All information submitted by respondents in the AD administrative review of wooden bedroom furniture from China is subject to verification. As noted above, the Q&V questionnaire and the additional questions will be available on Commerce's website on the date of publication of this correction notice in the **Federal Register**.

Dated: April 6, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–07376 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–854]

Standard Steel Welded Wire Mesh From Mexico: Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on standard steel welded wire mesh (wire mesh) from Mexico.

DATES: Applicable April 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2021, Commerce published its affirmative final determination in the countervailing duty investigation of wire mesh from Mexico.[1] On April 5, 2021, the ITC notified Commerce of its final determination, pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of wire mesh from Mexico.[2]

Scope of the Order

The scope of the order is wire mesh from Mexico. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

On April 5, 2021, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of wire mesh from Mexico.[3] As a result, and in accordance with sections 705(c)(2) and 706 of the Act, we are issuing this countervailing duty order. Because the ITC determined that imports of wire mesh from Mexico are materially injuring a U.S. industry, unliquidated entries of such merchandise from Mexico, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Countervailing duties will be assessed on unliquidated entries of wire mesh from Mexico entered, or withdrawn from warehouse, for consumption on or after December 3, 2020, the date of publication of the *Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described below.

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will direct CBP to suspend liquidation of entries of wire mesh from Mexico, as described in the appendix to this notice, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise. On or after the publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice.

Company	Subsidy rate (percent)
Aceromex S.A. De C.V	1.03
Deacero S.A.P.I. de C.V	102.10
All Others[5]	1.03

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on December 3, 2020. As such, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on April 2, 2021. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of wire mesh from Mexico, entered, or withdrawn from warehouse, for consumption, on or after April 2, 2021, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.[6] Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to wire mesh from Mexico, pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.* This order is published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

[1] *See Standard Steel Welded Wire Mesh from Mexico: Final Affirmative Countervailing Duty Determination,* 86 FR 10034 (February 18, 2021) (*Final Determination*).

[2] *See* ITC's Letter, ''Notification of ITC Final Determinations,'' dated April 5, 2021 (ITC Notification Letter).

[3] *See* ITC Notification Letter.

[4] *See Standard Steel Welded Wire Mesh from Mexico: Preliminary Affirmative Countervailing Duty Determination,* 85 FR 78124 (December 3, 2020) (*Preliminary Determination*).

[5] The all-others rate applies to all producers or exporters not specifically listed.

[6] *See Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates; Determinations,* 86 FR 7564 (January 29, 2021).

Dated: April 6, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of this order covers uncoated standard welded steel reinforcement wire mesh (wire mesh) produced from smooth or deformed wire. Subject wire mesh is produced in square and rectangular grids of uniformly spaced steel wires that are welded at all intersections. Sizes are specified by combining the spacing of the wires in inches or millimeters and the wire cross-sectional area in hundredths of square inch or millimeters squared. Subject wire mesh may be packaged and sold in rolls or in sheets.

Subject wire mesh is currently produced to ASTM specification A1064/A1064M, which covers carbon-steel wire and welded wire reinforcement, smooth and deformed, for concrete in the following seven styles:

1. 6X6 W1.4/W1.4 or D1.4/D1.4
2. 6X6 W2.1/W2.1 or D2.1/D2.1
3. 6X6 W2.9/W2.9 or D2.9/D2.9
4. 6X6 W4/W4 or D4/D4
5. 6X12 W4/W4 or D4/D4
6. 4X4 W2.9/W2.9 or D2.9/D2.9
7. 4X4 W4/W4 or D4/D4

The first number in the style denotes the nominal spacing between the longitudinal wires and the second number denotes the nominal spacing between the transverse wires. In the first style listed above, for example, ''6X6'' denotes a grid size of six inches by six inches. ''W'' denotes the use of smooth wire, and ''D'' denotes the use of deformed wire in making the mesh. The number following the W or D denotes the nominal cross-sectional area of the transverse and longitudinal wires in hundredths of a square inch (*i.e.,* W1.4 or D1.4 is .014 square inches).

Smooth wire is wire that has a uniform cross-sectional diameter throughout the length of the wire.

Deformed wire is wire with indentations or raised transverse ribs, which results in wire that does not have a uniform cross-sectional diameter throughout the length of the wire.

Rolls of subject wire mesh are produced in the following styles and nominal width and length combinations:

Style: 6X6 W1.4/W1.4 or D1.4/D1.4 (*i.e.,* 10 gauge)
Roll Sizes: 5′ X 50′
5′ X 150′
6′ X 150′
5′ X 200′
7′ X 200′
7.5′ X 200′
Style: 6X6 W2.1/W2.1 or D2.1/D2.1 (*i.e.,* 8 gauge)
Roll Sizes: 5′ X 150′
Style: 6X6 W2.9/W2.9 or D2.9/D2.9 (*i.e.,* 6 gauge)
Roll Sizes: 5′ X 150′
7′ X 200′

All rolled wire mesh is included in scope regardless of length.

Sheets of subject wire mesh are produced in the following styles and nominal width and length combinations:

Style: 6X6 W1.4/W1.4 or D1.4/D1.4 (*i.e.,* 10 gauge)
Sheet Size: 3′6″ X 7′
4′ X 7′
4′ X 7′6″
5′ X 10′
7′ X 20′
7′6″ X 20′
8′ X 12′6″
8′ X 15′
8′ X 20′
Style: 6X6 W2.1/W2.1 or D2.1/D2.1 (*i.e.,* 8 gauge)
Sheet Size: 5′ X 10′
7′ X 20′
7′6″ X 20′
8′ X 12′6″
8′ X 15′
8′ X 20′
Style: 6X6 W2.9/W2.9 or D2.9/D2.9 (*i.e.,* 6 gauge)
Sheet Size: 3′6″ X 20′
5′ X 10′
7′ X 20′
7′6″ X 20′
8′ X 12′6″
8′ X 15′
8′ X 20′
Style: 6X12 W4/W4 or D4/D4 (*i.e.,* 4 gauge)
Sheet Size: 8′ X 20′
Style: 4X4 W2.9/W2.9 or D2.9/D2.9 (*i.e.,* 6 gauge)
Sheet Size: 5′ X 10′
7′ X 20′
7′6″ X 20′
8′ X 12′6″
8′ X 12′8″
8′ X 15′
8′ X 20′
Style: 4X4 W4/W4 or D4/D4 (*i.e.,* 4 gauge)
Sheet Size: 5′ X 10′
8′ X 12′6″
8′ X 12′8″
8′ X 15′
8′ X 20′

Any product imported, sold, or invoiced in one of these size combinations is within the scope.

ASTM specification A1064/A1064M provides for permissible variations in wire gauges, the spacing between transverse and longitudinal wires, and the length and width combinations. To the extent a roll or sheet of welded wire mesh falls within these permissible variations, it is within this scope.

ASTM specification A1064/A1064M also defines permissible oversteeling, which is the use of a heavier gauge wire with a larger cross-sectional area than nominally specified. It also permits a wire diameter tolerance of ± 0.003 inches for products up to W5/D5 and ± 0.004 for sizes over W5/D5. A producer may oversteel by increasing smooth or deformed wire diameter up to two whole number size increments on Table 1 of A1064. Subject wire mesh has the following actual wire diameter ranges, which account for both oversteeling and diameter tolerance:

W/D No.	Maximum oversteeling No.	Diameter range (inch)
1.4 (*i.e.,* 10 gauge)	3.4	0.093 to 0.211.
2.1 (*i.e.,* 8 gauge)	4.1	0.161 to 0.231.
2.9 (*i.e.,* 6 gauge)	4.9	0.189 to 0.253.
4.0 (*i.e.,* 4 gauge)	6.0	0.223 to 0.280.

To the extent a roll or sheet of welded wire mesh falls within the permissible variations provided above, it is within this scope.

In addition to the tolerances permitted in ASTM specification A1064/A1064M, wire mesh within this scope includes combinations where:

1. A width and/or length combination varies by ± one grid size in any direction, *i.e.,* ± 6 inches in length or width where the wire mesh's grid size is ''6X6''; and/or

2. The center-to-center spacing between individual wires may vary by up to one quarter of an inch from the nominal grid size specified.

Length is measured from the ends of any wire and width is measured between the center-line of end longitudinal wires.

Additionally, although the subject wire mesh typically meets ASTM A1064/A1064M, the failure to include certifications, test reports or other documentation establishing that the product meets this specification does not remove the product from the scope. Wire mesh made to comparable foreign specifications (*e.g.,* DIN, JIS, *etc.*) or proprietary specifications is included in the scope.

Excluded from the scope is wire mesh that is galvanized (*i.e.,* coated with zinc) or coated with an epoxy coating. In order to be excluded as galvanized, the excluded welded wire mesh must have a zinc coating thickness meeting the requirements of ASTM specification A641/A641M. Epoxy coating is a mix of epoxy resin and hardener that can be applied to the surface of steel wire.

Merchandise subject to this order are classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 7314.20.0000 and 7314.39.0000. While HTSUS subheadings are provided for convenience and customs purposes, the

written description of the scope of this order is dispositive.

[FR Doc. 2021–07448 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable April 12, 2021.

FOR FURTHER INFORMATION: Christopher Williams, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2009, Commerce published in the **Federal Register** the AD order on diamond sawblades from China.[1] On August 3, 2020, the ITC instituted its five-year (sunset) review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On August 4, 2020, Commerce published the initiation of the second sunset review of the *Order,* pursuant to section 751(c) of the Act.[3] As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) and of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should this *Order* be revoked, in accordance with section 752(c)(3) of the Act.[4]

On April 2, 2021, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the *Order* are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the *Order.* Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the *Order.* Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the *Order.* Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the *Order.* Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the *Order.*

Merchandise subject to the *Order* is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.[6] Pursuant to requests by U.S. Customs and Border Protection (CBP), Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.[7]

The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of this *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of this *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the final reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) (*Order*).

[2] *See Diamond Sawblades and Parts Thereof from China; Institution of Five-Year Reviews,* 85 FR 46719 (August 3, 2020).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 47185 (August 4, 2020).

[4] *See Diamond Sawblades from the People's Republic of China: Final Results of the Second Expedited Sunset Review of the Antidumping Duty Order,* 85 FR 78827 (December 7, 2020).

[5] *See Diamond Sawblades from China Determination,* 86 FR 17402 (April 2, 2021).

[6] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011).

[7] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331 (December 14, 2018), and accompanying Issues and Decision Memorandum at 3.

accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: April 6, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–07450 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB007]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off of Delaware

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Skipjack Offshore Energy, LLC (Skipjack) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys offshore of Delaware in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0519) and along potential submarine cable routes to a landfall location in Delaware.

DATES: This Authorization is effective for a period of one year, from April 5, 2021 through April 4, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On August 12, 2020, NMFS received a request from Skipjack for an IHA to take marine mammals incidental to marine site characterization surveys offshore of Delaware in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0519) and along potential submarine cable routes to a landfall location in Delaware. Revised versions of the application were received on September 21, 2020 and November 5, 2020. The application was deemed adequate and complete on December 12, 2020. Skipjack's request is for take of a small number of 16 species of marine mammals by Level B harassment only. Neither Skipjack nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Skipjack for similar work in the same geographic area on December 3, 2019 (84 FR 66156) with effectives dates from November 26, 2019 through November 25, 2020. Skipjack complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and given the similarity in activities and location, relevant information regarding their previous marine mammal monitoring results may be found in the Estimated Take section.

Description of the Specified Activity

Skipjack plans to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in the area of OCS–A 0519 (Lease Area) and along potential submarine cable routes to landfall locations in Delaware over approximately 200 days. The purpose of the marine site characterization surveys are to obtain a baseline assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of offshore wind facility development. Underwater sound resulting from Skipjack's planned activities, specifically certain acoustic sources planned for use during surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment (*i.e.,* Level B harassment only). Impulsive sources (*e.g.,* sparker systems) would be utilized for 50 survey days while the non-impulsive sources (*e.g.,* CHIRP sub-bottom profilers (SBPs)) would be used for the remaining 150 days. The survey activities planned by Skipjack are described in detail in the notice of proposed IHA (86 FR 11239; February 24, 2021). The HRG survey equipment that may be used by Skipjack are shown in Table 1.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT

Equipment	Acoustic source type	Operating frequency (kHz)	SL_{rms} (dB re 1 μPa m)	$SL_{0\text{-}pk}$ (dB re 1 μPa m)	Pulse duration (width) (millisecond)	Repetition rate (Hz)	Beamwidth (degrees)	CF= Crocker and Fratantonio (2016) MAN = Manufacturer
Non-impulsive, Non-parametric, Shallow Sub-bottom Profilers (CHIRP Sonars)								
ET 216 (2000DS or 3200 top unit).	Non-impulsive, mobile, intermittent.	2–16 2–8	195	.....	20	6	24	MAN.
ET 424	Non-impulsive, mobile, intermittent.	4–24	176	.....	3.4	2	71	CF.
ET 512	Non-impulsive, mobile, intermittent.	0.7–12	179	.....	9	8	80	CF.
GeoPulse 5430A	Non-impulsive, mobile, intermittent.	2–17	196	.....	50	10	55	MAN.
Teledyne Benthos Chirp III—TTV 170.	Non-impulsive, mobile, intermittent.	2–7	197	.....	60	15	100	MAN.
Impulsive, Medium Sub-bottom Profilers (Sparkers & Boomers)								
AA, Dura-spark UHD (400 tips, 500 J).	Impulsive, mobile	0.3–1.2	203	211	1.1	4	Omni	CF.
AA, Dura-spark UHD (400+400).	Impulsive, mobile	0.3–1.2	203	211	1.1	4	Omni	CF (AA Dura-spark UHD Proxy).
GeoMarine, Geo-Source dual 400 tip sparker (800 J).	Impulsive, mobile	0.4–5	203	211	1.1	2	Omni	CF (AA Dura-spark UHD Proxy).
GeoMarine Geo-Source 200 tip sparker (400 J).	Impulsive, mobile	0.3–1.2	203	211	1.1	4	Omni	CF (AA Dura-spark UHD Proxy).
GeoMarine Geo-Source 200–400 tip sparker (400 J).	Impulsive, mobile	0.3–1.2	203	211	1.1	4	Omni	CF (AA Dura-spark UHD Proxy).
AA, triple plate S-Boom (700–1,000 J).	Impulsive, mobile	0.1–5	205	211	0.6	4	80	CF.

As described above, a detailed description of Skipjack's planned surveys is provided in the **Federal Register** notice for the proposed IHA (86 FR 11239; February 24, 2021). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Skipjack was published in the **Federal Register** on February 24, 2021 (86 FR 11239). During the 30-day comment period, NMFS received comments from: (1) A group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Wildlife Conservation Society, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, Inland Ocean Coalition, Nassau Hiking & Outdoor Club, and Connecticut Audubon Society; and (2) the Delaware Department of Resources and Environmental Control (DNREC).

NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see the letters for full detail and rationale for the comments.

Comment 1: The ENGOs recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take and that NMFS must ensure all available data are used to ensure that any potential shifts in North Atlantic right whale habitat usage are reflected in estimations of marine mammal density and take. The ENGOs asserted in general that the density models used by NMFS do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore result in an underestimate of take.

Response: At the outset of their letter, the ENGOs note that the comments reflect overarching concerns regarding NMFS' IHAs for marine site characterization survey (including HRG survey) activities required for offshore wind energy development, as well as their intention that the comments be considered in relation to all authorizations associated with marine site characterization activities for offshore wind energy off the U.S. East Coast. The comments provided in the letter apparently focus concern on available data regarding the Massachusetts and Rhode Island and Massachusetts Wind Energy Areas, and on North Atlantic right whale habitat usage within those areas. As such, the specific comments pertaining to those data and right whale habitat usage within those areas are not germane to this specific action, *i.e.,* issuance of an IHA associated with HRG survey activity off of Delaware. We address the general comments regarding sufficiency of the available data on marine mammal occurrence below.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each

of those models, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of eight physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates.

Of particular note, Roberts *et al.* (2020) further updated density model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into five discrete regions. This most recent update—model version 9 for North Atlantic right whales—was undertaken with the following objectives (Roberts *et al.,* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions:
  - Aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et al.,* 2016), spanning 2011–2015 and 2017–2018.
  - Recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both.
- To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future.
- To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York.
- Increase the resolution of the model beyond 10 kilometers (km), if possible.

All of these objectives were met in developing the most recent update to the North Atlantic right whale density model. The commenters do not cite this most recent report, and the comments suggest that the aforementioned data collected by the New England Aquarium is not reflected in the model. Therefore, it is unclear whether the commenters are aware of the most recently available data, which is used herein.

As noted above, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information, and we specifically note that the most recent version of the North Atlantic right whale model may address some of the specific concerns provided by the commenters. However, NMFS acknowledges that there will always be additional data that is not reflected in the models and that may inform our analyses, whether because the data were not made available to the model authors or because the data is more recent than the latest model version for a specific taxon. NMFS will review any recommended data sources to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in U.S. Atlantic waters.

The ENGOs cited several additional sources of information that are not reflected in currently available density models, including sightings databases and passive acoustic monitoring (PAM) efforts. However, no specific recommendations were made with regard to use of this information in informing the take estimates. Rather, the commenters reference a disparate array of data sources (some which are indeed reflected in the most recent models) and suggest that NMFS should ''collate and integrate these and more recent data sets to more accurately reflect marine mammal presence for future IHAs and other work.'' NMFS would welcome in the future constructive suggestions as to how these objectives might be more effectively accomplished. NMFS used the best scientific information available at the time the analyses for the proposed IHA were conducted, and has considered all available data, including sources referenced by the commenters, in reaching its determinations in support of issuance of the IHA requested by Skipjack.

Comment 2: The ENGOs noted that the Roberts *et al.* model does not differentiate between species of pilot whale or seal or between stocks of bottlenose dolphin. The ENGOs express concern that, as a result, NMFS may not conduct the appropriate species-or stock-specific negligible impact analysis. The ENGOs also imply that use of these models may produce inaccurate take numbers by stating that ''[m]iscalculation of take levels based on incomplete data could have serious implications for the future conservation of these species and stocks.''

Response: The MMPA requires that species- or stock-specific negligible impact determinations be made, and NMFS has done so. In this case, NMFS has authorized take numbers specific to each affected species or stock. As a general matter, NMFS is unaware of any available density data which differentiates between species of pilot whales or seals, or stocks of bottlenose dolphins. However, lack of such data does not preclude the requisite species- or stock-specific findings. In the event that an amount of take is authorized at the guild or species level only, *e.g.,* for pilot whales or bottlenose dolphins, respectively, NMFS may adequately evaluate the effects of the activity by conservatively assuming (for example) that all takes authorized for the guild or species would accrue to each potentially affected species or stock. In this case, NMFS has apportioned the overall take number for bottlenose dolphins according to stock, as described in the Estimated Take section and, for pilot whales, has assigned take on the basis of an assumed group size of 10 for each potentially affected species. NMFS does not agree that use of these models is likely to result in miscalculation of take levels, and the commenters do not provide support for this statement.

Comment 3: The ENGOs assert that NMFS has not acknowledged the use of areas south of Nantucket and Martha's Vineyard as important habitat for foraging and social behavior for North Atlantic right whales, but rather that

NMFS believes the areas are important solely as a migratory pathway. The commenters also asserted that NMFS is overly reliant on the description of biologically important areas (BIA) provided in LaBrecque *et al.* (2015), stating that ''NMFS should not rely on the North Atlantic right whale migratory corridor BIA as the sole indicator of habitat importance for the species.''

Response: The specified activity associated with the IHA addressed herein is located off of Delaware. Therefore, this comment is not relevant to issuance of this IHA. However, as a general matter, NMFS disagrees with the commenters' assertion. Although NMFS has in other notices discussed at length the use of the referenced area as a migratory pathway (and recognition of such use through the area's description as a BIA for right whales), we have also acknowledged the more recent data and its implications for the use of the referenced area (see, *e.g.,* 85 FR 63508; December 7, 2018; 86 FR 11930; March 1, 2021). Similarly, NMFS does not agree with the assertion that our understanding of important habitat for marine mammals stems solely from existing, described BIAs. NMFS concurs with the statement that BIAs are not comprehensive and are intended to be periodically reviewed and updated and we routinely review newly available information to inform our understanding of important marine mammal habitat. In this case, the specified geographical region does not include important habitat other than that described as being the migratory pathway for right whales.

Comment 4: The ENGOs commented that the waters off Cape Hatteras, North Carolina, have high marine mammal biodiversity and that marine mammals occur at unusually high densities off Cape Hatteras compared to other areas along the East Coast. The ENGOs asserted that this area demands special attention from NMFS.

Response: NMFS concurs with the commenters regarding the importance of deepwater areas off of Cape Hatteras. However, the specific activity associated with the IHA addressed herein does not occur off of Cape Hatteras and, in general, the site characterization surveys conducted in support of wind energy development that are the subject of the ENGO comment letter occur in shallow water (not the area of high biodiversity and density referenced by commenters). When appropriate, NMFS has accorded special attention to the development of additional mitigation for activities conducted in that location (*e.g.,* 83 FR 63268; December 7, 2018). NMFS uses the best available scientific information when analyzing potential impacts to marine mammals and in developing prescribed mitigation sufficient to meet the MMPA's ''least practicable adverse impact'' standard, and has done so in this case.

Comment 5: The ENGOs asserted that NMFS must analyze cumulative impacts to North Atlantic right whales and other marine mammal species and stocks and ensure appropriate mitigation of these cumulative impacts. The commenters express particular concern about the cumulative impacts of survey activities off Rhode Island and Massachusetts on North Atlantic right whales. They further recommended that NMFS develop programmatic incidental take regulations applicable to site characterization activities.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, both this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Skipjack was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. Regarding activities in the Mid- and South Atlantic region, in 2018 NMFS signed a Record of Decision that (1) adopted the Bureau of Ocean Energy Management's 2014 Final Programmatic Environmental Impact Statement that evaluated the direct, indirect, and cumulative impacts of geological and geophysical survey activities on the Mid- and South Atlantic Outer Continental Shelf to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to sections 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216), and (2) in accordance with 40 CFR 1505.2, announced and explained the basis for our decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate. Separately, NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Orsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island.

Separately, cumulative effects were analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA, which determined that NMFS' action of issuing the IHA is not likely to adversely affect listed marine mammals or their critical habitat.

Finally, the ENGOs suggested that NMFS should promulgate programmatic

incidental take regulations for site characterization activities. Although NMFS is open to this approach, we have not received a request for such regulations. The ENGOs do not explain their apparent position that NMFS may advance regulations absent a requester.

Comment 6: The ENGOs state that NMFS should not adjust estimated take numbers for large whales on the basis of assumed efficacy of mitigation requirements, and assert that NMFS' assumptions regarding effectiveness of mitigation requirements are unfounded.

Response: In this case, NMFS did not propose to adjust downward any estimated take number based on proposed mitigation measures, and has not done so in the issued IHA. Therefore, the comment is not relevant to this specific action. Generally, NMFS does not agree with the apparent contention that it is never appropriate to reduce estimated take numbers based on anticipated implementation and effectiveness of mitigation measures, and will continue to evaluate the appropriateness of doing so on a case-specific basis.

While we acknowledge the commenters' concerns regarding unfounded assumptions concerning the effectiveness of mitigation requirements in reducing actual take, it is important to also acknowledge the circumstances of a particular action. In most cases, the maximum estimated Level B harassment zone associated with commonly-used acoustic sources is approximately 150 meters (m), whereas the typically-required shutdown zone for North Atlantic right whales is 500 m. For North Atlantic right whales, NMFS expects that this requirement will indeed be effective in reducing actual take below the estimated amount, which typically does not account for the beneficial effects of mitigation.

Comment 7: The ENGOs state that NMFS must require mitigation measures that meet the least practicable adverse impact standard, imply that the requirements prescribed by NMFS have not met that standard, and recommend various measures that the commenters state NMFS should require.

The ENGOs first state that NMFS should prohibit site assessment and characterization activities involving equipment with noise levels that the commenters assert could cause injury or harassment to North Atlantic right whales during periods of highest risk, which the commenters define as times of highest relative density of animals during their migration, and times when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales are, or are expected to be, present. The commenters additionally state that NMFS should require that work commence only during daylight hours and good visibility conditions to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone before activities begin. If the activity is halted or delayed because of documented or suspected North Atlantic right whale presence in the area, the commenters state that NMFS should require operators to wait until daylight hours and good visibility conditions to recommence.

Response: NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses, as described in greater detail herein. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. NMFS also agrees with the commenters that certain recommended mitigation requirements, *e.g.,* avoiding impacts in places and times of greatest importance to marine mammals, limiting operations to times of greatest visibility, would be effective in reducing impacts. However, the commenters fail entirely to establish that Skipjack's specified site assessment and characterization survey activities—or site assessment and characterization survey activities in general—would have impacts on North Atlantic right whales (or any other species) such that operational limitations would be warranted. In fact, NMFS considers this category of survey operations to be near de minimis, with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. In that context, there is no need for more restrictive mitigation requirements, and the commenters offer no justification to the contrary.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 8: The ENGOs recommended that NMFS establish an exclusion zone (EZ) of 1,000-m around each vessel conducting activities with noise levels that they assert could result in injury or harassment to North Atlantic right whales, and a minimum EZ of 500 m for all other large whale species and strategic stocks of small cetaceans.

Response: NMFS disagrees with this recommendation, and has determined that the EZs included here are sufficiently protective. We note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest Level B harassment isopleth distance (141 m) by a factor of more than three. The commenters do not provide any justification for the contention that the existing EZs are insufficient, and do not provide any rationale for their recommended alternatives (other than that they are larger).

Comment 9: The ENGOs stated that NMFS' requirements related to visual monitoring are inadequate. The commenters specifically noted their belief that a requirement for one Protected Species Observer (PSO) to be

on duty during daylight hours is insufficient, and recommended that NMFS require the use of infrared equipment to support visual monitoring by PSOs during periods of darkness. DNREC also recommended that infrared equipment be used to support visual monitoring by PSOs during periods of darkness.

Response: NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours only. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 141-m harassment zone) will be successful in detecting marine mammals that are available for detection at the surface. The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. As far as visual monitoring at night, we have not historically required visual monitoring at night because available information demonstrated that such monitoring should not be considered effective. However, as night vision technology has continued to improve, NMFS has adapted its practice, and two PSOs are required to be on duty at night. Moreover, NMFS has included a requirement in the final IHA that night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) must be available for use.

Regarding specific technology cited by the ENGOs, NMFS appreciates the suggestion and agrees that relatively new detection platforms have shown promising results. Following review of the ENGO's letter, we considered these and other supplemental platforms as suggested. However, to our knowledge, there is no clear guidance available for operators regarding characteristics of effective systems, and the detection systems cited by the commenters are typically extremely expensive, and are therefore considered impracticable for use in most surveys. The commenters do not provide specific suggestions with regard to recommended systems or characteristics of systems. NMFS does not generally consider requirements to use systems such as those cited by the commenters to currently be practicable.

Comment 10: The ENGOs recommended that NMFS should require PAM at all times, both day and night, to maximize the probability of detection for North Atlantic right whales, and other species and stocks. DNREC echoed this recommendation.

Response: The foremost concern expressed by the ENGOs in making the recommendation to require use of PAM is with regard to North Atlantic right whales. However, the commenters do not explain why they expect that PAM would be effective in detecting vocalizing *mysticetes.* It is generally well-accepted fact that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 dB re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 11: The ENGOs recommended that NMFS require applicants to use the lowest practicable source level.

Response: Wind energy developers selected the equipment necessary during HRG surveys to achieve their objectives. As part of the analysis for all HRG IHAs, NMFS evaluated the effects expected as a result of use of this equipment, made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives.

Comment 12: The ENGOs recommended that NMFS require all offshore wind energy related project vessels operating within or transiting to/from survey areas, regardless of size, to

observe a 10-knot speed restriction during the entire survey period.

Response: NMFS does not concur with these measures. NMFS has analyzed the potential for ship strike resulting from various HRG activities and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 km/hour) or less speed restrictions in any established dynamic management area (DMA) or seasonal management area (SMA); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500 m minimum separation distance has been established; a requirement that all vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales; and a requirement that all vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization survey activities which were issued IHAs from NMFS.

Comment 13: The ENGOs recommend that NMFS work with relevant experts and stakeholders towards developing a robust and effective near real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species (*e.g.,* fin, sei, minke, and humpback whales) during offshore wind energy development.

Response: NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. The ENGOs cited the NMFS publication ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations.* This report summarizes a workshop NMFS convened to address objectives related to monitoring North Atlantic right whales and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

Comment 14: The ENGOs state that NMFS must not issue Renewal IHAs, and assert that the process is contrary to statutory requirements.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the Comments and Responses section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the Comments and Responses section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Specified Activity section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a Renewal request, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

Comment 15: The ENGOs expressed concern about past instances where NMFS has modified issued IHAs in response to preliminary monitoring data indicating that certain species of marine mammal were being encountered more frequently than anticipated.

Response: No modifications are included as part of this action and, therefore, this comment is not relevant to this IHA.

Changes From the Proposed IHA to Final IHA

NMFS has revised the final IHA to include a section requiring that night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) must be available for use during nighttime monitoring. NMFS has also included language in the IHA stating that all vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including SMAs and DMAs when in effect and that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less while transiting to and from Project Area.

The language above was included in the text of the notice of proposed IHA but inadvertently omitted from the draft IHA. There were no other changes from the proposed IHA to the final IHA.

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, NMFS follows Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or Project Area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 Atlantic and Gulf of Mexico Marine Mammal SARs (Hayes *et al.,* 2020), available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region* and draft 2020 Atlantic and Gulf of Mexico Marine Mammal SARs available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY SKIPJACK'S ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	412 (0; 408; 2018)	0.8	18.6
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,802 (0.24; 5,573; 2016)	11	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.015; 3,098; see SAR).	6.2	1.2
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	NA	E; Y	4,349 (0.28;3,451; See SAR)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.30; 30,627; See SAR).	306	21
Short finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-/-;Y	28,924 (0.24; 23,637; See SAR).	236	160
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore.	-/-; N	62,851 (0.23; 51,914; See SAR).	519	28
		W.N.A. Northern Migratory Coastal.	-/-;Y	6,639 (0.41,4 ,759, 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,897 (0.21; 145, 216; 2016).	1,452	399
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	93,233 (0.71; 54,443; See SAR).	544	26
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-; N	39,921 (0.27; 32,032; 2012)	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,493 (0.19; 30,289; See SAR).	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; See SAR).	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-/-; N	27,131 (0.19; 23,158, 2016)	1,389	5,410

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY SKIPJACK'S ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-; N	75,834 (0.15; 66,884, 2018)	2,006	350

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual Mortality/Serious Injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The NMFS stock abundance estimate applies to U.S. population only, however the actual stock abundance is approximately 451,431.

As indicated above, all 16 species (with 17 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur and has been authorized by NMFS.

A detailed description of the of the species likely to be affected by Skipjack's surveys, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the notice of proposed IHA (86 FR 11239; February 24, 2021); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that notice for these descriptions. Please also refer to NMFS' website (*www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The underwater noise from Skipjack's survey activities has the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (86 FR 11239; February 24, 2021) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Skipjack's survey activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (86 FR 11239; February 24, 2021).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Level B harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes are by Level B harassment only. Based on the nature of the activity, even in the absence of mitigation, Level A harassment is neither anticipated nor authorized. The anticipated effectiveness of the required mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in Mitigation section, serves to strengthen the position that Level A harassment is not expected.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner NMFS considers Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Skipjack's planned activity includes the use of intermittent sources (HRG equipment) and therefore the 160 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Skipjack's planned activity includes the use of impulsive (*e.g.,* sparkers and boomers) and non-impulsive (*e.g.,* CHIRP) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1*: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2*: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3*: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4*: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5*: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6*: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7*: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8*: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9*: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10*: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and some directionality to refine estimated ensonified zones. For sources that operate with different beam widths, the maximum beam width was used (see Table 1). The lowest frequency of the source was used when calculating the absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level A and Level B harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the planned surveys and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Skipjack that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics Dura-Spark UHD sparkers and GeoMarine Geo-Source sparker would propagate furthest to the Level B harassment threshold (141 m; Table 6). As described above, only a portion of Skipjack's survey activity days will employ sparkers or boomers; therefore, for the purposes of the exposure analysis, it was assumed that sparkers would be the dominant acoustic source for 50 of the total 200 survey activity days. For the remaining 150 survey days, the TB Chirp III (48 m) was assumed to be the dominant source. Thus, the distances to the isopleths corresponding to the threshold for Level B harassment for sparkers (141 m) and the TB Chirp III (48m) were used as the basis of the take calculation for all marine mammals 25 percent and 75 percent of survey activity days, respectively. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

When the NMFS Technical Guidance was first published in 2016, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, NMFS developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. NMFS notes that because of some of the assumptions included in the methods used for these tools, it is anticipated that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources such as HRG equipment, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Inputs used in the User Spreadsheet are shown in Table 4

and Table 5 and the resulting isopleths are reported in Table 6.

TABLE 4—USER SPREADSHEET INPUTS FOR NON-IMPULSIVE, NON-PARAMETRIC, SHALLOW SUB-BOTTOM PROFILERS
[CHIRP Sonars]

Device	EdgeTech 216	Edgetech 424	Edgetech 512	GeoPulse 5430	Teledyne Chirp III
Spreadsheet tab used	D1) Mobile source; non-impulsive, intermittent	D1) Mobile source; non-impulsive, intermittent	D1) Mobile source; non-impulsive, intermittent	D1) Mobile source; non-impulsive, intermittent	D1) Mobile source; non-impulsive, intermittent
Frequency used for Weighting Factor Adjustment (kHz) [1] [2].	2; 16; 16; 6.2	4; 24; 24; 6.2	1.7; 12; 12; 6.2	2; 17; 17; 6.2	2; 7; 7; 6.2.
Source Level (RMS SPL)	195	176	179	196	197.
Source Velocity (m/sec)	2.057	2.057	2.057	2.057	2.057.
Pulse Duration (sec)	0.02	0.0034	0.009	0.05	0.06.
1/Repetition rate (sec)	0.17	0.5	0.125	0.1	0.07.

[1] Values for WFA represented = (LFC; MFC; HFC; PPW).
[2] WFAs were selected in the User Spreadsheet for each marine mammal hearing group based on estimated hearing sensitivities of each group and the operational frequency of the source.

TABLE 5—USER SPREADSHEET INPUTS FOR IMPULSIVE, MEDIUM SUB-BOTTOM PROFILERS
[Sparkers & Boomers]

Device	AA, Dura-spark UHD (400 tips, 500 J) [1]	AA, Dura-spark UHD (400+400) [1]	GeoMarine, geo-source dual 400 tip sparker (800 J) [1]	GeoMarine geo-source 200 tip sparker (400 J) [1]	GeoMarine geo-source 200–400 tip sparker (400 J) [1]	AA, triple plate S boom (700–1,000 J) [2]
Spreadsheet tab used	F1) Mobile source: impulsive, intermittent	F1) Mobile source: impulsive, intermittent	F1) Mobile source: impulsive, intermittent	F1) Mobile source: impulsive, intermittent	F1) Mobile source: impulsive, intermittent	F1) Mobile source: impulsive, intermittent
Frequency used for Weighting Factor Adjustment (kHz)*.	1	1	1.5	1	1	3.4.
Source Level (RMS SPL; PK SPL)	203; 211	203; 211	203; 211	203; 211	203; 211	205; 211.
Source Velocity (m/sec)	2.057	2.057	2.057	2.057	2.057	2.057.
Pulse Duration (sec)	0.0011	0.0011	0.0011	0.0011	0.0011	0.0006.
1/Repetition rate (sec)	0.25	0.25	0.25	0.25	0.25	0.25.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems planned for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.
[2] Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S Boom.

TABLE 6—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLDS

Source	Distance to Level B harassment threshold (m) (SPL_{rms} threshold)
Non-impulsive, Non-parametric, Shallow SBPs:	
ET 216 CHIRP	9
ET 424 CHIRP	4
ET 512i CHIRP	6
GeoPulse 5430	21
TB CHIRP III	48
Impulsive, Medium SBPs:	
AA Triple plate S-Boom (700/1,000 J)	34
AA, Dura-spark UHD (500 J/400 tip)	141
AA, Dura-spark UHD 400+400	141
GeoMarine, Geo-Source dual 400 tip sparker	141
GeoMarine, Geo-Source 200 tip sparker	141
GeoMarine, Geo-Source 200–400 tip sparker	141

Isopleth distances to Level A harassment thresholds for all types of HRG equipment and all marine mammal functional hearing groups were modeled using the NMFS User Spreadsheet and NMFS Technical Guidance (2018). The dual criteria (peak SPL and SEL_{cum}) were applied to all HRG sources using the modeling methodology as described

above, and the isopleth distances for each functional hearing group were then carried forward in the exposure analysis. Modeled distances to isopleths corresponding to the Level A harassment thresholds are very small for all marine mammals and stocks (<5 m) with the exception of HF cetaceans (36.5 m from GeoPulse 5430). Note that the modeled distances to isopleths corresponding to the Level A harassment threshold are also assumed to be conservative. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source. In regards to the one HF cetacean that is likely to occur in Skipjack's Project Area, the harbor porpoise, it is a notoriously shy species which is known to avoid vessels. Harbor porpoise would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment).

Given the factors above, Level A harassment of marine mammals is neither anticipated nor authorized, even in the absence of mitigation measures. However, the required mitigation measures—including shutdown measures and a 100 m exclusion zone for all marine mammals including the harbor porpoise—are expected to even further minimize the potential for close approach or longer duration exposure to active HRG acoustic sources. Those mitigation measures in addition to the very small size of Level A harassment zones, strengthens NMFS' determination that the potential for any marine mammals to be taken by Level A harassment is considered so low as to be discountable. Skipjack did not request and NMFS has not authorized the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available information regarding marine mammal densities in the planned survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the survey area (animals/kilometers squared (km^2)) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys (*e.g.,* NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016). For the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018, 2020) were mapped using a geographic information system (GIS). Density grid cells that included any portion of the planned survey area were selected for all survey months.

Densities from each of the selected density blocks were averaged for each month available to provide monthly density estimates for each species (when available based on the temporal resolution of the model products), along with the average annual density (Table 7).

TABLE 7—ESTIMATED MONTHLY AND AVERAGE ANNUAL DENSITY (ANIMALS/km^{-2}) OF POTENTIALLY AFFECTED MARINE MAMMALS WITHIN THE PROJECT AREA BASED ON MONTHLY HABITAT DENSITY MODELS

[Roberts *et al.* 2016; Roberts, 2018, 2020]

Species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average annual density (km^{-2})
Low-Frequency Cetaceans:													
Fin whale	0.0010	0.0008	0.0015	0.0020	0.0017	0.0012	0.0005	0.0004	0.0011	0.0014	0.0010	0.0009	0.0011
Sei whale	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Minke whale	0.0002	0.0002	0.0002	0.0009	0.0010	0.0005	0.0001	0.0000	0.0001	0.0003	0.0001	0.0001	0.0003
Humpback whale	0.0013	0.0006	0.0006	0.0005	0.0005	0.0004	0.0001	0.0001	0.0002	0.0004	0.0004	0.0014	0.0005
North Atlantic right whale	0.0037	0.0042	0.0043	0.0028	0.0002	0.0000	0.0000	0.0000	0.0000	0.0000	0.0003	0.0020	0.0015
Mid-Frequency Cetaceans:													
Sperm whale	0.0000	0.0000	0.0000	0.0000	0.0000	0.0001	0.0001	0.0001	0.0000	0.0001	0.0000	0.0000	0.0000
Atlantic white-sided dolphin	0.0017	0.0009	0.0012	0.0028	0.0035	0.0022	0.0006	0.0003	0.0008	0.0026	0.0036	0.0034	0.0020
Atlantic spotted dolphin	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017
Common bottlenose dolphin (Offshore) [1]	0.0134	0.0088	0.0125	0.0193	0.1224	0.1138	0.1361	0.1663	0.0800	0.0713	0.0524	0.0201	0.0680
Common bottlenose dolphin (Migratory) [1]	0.0317	0.0271	0.0444	0.0910	0.5921	0.4623	0.5903	0.6439	0.2388	0.2015	0.1335	0.0459	0.2585
Short-finned pilot whale [2]	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003
Long-finned pilot whale [2]	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003	0.0003
Risso's dolphin	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Common dolphin	0.0071	0.0035	0.0040	0.0092	0.0167	0.0110	0.0125	0.0143	0.0109	0.0109	0.0200	0.0152	0.0113
High-Frequency Cetaceans:													
Harbor porpoise	0.0261	0.0247	0.0225	0.0095	0.0031	0.0000	0.0000	0.0000	0.0000	0.0005	0.0153	0.0535	0.0129
Pinnipeds [3]:													
Gray seal	0.0003	0.0003	0.0003	0.0003	0.0003	0.0007	0.0007	0.0007	0.0003	0.0003	0.0003	0.0003	0.0004
Harbor seal	0.0003	0.0003	0.0003	0.0003	0.0003	0.0007	0.0007	0.0007	0.0003	0.0003	0.0003	0.0003	0.0004

[1] Bottlenose dolphin stocks were delineated based on the 20-m isobath as identified in NMFS 2017 SAR; all density blocks falling inland of the 20-m depth contour were assumed to belong to the migratory coastal stock, and those beyond this depth were assumed to belong to the offshore stock.

[2] Roberts (2018) only provides density estimates for ''generic'' pilot whales. It is assumed that each species has density levels that are equivalent to the generic pilot whale Density levels.

[3] Seal densities are not given by individual months or species, instead, seasons are divided as summer (June, July, August) and Winter (September–May) and applied to ''generic'' seals; as a result, reported seasonal densities for spring and fall are the same and are not provided for each species (Roberts 2018). Densities were evenly split between both species.

Take Calculation and Estimation

Here NMFS describes how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed

harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel. The daily area is multiplied by the mean annual density of a given marine mammal species. This value is then multiplied by the number of planned vessel days.

The estimated potential daily active survey distance of 70 km was used as the estimated areal coverage over a 24-hour period. This distance accounts for the vessel traveling at roughly 4 knots and only for periods during which equipment <180 kHz is in operation. A vessel traveling 4 knots can cover approximately 110 km per day; however, based on data from 2017, 2018, and 2019 surveys, survey coverage over a 24-hour period is closer to 70 km per day. For daylight only vessels, the distance is reduced to 35 km per day. To maintain the potential for 24-hour surveys, the Level B harassment ZOIs provided in Table 8 were calculated for each source based on the Level B harassment threshold distances in Table 6 with a 24-hour (70 km) operational period.

TABLE 8—CALCULATED ZONE OF INFLUENCE (ZOI) ENCOMPASSING LEVEL B THRESHOLDS FOR EACH SOUND SOURCE OR COMPARABLE SOUND SOURCE CATEGORY

Source	Level B ZOI (km^2)
Hearing group	All
ET 216 CHIRP	1.3
ET 424 CHIRP	0.6
ET 512i CHIRP	0.8
GeoPulse 5430	2.9
TB CHIRP III	6.7
AA Triple plate S-Boom (700–1,000 J)	4.8
AA, Dura-spark UHD	19.8
AA, Dura-spark UHD 400+400	19.8
GeoMarine, Geo-Source dual 400 tip Sparker	19.8

AA = Applied Acoustics; CHIRP = Compressed High-Intensity Radiated Pulse; ET = EdgeTech; HF = high-frequency; J = joules; LF = low-frequency; MF = mid-frequency; PW = phocid pinnipeds in water; SBP = sub-bottom profiler; TB = Teledyne Benthos; UHD = ultra-high definition.

Level B exposures were estimated by multiplying the average annual density of each species (Table 7) (Roberts *et al.,* 2016; Roberts, 2018) by the daily ZOI that was estimated to be ensonified to an SPL_{rms} exceeding 160 dB re 1 μPa (Table 8), times the number of operating days expected for the survey in each area assessed. As described previously, it was assumed that that sparker systems with 141-m Level B harassment isopleths would operate for 50 survey days and the non-sparker TB CHIRP III with 48-m Level B harassment isopleth would operate for the remaining 150 survey days. The results of these calculations are shown in Table 9.

TABLE 9—SUMMARY OF TAKE NUMBERS AUTHORIZED BY NMFS

Species	Abundance	Level B takes[1]	Max percent population
Low-Frequency Cetaceans:			
Fin whale	7,418	2	0.03
Sei whale	6,292	0 (1)	0.02
Minke whale	24,202	0 (2)	0.01
Humpback whale	1,396	2	0.14
North Atlantic right whale	428	3	0.70
Mid-Frequency Cetaceans:			
Sperm whale[3]	4,349	0 (3)	0.07
Atlantic white-sided dolphin	93,233	4	0.00
Atlantic spotted dolphin	39,921	4 (2,000)	5.00
Common bottlenose dolphin[2]:			
Offshore Stock	62,851	135	0.21
Migratory Stock	6,639	516	7.77
Pilot Whales[3]:			
Short-finned pilot whale	28,924	0 (10)	0.03
Long-finned pilot whale	39,215	0 (10)	0.03
Risso's dolphin	35,493	0 (30)	0.08
Common dolphin	178,825	24 (70)	0.04
High-Frequency Cetaceans:			
Harbor porpoise	95,543	22	0.03
Pinnipeds:			
Seals[4]:			
Gray seal	27,131	0 (10)	0.04
Harbor seal	75,834	0 (10)	0.01

[1] Parenthesis denote changes from calculated take estimates.
[2] Roberts *et al.* (2016) does not provide density estimates for individual stocks of common bottlenose dolphins; therefore, stock densities were delineated using the 20-m isobath.

[3] Roberts (2018) only provides density estimates for ''generic'' pilot whales and seals; therefore, an equal potential for takes has been assumed either for species or stocks within the larger group.

[4] Roberts (2018) only provides density estimates for ''generic'' seals; therefore, densities were split evenly between the two species.

No takes were calculated for the sei whale, minke whale, sperm whale, short- and long-finned pilot whale, or Risso's dolphin. However, based on anticipated species distributions and data from previous surveys conducted in the DE WEA, it is possible that these species could be encountered. Therefore, Skipjack based its take requests on estimated group sizes for these species (1 for sei whales, 2 for minke whales, 3 for sperm whales, 10 for short- and long-finned pilot whales, and 30 for Risso's dolphins). For species with no modeled exposures, requested takes for HRG surveys are based on mean group sizes derived from the following references:

- *Sei whale:* Kenney and Vigness-Raposa, 2010;
- *Minke whale:* Kenney and Vigness-Raposa, 2020;
- *Sperm whale:* Barkaszi and Kelly, 2018;
- *Short- and long-finned pilot whales:* Kenney and Vigness-Raposa, 2010; and
- *Risso's dolphin:* Barkaszi and Kelly, 2018.

NMFS concurred with this approach and based its authorized takes of these species on Skipjack's requests. Additionally, the number of takes authorized in Table 9 for Atlantic white-sided dolphin, bottlenose dolphin, and harbor porpoise are equivalent to the numbers requested by Skipjack.

Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. The take calculation methodology as described above resulted in close to zero takes. The marine mammal monitoring report associated with the previous IHA issued to Skipjack in this survey area (84 FR 66156; December 3, 2019) did not record any takes of seals. However, the planned survey area includes a portion of Delaware Bay which is not covered by Roberts *et al.* (2018) and was not included as part of the previous IHA. Therefore, Skipjack did not request take of any harbor or gray seals. However, since seals are known to occur in the Bay, mostly during winter months, NMFS is conservatively authorizing 10 takes of each species by Level B harassment of both harbor and gray seals.

Skipjack had requested 4 takes of spotted dolphin and 24 takes of common dolphin by Level B harassment. However, recent HRG surveys in the Mid-Atlantic area off the coast of Virginia have recorded unexpectedly large numbers of both Atlantic spotted dolphin and common dolphin. These events have led NMFS to modify another offshore wind energy company's existing IHA (85 FR 81879; December 17, 2020) in order to accommodate larger take numbers. The spotted dolphins had been recorded at a rate of up 15 per day while common dolphins were recorded at a rate of 62 animals in a single week. Note that there were many days in which there were no sightings of spotted dolphins and that all of the 62 common dolphin sightings occurred during a single week. The previous Skipjack marine mammal monitoring report from this area recorded up to 8 common dolphins over 23 days of active surveying (0.35 animals/day). Given this data, NMFS will assume that 0.35 common dolphins could be exposed within the Level B harassment zone per day over 200 days resulting in the 70 authorized takes of common dolphin by Level B harassment. NMFS will also assume that there could be up to 10 exposures of spotted dolphin per day resulting in the 2000 authorized takes by Level B harassment.

Note that Skipjack submitted a marine mammal monitoring report under the previous IHA covering the period of June 4, 2020 through June 26, 2020. Over the 23-day monitoring period there were 110 sightings consisting of 112 individual animals. Only three bottlenose dolphins were recorded as occurring within estimated Level B harassment zones which is well below the 1,465 takes that were authorized. However, due to a range of factors only 23 actual survey days occurred out of 200 that were planned.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS carefully considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS requires the following mitigation measures be implemented during Skipjack's planned marine site characterization surveys.

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal EZs would be established around the HRG survey equipment and monitored by PSOs:

- 500 m EZ for North Atlantic right whales during use of all acoustic sources;
- 100 m EZ for all marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Clearance of the Exclusion Zones

Skipjack would implement a 30-minute pre-clearance period of the EZ prior to the initiation of ramp-up of

HRG equipment. During this period, the exclusion zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective EZ. If a marine mammal is observed within an EZ during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power.

A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective EZ. Ramp-up will continue if the animal has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures may not occur when visual observation of the pre-clearance zone is not expected to be effective (*i.e.,* during inclement conditions such as heavy rain or fog).

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment would be required if a marine mammal is sighted entering or within its respective EZ. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective EZ or until an additional time period has elapsed (*i.e.,* 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (48 m, non-impulsive; 141 m impulsive), shutdown would occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective EZs. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops* and seals. Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the exclusion zone and belongs to a genus other than those specified.

Vessel Strike Avoidance

Skipjack will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.
- All vessels (*e.g.,* source vessels, chase vessels, supply vessels), regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including SMAs and DMAs when in effect;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less while transiting to and from Project Area;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.
- These requirements do not apply in any case where compliance would

create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Seasonal Operating Requirements

Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the Lease Areas during the survey, the vessels will abide by speed restrictions in the DMA.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Skipjack would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Pauline@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations
- Dates of departures and returns to port with port name
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) If a marine mammal is sighted, the following information should be recorded:
- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other);
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Skipjack must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Skipjack personnel discover an injured or dead marine mammal, Skipjack would report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Skipjack would report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assesses the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 9, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described previously due to the nature of the operations, Level A harassment is not expected even in the absence of mitigation. The small size of the Level A harassment zones and the required shutdown zones for certain activities further bolster this conclusion.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m; 75 percent of survey days would include activity with a reduced acoustic harassment zone of 48 m per vessel, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the planned survey area. There is no designated critical habitat for any ESA-listed marine mammals in the planned survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active unusual mortality event (UME). Overall, findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. The planned survey area overlaps a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of Delaware, this migratory BIA extends from the coast to beyond the shelf break. Due to the fact that that the planned survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Skipjack's planned activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested or is authorized by NMFS as HRG survey operations are required to maintain a 500-m EZ and shutdown if a North Atlantic right whale is sighted at or within the EZ. The 500-m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* GeoMarine Geo-Source 400 tip sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types planned for use. NMFS does not anticipate North Atlantic right whales takes that would result from Skipjack's planned activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Skipjack's planned survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct

population segment remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 505,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic Economic Exclusion Zone as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of authorized takes for all species listed in Table 9, including those with active UME's to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration. In addition, mitigation measures to shutdown at 500 m to minimize potential for Level B behavioral harassment would limit any take of the species.
- The required mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS has authorized incidental take of 16 marine mammal species (with 17 managed stocks.) The total amount of takes authorized is less than eight percent for one stock (bottlenose dolphin northern coastal migratory stock) and less than one percent of all other species and stocks, which NMFS finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks. See Table 9. Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the planned

action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals which are listed under the ESA: Fin, sei, sperm, and North Atlantic right whales. We requested initiation of consultation under section 7 of the ESA with NMFS GARFO on March 5, 2021, for the issuance of this IHA. On April 2, 2021, NMFS GARFO concurred with our determination that our issuance of the IHA to Skipjack is not likely to adversely affect the North Atlantic right, fin, sei, and sperm whale or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA.

Authorization

NMFS has issued an IHA to Skipjack for the potential harassment of small numbers of 16 marine mammal species incidental to the conducting marine site characterization surveys offshore of Delaware in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0519) and along potential submarine cable routes to a landfall location in Delaware provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: April 6, 2021.

Catherine Marzin,

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

[FR Doc. 2021–07419 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB013]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening an ad-hoc social science sub-panel of its Scientific and Statistical Committee (SSC) via webinar to conduct a peer review of Northeast Multispecies and Atlantic Scallops Specifications via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, April 28, 2021, beginning at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/4051555626669408784.* Call in information: Phone: +1 (914) 614–3221; Access Code: 429–619–243.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The SSC Social Science Subpanel will meet to receive presentations on Groundfish Framework Adjustment 59 and Scallop Framework Adjustment 32 social and economic impact analyses. The presentations and discussion will be part of the Subpanel's review of social and economic impact analyses for Council actions that adjust fishery specifications. There will be opportunities for public input and comment.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 7, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–07416 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA984]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 173rd public meeting (virtual) to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 173rd CFMC public meeting (virtual) will be held on April 27, 2021, from 9 a.m. to 5 p.m., and on April 28, 2021, from 8:45 a.m. to 3:30 p.m. The meeting will be at AST (U.S. Caribbean time, presently same as EST).

ADDRESSES: You may join the 173rd CFMC public meeting (virtual) via Zoom, from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting
https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09
Meeting ID: 830 6068 5915
Passcode: 995658
One tap mobile
+17879451488,,83060685915#

,,,,,,0#,,995658# Puerto Rico
+17879667727,,83060685915#
,,,,,,0#,,995658# Puerto Rico
Dial by your location
+1 787 945 1488 Puerto Rico
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico
Meeting ID: 830 6068 5915
Passcode: 995658

In case there are problems and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/971749317.* You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

April 27, 2021

9 a.m.–10 a.m.

—Call to Order
—Roll Call
—Adoption of Agenda
—Consideration of 172nd Council Meeting Verbatim Transcriptions
—Executive Director's Report
—Southeast Data, Assessment, and Review (SEDAR) Update
—Southeast Fisheries Science Center (SEFSC) Update

10 a.m.–11 a.m. (15 Minutes Each Presentation)

—Scientific and Statistic Committee (SSC) Report—Richard Appeldoorn, SSC Chair
—Ecosystem-Based Fisheries Management Technical Advisory Panel (EBFMTAP) Report—Sennai Habtes, EBFMTAP Chair
—Puerto Rico Port Sampling and Catch Validation Project (August 2017–December 2019) Report—Todd Gedamke, MER Consultants, LLC
—Presentation on Regional Electronic Technologies Plan: 2020–2024—Jessica Stephen, SERO/NOAA Fisheries

11 a.m.–11:30 a.m.

—Evaluation of Marine Reserves in the U.S. Caribbean—Diana Beltrán, CFMC Contractor

11:30 a.m.–12:30 p.m.

—Island-Based Fishery Management Plans (IBFMP) Proposed Rule Status—María López-Mercer, SERO/NOAA Fisheries
—Modification to the Buoy Gear Definition for the Harvest of Managed Reef Fish, Draft Gear Amendment I to the IBFMPs—María López-Mercer, SERO/NOAA Fisheries
—Modification of Spiny Lobster Reference Points Based on Southeast Data, Assessment, and Review (SEDAR) 57 Stock Assessment, Draft Amendment Revisions—Sara Stephenson, SERO/NOAA Fisheries

12:30 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–2:30 p.m.

CFMC 5-Year Strategic Plan—Michelle Duval, CFMC Contractor

2:30 p.m.–3 p.m.

—DAP Reports (10 minutes each)
—St. Thomas/St. John—Julian Magras, Chair
—Puerto Rico—Nelson Crespo, Chair
—St. Croix—Edward Schuster, Chair

3 p.m.–4 p.m.

—Listening Session of President Biden's E.O. Titled the Climate Crisis at Home and Abroad: E.O. 14008 Section 216(c)—Paul Doremus, NOAA Fisheries

4 p.m.–4:15 p.m.

—Public Comment Period (5 minutes each)

4:30 p.m.–5 p.m.

—Closed Session
—SSC and Panels Membership

April 28, 2021

8:45 a.m.–9 a.m.

—Call to Order
—Roll Call
—SSC and Panels Appointments

9 a.m.–9:30 a.m.

—Overview of the Aquaculture Opportunity Areas Initiative—Jess Beck-Stimpert, SERO/NOAA Fisheries

9:30 a.m.–9:45 a.m.

—Aquaculture Project, Parcelas Suárez, Loíza—David Miranda

9:45 a.m.–10:15 a.m.

—Outreach and Education Advisory Panel Report—Alida Ortíz, Chair
—St. Thomas/St. John Initiative
—Social Network Report—Cristina Olán, CFMC Contractor

10:15 a.m.–10:45 a.m.

—CFMC Liaison Officers Report (10 minutes each)
—St. Thomas/St. John, USVI—Nicole Greaux, Liaison Officer STT/SJ
—St. Croix, USVI—Nikita Charles, Liaison Officer STX
—Puerto Rico—Wilson Santiago, Liaison Officer PR

10:45 a.m.–11 a.m.

—Nassau Grouper Critical Habitat Designation—Jennifer Lee, SERO/NOAA Fisheries
—Queen Conch Status Review Update—Jennifer Lee, SERO/NOAA Fisheries

11 a.m.–11:30 a.m.

—Puerto Rico Coral Reef Monitoring Program and Visualization in Marine Biodiversity Observation Network—Miguel Figuerola, Coral Reef Specialist, DNER and Caricoos Contractor and Jorge R. García-Sais, Reef Research Inc., DNER Contractor

11:30 a.m.–12 p.m.

—USVI Compatible Regulations with Federal Waters—Carlos Farchette, CFMC Member
—Recreational Fishing License Program for the USVI
—Puerto Rico Electronic Data Reporting—Damaris Delgado, DNER

12 p.m.–1 p.m.

—Lunch

1 p.m.–2 p.m.

—Enforcement Reports (15 minutes each):
—Puerto Rico—DNER
—USVI—DPNR
—U.S. Coast Guard
—NOAA Fisheries/OLE

2 p.m.–3 p.m.

—Other Business

3 p.m.–3:30 p.m.

—Public Comment Period (5 minutes each)
—Next Council Meetings
—Adjourn

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the

completion of agenda items. The meeting will begin on April 27, 2021, at 9 a.m. AST, and will end on April 28, 2021, at 3:30 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided.

Se proveerá interpretación en español.

Para interpretación en español puede marcar el siguiente número para entrar a la reunión:

US/Canadá: llame al +1–888–947–3988, cuando el sistema conteste, entrar el número 1*9999996#.

For English interpretation you may dial the following number to enter the meeting:

US/Canada: call +1–888–947–3988, when the system answers enter the number 2*9999996#.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: April 7, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–07414 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA973]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Bluefish Advisory Panel.

DATES: The meeting will be held on Tuesday, April 27, 2021, from 10 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the bluefish allocation and rebuilding amendment and public hearing document. The public comment period will remain open until April 23, 2021. At this meeting, we will recruit feedback from the advisors on the proposed alternatives. This feedback, in conjunction with the public comments will be incorporated into the public comment summary document to be presented to the Council during final action in June.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to K. Collins, (302) 526–5253, at least 5 days prior to the meeting date.

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

Dated: April 7, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–07413 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA998]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online workshop.

SUMMARY: The Pacific Sablefish Transboundary Assessment Team (PSTAT), in collaboration with the Northwest Fisheries Science Center (NWFSC), Alaska Fisheries Science Center (AFSC), Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Game (ADF&G), Pacific Fishery Management Council (PFMC), and North Pacific Fishery Management Council (NPFMC), is holding a public workshop to solicit feedback on the ongoing range-wide sablefish management strategy evaluation (MSE). The Sablefish MSE Workshop is open to the public.

DATES: The Sablefish MSE Workshop will be held Tuesday, April 27, 2021 through Wednesday, April 28, 2021 beginning at 1:30 p.m. Pacific Daylight Time (PDT) and ending at 5:30 p.m. on Tuesday, reconvening at 9:30 a.m. on Wednesday and ending at 5 p.m. or when business for the workshop has been completed.

ADDRESSES: The Sablefish MSE Workshop will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements will be provided at *https://www.pacificsablefishscience.org/.* You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Melissa Haltuch, NMFS Northwest Fisheries Science Center, (206) 860–3480; Ms. Kari Fenske, Alaska Fisheries Science Center, (907) 789–6653; Mr. Chris Lunsford, Alaska Fisheries Science Center, (907) 789–6008; Dr. Brendan Connors, Department of Fisheries and Oceans Canada, (250) 858–7028; Dr. Diana Stram, North Pacific Fishery Management Council, (907) 271–2806; or Mr. John DeVore, Pacific Fishery Management Council, (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the Sablefish MSE Workshop is to engage fishery stakeholders, Alaska Native and Tribal governments, First Nations, scientists, managers, and non-governmental organization (NGO) staff from each region during this two-day workshop that will foster discussions among regions about sablefish science and management. The workshop will introduce the basic premise, goals, and utility of an MSE and participants' roles in the process. The successful sablefish MSE experience from British Columbia will be introduced, along with the range of time horizons for incorporating stakeholder input into this Sablefish MSE. Then the Operating Model (OM) structure and justification for focusing on the entire NE Pacific, rather than the

traditional regional approach to scientific analyses, will be discussed. The first key focal point for participant feedback into this MSE process is in identifying fishery objectives. Participants will be provided with an overview of the types of objectives commonly used for MSE and recommend objectives for this MSE. Next, participants will be provided with an overview of the types of performance metrics (quantities for evaluating if objectives are met) commonly used for MSE and provide feedback on performance metrics for this MSE. An overview of the current regional sablefish management strategies (the combination of stock assessment model and harvest control rule) will precede a discussion of the proposed near term MSE management strategies and identify and prioritize additional ideas for MSE management strategies for future research.

Workshop attendees desiring to engage participants will be required to register in advance at *https://www.pacificsablefishscience.org/.* There are two registration options for workshop attendees—participant or observer. Registrants are asked to self-select their attendance category. Participants are expected to engage in the full two-day workshop, including approximately three small group breakout group sessions over the course of the two days (approximately 20–40 min. for each session). Facilitators will guide breakout group participants through questions and discussions aimed at collecting participant feedback and ideas on each focal topic. Facilitators will summarize breakout group discussions and suggestions to the full group of observers and participants. The registration deadline for participants is Friday, April 16. The objective is to accommodate everyone that registers as a participant, although it may not be possible for all participant requests to be fulfilled. Early registration is encouraged to ensure the ability to participate. Observer-level registrants will be able to listen to presentations and full group discussions and ask questions as time permits during full group discussions. While observers are encouraged to register in advance, observers may register for the meeting until 5 p.m. April 23.

Additionally, the meeting will be live streamed via YouTube where individuals may listen to the presentations and full group discussions without registration. YouTube viewers will not be able to ask questions during the full group discussion periods and will not be able to view the breakout group discussions. Meeting materials and instructions for connecting to the live audio stream will be made available in advance of the workshop at *https://www.pacificsablefishscience.org/.* No management actions will be decided by the workshop participants. The workshop's participants' role will be development of recommendations for consideration by the PSTAT in developing the NE Pacific Sablefish MSE.

Although nonemergency issues not contained in the workshop agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, at least 10 days prior to the meeting date.

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

Dated: April 7, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–07415 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Broadband Grant Programs Webinar Series

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of change to schedule for Open Meetings—NTIA Broadband Grant Programs Webinars.

SUMMARY: On March 19, 2021, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** announcing a webinar series in connection with the three new broadband grant programs authorized and funded by the Consolidated Appropriations Act, 2021. This Notice announces changes to the dates on which the webinars will be held.

DATES: NTIA will offer webinars on the following dates:

1. Broadband Infrastructure Program:
   - April 28 & 29 at 2:30 p.m. Eastern Daylight Time (EDT)
   - May 12 & 13 at 2:30 p.m. EDT
   - June 9 & 10 at 2:30 p.m. EDT
   - July 14 & 15 at 2:30 p.m. EDT
2. Tribal Broadband Connectivity Program:
   - April 21 & 22 at 2:30 p.m. EDT
   - May 19 & 20 at 2:30 p.m. EDT
   - June 16 & 17 at 2:30 p.m. EDT
   - July 21 & 22 at 2:30 p.m. EDT
3. Connecting Minority Communities:
   - May 5 & 6 at 2:30 p.m. EDT
   - May 26 & 27 at 2:30 p.m. EDT
   - June 23 & 24 at 2:30 p.m. EDT
   - July 28 & 29 at 2:30 p.m. EDT

ADDRESSES: These are virtual meetings. NTIA will post the registration information on its BroadbandUSA website, *https://broadbandusa.ntia.doc.gov,* under Events.

FOR FURTHER INFORMATION CONTACT: Christopher Holt, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4872, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4884; email: *BroadbandUSAwebinars@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: Division N, Title IX—Broadband Internet Access Service, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) authorized and funded three new broadband grant programs to be administered by NTIA: The Broadband Infrastructure Program, the Tribal Broadband Connectivity Program, and the Connecting Minority Community Program. On March 19, 2021, NTIA published a Notice in the **Federal Register** announcing a webinar series designed to help prospective applicants understand the grant programs and to assist applicants to prepare high quality grant applications. *See* NTIA, Notice of Open Meetings—NTIA Broadband Grant Programs Webinars, 86 FR 14882 (March 19, 2021). In this Notice, NTIA announces changes to the dates on which the webinars will be held. All other information in the March 19, 2021 Notice remains the same.

Dated: April 7, 2021.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021–07451 Filed 4–9–21; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Webinar on Improvements to SaferProducts.gov

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC or Commission) will hold a public webinar to receive information from interested parties about updates CPSC is making to *www.SaferProducts.gov/Business* for electronically filed section 15(b) reports under the Consumer Product Safety Act (CPSA). The presentation will focus on section 15(b) reporting for the purposes of entering the Fast Track Recall Program.

DATES: The webinar will be from 1:00 p.m. to 3:00 p.m. Eastern Standard Time (EST) on April 28, 2021.

ADDRESSES: Attendees must pre-register for the webinar. To pre-register for the webinar, please visit: *https://register.gotowebinar.com/register/4712726053154742796* and fill in the information. After registering, you will receive a confirmation email containing information about joining the webinar.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: *cpsc-os@cpsc.gov;* telephone: (301) 504–7479.

SUPPLEMENTARY INFORMATION:

I. Background

Section 15(b) of the CPSA (15 U.S.C. 2051–2089) requires every manufacturer of a consumer product, or other product or substance over which the Commission has jurisdiction under any other act enforced by the Commission, distributed in commerce, and every distributor or retailer of such product, to immediately report to the Commission when it obtains certain information. 15 U.S.C. 2064(b). Specifically, such reporting is required when manufacturers, distributors, or retailers obtain information that reasonably supports the conclusion that a product:

- Fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard that the Commission relied on under Section 9 of the CPSA (15 U.S.C. 2058);
- fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other act the Commission enforces;
- contains a defect which could create a substantial product hazard (*i.e.,* a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public)); or
- creates an unreasonable risk of serious injury or death.

15 U.S.C. 2064(b). This reporting is required unless the manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, such failure to comply, or such risk. *Id.* Manufacturers, distributors, and retailers can submit Section 15(b) reports to CPSC at: *www.SaferProducts.gov/Business.*

When submitting a Section 15(b) report through *www.SaferProducts.gov/Business,* manufacturers, distributors, and retailers may elect to participate in the Fast Track Recall Program, which is an alternative procedure for recalling products reported under Section 15(b) of the CPSA. 62 FR 39827 (July 24, 1997).

On March 6, 2019, CPSC held a public hearing to receive information from interested parties about possible changes to *www.SaferProducts.gov* to improve the website's usefulness and ease of use. 84 FR 3134 (Feb. 11, 2019). CPSC will hold a public webinar on April 28, 2021 on further enhancements, focusing on Section 15(b) reporting for purposes of entering the Fast Track Recall Program.

II. Webinar

A. Topics for Discussion

Participants who register for the webinar will have an opportunity to see the improvements to *www.SaferProducts.gov/Business* and provide feedback to CPSC through a moderated discussion. CPSC would like to hear from manufacturers, distributors, and retailers that have participated in the Fast Track Recall Program, including those who use *www.SaferProducts.gov/Business* to report potentially defective or hazardous products to CPSC. The goal of the webinar is to receive feedback on these updates and to assess the impact, if any, that the improvements will have on the website's utility and usability and the Fast Track Recall Program.

B. How To Attend and/or Provide Comments

If you would like to participate in the webinar, please register at: *https://register.gotowebinar.com/register/4712726053154742796.* The webinar will be held online on April 28, 2021, from 1:00 p.m. to 3:00 p.m. EST. Online participant viewers will be able to interact with the presenters through the webinar software. The webinar software allows for communicating with the presenters orally and in written format. CPSC staff will take questions and comments during the webinar, as time permits.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2021–07401 Filed 4–9–21; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this online meeting be announced in the **Federal Register**.

DATES: Wednesday, May 12, 2021; 6:00 p.m.–7:30 p.m.

ADDRESSES: Online Virtual Meeting. To attend, please send an email to: *orssab@orem.doe.gov* by no later than 5:00 p.m. EDT on Wednesday, May 5, 2021.

To Submit Public Comments: Public comments will be accepted via email prior to and after the meeting. Comments received by no later than 5:00 p.m. EDT on Wednesday, May 5, 2021, will be read aloud during the virtual meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. EDT on Monday, May 17, 2021. Please submit comments to *orssab@orem.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy (DOE), Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831; Phone (865) 241–3315; or E-Mail: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://www.energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration,

waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Presentation: *EM Disposal Facility/ Waste Disposal Capacity*
- Public Comment Period
- Motions/Approval of March 10, 2021 Meeting Minutes
- Status of Outstanding Recommendations
- Alternate DDFO Report
- Committee Reports
- Adjourn

Public Participation: The online meeting is open to the public. Written statements may be filed with the Board either before or after the meeting as there will not be opportunities for live public comment during this online virtual meeting. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should email them as directed above.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and telephone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Signed in Washington, DC, on April 7, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–07445 Filed 4–9–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, May 19, 2021; 4:00 p.m.–7:40 p.m.

ADDRESSES: Online Virtual Meeting. To attend, please send an email to: *nssab@emcbc.doe.gov* by no later than 4:00 p.m. PDT on Monday, May 17, 2021.

To Submit Public Comments: Public comments will be accepted via email prior to and after the meeting. Comments received by no later than 4:00 p.m. PDT on Monday, May 17, 2021 will be read aloud during the virtual meeting. Comments will also be accepted after the meeting, by no later than 4:00 p.m. PDT on Friday, June 4, 2021. Please submit comments to *nssab@emcbc.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Nevada Site Specific Advisory Board (NSSAB) Administrator, by Phone: (702) 523–0894 or Email: *nssab@emcbc.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Corrective Action Unit 111, Area 5 Closed Mixed Waste Cells, Revegetation Path Forward—Work Plan Item #1
2. External Peer Review Team Composition for Central and Western Pahute Mesa—Work Plan Item #2

Public Participation: The online virtual meeting is open to the public. Written statements may be filed with the Board either before or after the meeting as there will not be opportunities for live public comment during this online virtual meeting. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should email them as directed above.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/NSSAB/pages/MM_FY21.html.*

Signed in Washington, DC, on April 7, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–07444 Filed 4–9–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1612–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: SR Cedar Springs Affected System Construction Agreement (GPAS 015) Filing to be effective 2/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5150.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1613–000.
Applicants: Alabama Power Company.
Description: Initial rate filing: Cedar Springs Solar Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5152.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1614–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: Cedar Springs Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5153.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1615–000.
Applicants: Mississippi Power Company.
Description: Initial rate filing: Cedar Springs Solar Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5155.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1616–000.
Applicants: Daylight I, LLC.
Description: Daylight I, LLC submits tariff filing per 35.1: Facilities Use Agreements to be effective 6/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5303.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1617–000.
Applicants: Edwards Solar Line I, LLC.
Description: Baseline eTariff Filing: Certificates of Concurrence to Facilities Use Agreements to be effective 6/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5203.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1618–000.
Applicants: Sanborn Solar Line I, LLC.

Description: Baseline eTariff Filing: Certificates of Concurrence to Facilities Use Agreements to be effective 6/1/2021.

Filed Date: 4/2/21.

Accession Number: 20210402–5222.

Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1620–000.

Applicants: Arizona Solar One LLC.

Description: Compliance filing: Arizona Solar One, LLC MBR Tariff Revision to be effective 4/6/2021.

Filed Date: 4/5/21.

Accession Number: 20210405–5583.

Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: ER21–1621–000.

Applicants: Mojave Solar LLC.

Description: Compliance filing: Mojave Solar MBR Tariff Revisions to be effective 4/6/2021.

Filed Date: 4/5/21.

Accession Number: 20210405–5586.

Comments Due: 5 p.m. ET 4/26/21.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF21–669–000.

Applicants: Georgia-Pacific Consumer Operations LLC.

Description: Form 556 of Georgia-Pacific Consumer Operations LLC.

Filed Date: 4/5/21.

Accession Number: 20210405–5428.

Comments Due: None-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07392 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–14–000]

Commission Information Collection Activities (FERC–516G); Comment Request; Revision and Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–516G, Electric Rates Schedules and Tariff Filings, as it would be revised in this information collection request.

DATES: Comments on the collection of information are due June 11, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–14–000) by any of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- *For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:*
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery: Deliver to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at: *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–516G, Electric Rates Schedules and Tariff Filings.

OMB Control No.: 1902–0295.

Type of Request: Three-year revision and renewal of FERC–516G.

Abstract: In accordance with section 206 of the Federal Power Act (FPA) [1] and 18 CFR 35.28(g)(10), each Independent System Operator (ISO) and Regional Transmission Organization (RTO) must report:

(1) On a monthly basis, total uplift payments for each transmission zone, broken out by day and uplift category;

(2) On a monthly basis, total uplift payments for each resource; and

(3) On a monthly basis, each operator-initiated commitment, the size of the commitment, transmission zone, commitment reason, and commitment start time.

As originally cleared by OMB, FERC–516G also included a one-time requirement that ITOs and RTOs revise their tariffs. Those tariffs have been revised, and FERC is requesting removal of that information collection activity.

Type of Respondents: ISOs and RTOs.

Estimate of Annual Burden [2]: The estimated burden and cost [3] are as follows:

[1] 16 U.S.C. 824e.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[3] The hourly cost estimate is based on data from the Bureau of Labor Statistics for three occupational categories for 2020 involved in the reporting and recordkeeping requirements. These figures include salary (*https://www.bls.gov/oes/current/oes_nat.htm*) and benefits and are:

- Manager (Occupation Code 110–0000) $97.15/hour.
- Electrical Engineer (Occupation Code 17–2071): $70.19/hour.
- File Clerk (Occupation Code 43–4071): $34.79/hour.

The estimate hourly cost for the reporting requirements ($67.38) is an average of the cost of a manager, an electrical engineer, and a file clerk.

FERC–516G ANNUAL BURDEN ESTIMATES IN DOCKET NO. IC21–14–000

Type of response	Number of respondents	Annual number of responses per respondent	Total number of responses (Column B × Column C)	Average burden hours & cost per response	Total annual burden hours & cost (Column D × Column E)	Cost per respondent (Column F ÷ Column B)
A.	B.	C.	D.	E.	F.	G.
Preparing and Posting of 3 reports on company website each month.	6	12	72	3 hrs.; $202.14	216 hrs.; $14,554.08 ..	$2,425.68

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 6, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07446 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP16–10–000, CP16–10–005, CP16–10–006, CP16–10–007, CP16–10–008, CP16–13–000, CP16–13–003, CP19–14–000, CP19–14–001, CP19–477–000, CP21–12–000, CP21–57–000.	3–24–2021	FERC Staff.[1]
2. CP16–10–000, CP16–10–005, CP16–10–006, CP16–10–007, CP16–10–008, CP16–13–000, CP16–13–003, CP19–14–000, CP19–14–001, CP19–477–000, CP21–12–000, CP21–57–000.	3–24–2021	FERC Staff.[2]
3. CP16–10–000, CP16–10–005, CP16–10–006, CP16–10–007, CP16–10–008, CP16–13–000, CP16–13–003, CP19–14–000, CP19–14–001, CP19–477–000, CP21–12–000, CP21–57–000.	3–24–2021	FERC Staff[3]
Exempt:		
1. ER21–1111–000, ER21–1112–000, ER21–1114–000, ER21–1115–000, ER21–1116–000, ER21–1117–000, ER21–1118–000, ER21–1119–000, ER21–1120–000, ER21–1121–000, ER21–1125–000, ER21–1128–000.	3–17–2021	South Carolina Senator Tom Davis.
2. CP17–458–000	3–17–2021	U.S. Representative Tom Cole.
3. ER21–1111–000, ER21–1112–000, ER21–1114–000, ER21–1115–000, ER21–1116–000, ER21–1117–000, ER21–1118–000, ER21–1119–000, ER21–1120–000, ER21–1121–000, ER21–1125–000, ER21–1128–000.	3–18–2021	South Carolina Representative Nathan Ballentine.
4. P–405–106, P–405–121	3–18–2021	Maryland Senator Stephen S. Hershey, Jr.
5. CP21–57–000	3–26–2021	U.S. Congress.[4]

Docket Nos.	File date	Presenter or requester
6. CP20–466–000	3–29–2021	FERC Staff.[5]
7. CP16–9–000	3–30–2021	U.S. Senator John Barrasso.

[1] Memorandum regarding ex parte communication from July 2020 with an individual.
[2] Memorandum regarding ex parte communication from July 2020 with Ms. Elaine Werner.
[3] Memorandum regarding ex parte communication from July 2020 with Mr. Alex Abrams of Wisconsin.
[4] U.S. Senators Tim Kaine and Mark R. Warner.
[5] Memorandum dated March 29, 2021, regarding a listening session entitled Landowners and Communities Affected by Infrastructure Development.

Dated: April 4, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07393 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1580–000]

Sky River Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sky River Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 26, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07443 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–696–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Natural Gas Pipeline Company of America LLC to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5002.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–698–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: April 21 Neg Rate Agree Amends to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5015.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–699–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Chevron Noble NRA to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5020.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–700–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2021 Non-Conforming Negotiated Rate SA—Kentex IT–839 to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5021.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–701–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Citadel Energy Marketing to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5024.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–702–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Sempra Gas & Power Marketing LLC to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5026.
Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–703–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Termination of FPL 52990 to be effective 4/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5028.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–704–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 53883 to Exelon 53921) to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5032.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–705–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Methanex 42805 to Tenaska 53955) to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5033.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–706–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—4/1/2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5035.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–707–000.

Applicants: KPC Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5039.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–708–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: ANR April 1 Neg. Rate Agreements to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5056.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–709–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5059.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–710–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—CERC dba Arkansas Gas 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5079.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–711–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—CERC dba Oklahoma Gas 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5084.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–712–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—CERC dba Louisiana Gas 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5087.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–713–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—CERC dba Texas Gas Operations 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5135.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–714–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Ovintiv Marketing 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5186.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–715–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 04–01–2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5197.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–716–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5252.

Comments Due: 5 p.m. ET 4/13/21.

Docket Numbers: RP21–717–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Tenaska Marketing Ventures 4.1.2021 to be effective 4/1/2021.

Filed Date: 4/1/21.

Accession Number: 20210401–5258.

Comments Due: 5 p.m. ET 4/13/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07394 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–119–000.

Applicants: West Medway II, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of West Medway II, LLC.

Filed Date: 4/2/21.

Accession Number: 20210402–5131.

Comments Due: 5 p.m. ET 4/23/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1250–000.

Applicants: Tumbleweed Solar, LLC.

Description: Supplement to March 2, 2021 Certificates of Concurrence.

Filed Date: 3/15/21.

Accession Number: 20210315–5422.

Comments Due: 5 p.m. ET 4/5/21.

Docket Numbers: ER21–1373–001.

Applicants: ES 1A Group 2 Opco, LLC.

Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 5/12/2021.

Filed Date: 4/2/21.

Accession Number: 20210402–5140.

Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1376–001.

Applicants: ES 1A Group 3 Opco, LLC.

Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 5/12/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5143.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1586–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–04–01_SA 3377 METC-Assembly Solar 2nd Rev GIA (J796) to be effective 3/18/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5177.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1587–000.
Applicants: GridLiance Heartland LLC.
Description: § 205(d) Rate Filing: GLH Non-MISO OATT C-Corp Conversion Filing to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5227.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1588–000.
Applicants: GridLiance High Plains LLC.
Description: § 205(d) Rate Filing: GHP Distribution C-Corp Conversion to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5232.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1589–000.
Applicants: CPI USA North Carolina LLC.
Description: Tariff Cancellation: Notice of Cancellation of MBR Tariff and Tariff ID to be effective 6/1/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5233.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1590–000.
Applicants: GridLiance High Plains LLC.
Description: § 205(d) Rate Filing: GHP SPP Transmission C-Corp Conversion to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5235.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1591–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Real time Value Market Rules to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5241.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1592–000.
Applicants: GridLiance West LLC.
Description: § 205(d) Rate Filing: 4–1 GLW C-Corp Conversion to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5250.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1593–000.
Applicants: GridLiance High Plains LLC.
Description: § 205(d) Rate Filing: GHP OATT C-Corp Conversion to be effective 5/31/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5262.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1594–000.
Applicants: Pegasus Wind A, LLC.
Description: Tariff Cancellation: Pegasus Wind A, LLC Notice of Cancellation of MBR Tariff to be effective 4/2/2021.
Filed Date: 4/1/21.
Accession Number: 20210401–5299.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1595–000.
Applicants: Public Service Company of New Mexico.
Description: Formula Rate Post-employment Benefits Other than Pensions filing of Public Service Company of New Mexico.
Filed Date: 4/1/21.
Accession Number: 20210401–5335.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1596–000.
Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: 2021–04–02_SA 3132 METC-Wolverine T–T 2nd Rev Appendix to be effective 3/3/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5023.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1597–000.
Applicants: Midcontinent Independent System Operator, Inc., American Electric Power Service Corporation, Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: 2021–04–02_SA 1524 I&M–NIPSCO Interconnection Agreement 4th Rev to be effective 3/5/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5027.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1598–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–04–02_SA 2853 3rd Rev Certificate of Concurrence IMTCO–NIPSCO Agreement to be effective 3/5/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5029.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1599–000.
Applicants: Public Service Company of Colorado.
Description: Formula Rate Post-Retirement Benefits Other than Pensions filing of Public Service Company of Colorado.
Filed Date: 4/1/21.
Accession Number: 20210401–5498.
Comments Due: 5 p.m. ET 4/22/21.

Docket Numbers: ER21–1600–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: Burlington February 2021 Fuel Cost Adjustment _Eff. 03–12–2021 to be effective 3/12/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5040.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1601–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 214 Rabbitbrush to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5045.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1602–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 216 Chaparral Solar to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5051.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1603–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 219 Marvel to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5054.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1604–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 222 RE Crimson to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5057.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1605–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 206 Willow Springs 3 to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5073.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1606–000.
Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amended LGIA SA No. 228 Pastoria Solar to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5096.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1607–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 237 Aurora Solar to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5107.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1608–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 243 Terra-Gen to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5114.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1609–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 245 50LW 8me LLC Bellefield to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5118.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1610–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 249 20SD 8ME LLC Rexford Solar to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5125.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1611–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA SA No. 256 sPower Baldy Mesa to be effective 6/2/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5138.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1612–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: SR Cedar Springs Affected System Construction Agreement (GPAS 015) Filing to be effective 2/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5150.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1613–000.
Applicants: Alabama Power Company.
Description: Initial rate filing: Cedar Springs Solar Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5152.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1614–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: Cedar Springs Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5153.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1615–000.
Applicants: Mississippi Power Company.
Description: Initial rate filing: Cedar Springs Solar Affected System Upgrade Agreement Filing to be effective 3/18/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5155.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1617–000.
Applicants: Edwards Solar Line I, LLC.
Description: Baseline eTariff Filing: Certificates of Concurrence to Facilities Use Agreements to be effective 6/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5203.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1618–000.
Applicants: Sanborn Solar Line I, LLC.
Description: Baseline eTariff Filing: Certificates of Concurrence to Facilities Use Agreements to be effective 6/1/2021.
Filed Date: 4/2/21.
Accession Number: 20210402–5222.
Comments Due: 5 p.m. ET 4/23/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–35–000.
Applicants: NextEra Energy Transmission MidAtlantic Indiana, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of NextEra Energy Transmission MidAtlantic Indiana, Inc.
Filed Date: 4/2/21.
Accession Number: 20210402–5243.
Comments Due: 5 p.m. ET 4/23/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07395 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR21–7–000]

Seahawk Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on March 30, 2021, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Seahawk Pipeline, LLC (''Seahawk'') respectfully submits its petition that the Commission issue a declaratory order approving Seahawk's proposed rate structures, service priority rights, and prorationing provisions for shippers and various aspects of the Transportation Service Agreement for the Seahawk Pipeline, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on April 30, 2021.

Dated: April 6, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07447 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–71–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Tri-State Generation and Transmission Association, Inc. et al.
Filed Date: 4/5/21.
Accession Number: 20210405–5792.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: EC21–72–000.
Applicants: Atlantic Energy LLC, Atlantic Energy MA LLC, Atlantic Energy MD, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Atlantic Energy LLC, et al.
Filed Date: 4/5/21.
Accession Number: 20210405–5801.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: EC21–73–000.
Applicants: Mobile Energy, LLC, AMF Tide LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Mobile Energy, LLC, et al.
Filed Date: 4/5/21.
Accession Number: 20210405–5804.
Comments Due: 5 p.m. ET 4/26/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3917–002; ER10–2774–005.
Applicants: Mojave Solar LLC, Arizona Solar One LLC.
Description: Triennial Market Power Analysis for Southwest Region of Mojave Solar LLC, et al.
Filed Date: 4/5/21.
Accession Number: 20210405–5799.
Comments Due: 5 p.m. ET 6/4/21.

Docket Numbers: ER20–1487–002.
Applicants: Frontier Windpower II, LLC.
Description: Notice of Non-Material Change in Status of Frontier Windpower II, LLC.
Filed Date: 4/2/21.
Accession Number: 20210402–5293.
Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–330–001.
Applicants: Specialty Products US, LLC.
Description: Tariff Amendment: Specialty Products US, LLC—Rate Schedule FERC No. 1 to be effective 1/4/2021.
Filed Date: 4/5/21.
Accession Number: 20210405–5733.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: ER21–331–001.
Applicants: DDP Specialty Electronic Materials US, Inc.
Description: Tariff Amendment: DDP App A FERC Rate Schedule No. 1 to be effective 1/4/2021.
Filed Date: 4/5/21.
Accession Number: 20210405–5748.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: ER21–817–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2021–04–05_SA 3616/3617 Deficiency Response J1076 GIA & MPFCA J1076 J1142 J1158 to be effective 3/8/2021.
Filed Date: 4/5/21.
Accession Number: 20210405–5759.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: ER21–1622–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Otter Tail Reactive Power Compensation Filing to be effective 6/1/2021.
Filed Date: 4/5/21.
Accession Number: 20210405–5704.
Comments Due: 5 p.m. ET 4/26/21.

Docket Numbers: ER21–1623–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6000; Queue No. AD2–116 to be effective 3/9/2021.
Filed Date: 4/6/21.
Accession Number: 20210406–5175.
Comments Due: 5 p.m. ET 4/27/21.

Docket Numbers: ER21–1624–000.
Applicants: Novera Energy, LLC.
Description: Petition for Limited Waiver of Mansfield-South Troy 34.5 kV and Roxbury 23 kV, subsidiaries of Novera Energy, LLC.
Filed Date: 4/5/21.
Accession Number: 20210405–5806.
Comments Due: 5 p.m. ET 4/15/21.

Docket Numbers: ER21–1625–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3128 NorthWestern Energy NITSA NOA Cancellation to be effective 10/1/2020.
Filed Date: 4/6/21.
Accession Number: 20210406–5331.
Comments Due: 5 p.m. ET 4/27/21.

Docket Numbers: ER21–1626–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 891 between Tri-State and Lucky Corridor to be effective 4/1/2021.
Filed Date: 4/6/21.
Accession Number: 20210406–5371.
Comments Due: 5 p.m. ET 4/27/21.

Docket Numbers: ER21–1627–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 108 to be effective 2/26/2020.
Filed Date: 4/6/21.
Accession Number: 20210406–5881.
Comments Due: 5 p.m. ET 4/27/21.

Docket Numbers: ER21–1628–000.
Applicants: Coso Geothermal Power Holdings, LLC.
Description: Initial rate filing: CoTenancy and Shared Facilities Agreement to be effective 5/21/2021.
Filed Date: 4/6/21.
Accession Number: 20210406–5906.
Comments Due: 5 p.m. ET 4/27/21.

Docket Numbers: ER21–1629–000.
Applicants: Southwest Power Pool, Inc.
Description: Notice of Cancellation of Network Integration Transmission Service Agreement and Network Operating Agreement of Southwest Power Pool, Inc.

Filed Date: 4/6/21.
Accession Number: 20210406–5960.
Comments Due: 5 p.m. ET 4/27/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07438 Filed 4–9–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2018–0124; FRL–10022–03–OMS]

Proposed Information Collection Request; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Contractor Cumulative Claim and Reconciliation (Renewal)'' (EPA ICR No. 0246.14, OMB Control No. 2030–0016) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through December 30, 2021. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 11, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2018–0124 online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy Training and Oversight Division, Office of Acquisition Solutions (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: All contractors who have completed an EPA cost-reimbursement type contract will be required to submit EPA Form 1900–10. EPA Form 1900–10 summarizes all costs incurred in performance of the contract and sets forth the final indirect rates. This form is reviewed by the contracting officer to determine the final costs reimbursable to the contractor. The Federal Acquisition Regulation (FAR) 52.216–7 states that the Government will pay only the costs determined to be allowable by the contracting officer in accordance with FAR Subpart 31.2. Furthermore, FAR 52.216–7 states that indirect cost rates shall be established for each fiscal year at the close of a contractor's fiscal year. EPA Form 1900–10 summarizes this information for the entire contract period and provides a basis for cost review by contracting, finance, and audit personnel. In addition, FAR 4.804–5 mandates that the office administering the contract shall ensure that the costs and indirect cost rates are settled.

Form numbers: EPA Form 1900–10.

Respondents/affected entities: All contractors who have completed an EPA cost-reimbursement type contract.

Respondent's obligation to respond: Mandatory (FAR 52.216–7).

Estimated number of respondents: 5 (total).

Frequency of response: Once, at the end of the contract.

Total estimated burden: 31.5 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,730.40 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Kimberly Patrick,

Director, Office of Acquisition Solutions.

[FR Doc. 2021–07403 Filed 4–9–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0594, 3060–0601 and 3060–0609; FRS 19738]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 11, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0594.

Title: Cost of Service Filing for Regulated Cable Services, FCC Form 1220.

Form Number: FCC Form 1220.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local, or Tribal Government.

Number of Respondents and Responses: 20 respondents; 10 responses.

Estimated Hours per Response: 4–80 hours.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Total Annual Burden: 1,220 hours.

Total Annual Cost: $100,000.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained is Sections 154(i) and 623 of the Communications Act of 1934, as amended.

Nature and Extent Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment.

OMB Control Number: 3060–0601.

Title: Setting Maximum Initiated Permitted Rates for Regulated Cable Services, FCC Form 1200.

Form Number: FCC Form 1200.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local, or Tribal Government.

Number of Respondents and Responses: 100 respondents; 50 responses.

Estimated Hours per Response: 2–10 hours.

Frequency of Response: One time and annual reporting requirements; Third party disclosure requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: $62,500.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 623 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators and local franchise authorities file FCC Form 1200 to justify the reasonableness of rates in effect on or after May 15, 1994. The FCC uses the data to evaluate cable rates the first time they are reviewed on or after May 15, 1994, so that maximum permitted rates for regulated cable service can be determined.

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal governments.

Number of Respondents and Responses: 20 respondents; 10 responses.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 4 hours.

Total Annual Burden: 80 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Obligation To Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained under 47 CFR 76.934(e) states that small cable systems may obtain an extension of time to establish compliance with rate regulations provided that they can demonstrate that timely compliance would result in severe economic hardship. Requests for the extension of time should be addressed to the local franchising authorities (''LFAs'') concerning rates for basic service tiers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–07361 Filed 4–9–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0009; FRS 19751]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 11, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0009.

Title: FCC Form 2100, Schedule 316—Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer Control of Entity Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 2100, Schedule 316.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents, 750 responses.

Estimated Time per Response: 1.5–4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,231 hours.

Total Annual Cost: $711,150.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Needs and Uses: This submission is being submitted as an extension of an existing information collection pursuant to 44 U.S.C. 3507. This submission contains revised FCC Form 2100, Schedule 316 (Schedule 316) and its accompanying instructions.

Schedule 316 is used to apply for Commission consent to a *pro forma* assignment of a broadcast station license or construction permit, or a *pro forma* transfer of control of an entity holding a broadcast station license or construction permit. Specifically, filing of the Schedule 316 is required when applying for consent to assignment of a broadcast station construction permit or license, or for consent to transfer control of an entity holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of an interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee entity. In addition, the applicant must notify the Commission when an approved assignment or transfer of control of a broadcast station construction permit or license has been consummated.

In October 2020, the Commission submitted a non-substantive change request to the Office of Management and Budget (OMB) for approval of minor non-substantive changes made to then-FCC Form 316.

The Media Bureau is transitioning to a new on-line electronic licensing database system called the ''Licensing Management System'' (LMS) in which all Media Bureau broadcast applications and reporting forms will eventually be filed. This database transition requires a corresponding design conversion of all existing forms previously filed in the legacy CDBS database. The Media Bureau has developed electronic, LMS-compatible versions of various broadcast station application and reporting forms, such as this Schedule 316, as part of the database transition. To accommodate the database transition from CDBS to LMS in the 2020 phase of the LMS roll-out, the new LMS-filed Schedule 316 replaced the old CDBS-filed Form 316 for applications for consent to a *pro forma* assignment or *pro forma* transfer of control of a broadcast license or construction permit for TV, AM, and FM full-service stations, TV and FM translator stations, Low Power FM stations, Class A Television stations, and Low Power Television stations.

The substance, respondents, burden hours and costs of this Information Collection were not impacted by the minor non-substantive changes. The certification-based questions and explanatory exhibit format on the application remained the same.

OMB approved the non-substantive change request on October 27, 2020.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–07359 Filed 4–9–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: April 14, 2021; 10:00 a.m.

PLACE: This meeting will be held by video-conference only.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: General Prohibitions in the Shipping Act and Pending Investigations.

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2021–07486 Filed 4–8–21; 11:15 am]

BILLING CODE 6730–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. OCC–2020–0047]

FEDERAL RESERVE BOARD

[Docket No. OP–1744]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA23

NATIONAL CREDIT UNION ADMINISTRATION

[Docket No. NCUA–2021–0007]

RIN 3133–AF33

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

[Docket No. FINCEN–2021–0004]

Request for Information and Comment: Extent to Which Model Risk Management Principles Support Compliance With Bank Secrecy Act/Anti-Money Laundering and Office of Foreign Assets Control Requirements

AGENCY: Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Financial Crimes Enforcement Network (FinCEN).[1]

ACTION: Notice and request for information and comment.

SUMMARY: The OCC, Board, FDIC, NCUA, and FinCEN (collectively, the agencies), seek information and comment from interested parties on the extent to which the principles discussed in the interagency Supervisory Guidance on Model Risk Management (referred to as the ''model risk management guidance,'' or MRMG) support compliance by banks with Bank Secrecy Act/anti-money laundering (BSA/AML) and Office of Foreign Assets Control (OFAC) requirements. The agencies seek this information to enhance their understanding of bank practices in these areas and determine whether additional explanation or clarification may increase transparency, effectiveness, or efficiency. The OCC, Board, and FDIC, in consultation with NCUA and FinCEN, are concurrently issuing a statement to clarify that the risk management principles discussed in the MRMG are appropriate considerations in the context of the BSA/AML statutory and regulatory requirements.

DATES: Comments must be received by June 11, 2021.

ADDRESSES: Interested parties are invited to submit written comments to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Request for Information and Comment: Extent to Which Model Risk Management Principles Support Compliance with Bank Secrecy Act/Anti-Money Laundering and Office of Foreign Assets Control Requirements'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2020–0047'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0047'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2020–0047'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Documents Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. OP–1744 by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.
- All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments on the request for information and

[1] This Request for Information primarily focuses on the institutions supervised by the Board, FDIC, NCUA, and OCC. FinCEN's BSA regulations apply to a broader group of financial institutions and any information submitted by financial institutions other than banks will be collected on behalf of FinCEN.

comment using any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the agency's website.

• *Email: Comments@fdic.gov.* Include RIN 3064–ZA23 in the subject line of the message.

• *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–ZA23, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All public comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/.*

NCUA: You may submit comments to the NCUA, Docket No. NCUA–2021–0007, by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Request for Information and Comment: Extent to Which Model Risk Management Principles Support Compliance with Bank Secrecy Act/Anti-Money Laundering and Office of Foreign Assets Control Requirements'' to facilitate the organization and distribution of the comments. *(Please send comments by one method only):*

• *Federal eRulemaking Portal—www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* (703) 518–6319.

• *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

In general, the NCUA will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this Request for Information and comment by any of the following methods:

• *Viewing Comments Electronically:* You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those NCUA cannot post for technical reasons.

• Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FinCEN: 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–2021–0004.

• *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2021–0004.

Please submit comments by one method only. Comments submitted in response to this Request for Information and Comment will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

OCC: James Vivenzio, BSA/AML Policy Director, (202) 649–5470; Jina Cheon, Counsel; or Henry Barkhausen, Counsel, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219

Board: Suzanne Williams, Deputy Associate Director, Specialized Policy; Koko Ives, Manager, BSA/AML Risk, (202) 973–6163; Lee Davis, Lead Financial Institution Policy Analyst, (202) 912–4350, Division of Supervision and Regulation; Jason Gonzalez, Assistant General Counsel, (202) 452–3275; Bernard Kim, Senior Counsel, (202) 452–3083, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Lisa Arquette, Associate Director, (202) 898–3673, *larquette@fdic.gov,* Division of Risk Management Supervision; Jennifer Maree, Counsel, (202) 898–6543, *jemaree@fdic.gov,* Legal Division.

NCUA: Timothy Segerson, Deputy Director; Andrew Bludorn, Bank Secrecy Act Officer, Office of Examination & Insurance, or Ian Marenna, Associate General Counsel; Chrisanthy Loizos, Senior Trial Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6300 or (703) 518–6540.

FinCEN: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The sound risk management principles discussed in the MRMG [2] are important considerations for the development and management of systems used by banks [3] to assist in complying with the requirements of the BSA/AML laws and regulations. Whether a bank characterizes a BSA/AML system [4] (or portions of that system) as a model, a tool, or an application, risk management of these systems should be consistent with safety and soundness principles,[5] and the system should promote compliance with applicable laws and regulations. The MRMG is premised upon sound risk management and governance principles, several of which are referenced in that guidance, such as adequate governance, development, documentation, testing, performance monitoring, validation, and effective challenge.

Stakeholders within the banking industry have questioned how the risk management principles described in the MRMG relate to systems or models used to comply with BSA/AML laws and regulations. The OCC, Board, and FDIC, in consultation with NCUA and FinCEN, are concurrently issuing a statement with this Request for Information (RFI) to clarify that

[2] Refer to the ''Supervisory Guidance on Model Risk Management,'' Federal Reserve Supervision and Regulation Letter 11–7, *https://www.federalreserve.gov/supervisionreg/srletters/srletters.htm;* OCC Bulletin 2011–12, *https://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-12.html;* and FDIC Financial Institution Letter-22–2017, *https://www.fdic.gov/news/financial-institution-letters/2017/fil17022.html.*

[3] The MRMG does not apply to credit unions, as it was not issued by the NCUA. As used in this Request for Information, however, the term ''bank'' includes each agent, agency, branch, or office within the United States of banks, credit unions, savings associations, and foreign banks as defined in Bank Secrecy Act regulations at 31 CFR 1010.100(d).

[4] In the BSA/AML context, the term ''system'' includes a bank's policies, procedures, or processes to identify, research and report unusual activity, typically known as suspicious activity monitoring and reporting systems, and are critical internal controls for ensuring an effective BSA/AML compliance program.

[5] Refer to the Interagency Guidelines Establishing Standards for Safety and Soundness, 12 CFR 208, Appendix D–1 (Federal Reserve); 12 CFR 364, Appendix A (FDIC); and 12 CFR 30, Appendix A (OCC).

regardless of how a BSA/AML system is characterized, sound risk management is important, and banks may use the principles discussed in the MRMG to establish, implement, and maintain their risk management framework.

In this RFI, the agencies seek comments and information from interested parties on the extent to which the principles discussed in the MRMG support compliance by banks with BSA/AML laws and regulations. This RFI also seeks feedback on the extent to which the MRMG principles support compliance by banks related to models and systems used in connection with OFAC requirements. The agencies seek this information to enhance their understanding of bank practices in these areas and determine whether additional explanation or clarification may increase transparency, effectiveness, or efficiency.

BSA Requirements

The BSA [6] is intended to safeguard the U.S. financial system and the financial institutions that make up that system from the abuses of financial crime, including money laundering, terrorist financing, and other illicit financial activity.

FinCEN, a bureau of the U.S. Department of the Treasury, is the delegated administrator of the BSA. In this capacity, FinCEN issues regulations and interpretive guidance, provides outreach to regulated industries, supports examinations, and pursues civil enforcement actions when warranted. FinCEN relies on the Board, FDIC, NCUA and OCC (the ''federal banking agencies'') to examine banks [7] within their respective jurisdictions for compliance with the BSA.

The federal banking agencies are responsible for the oversight of the various banking entities operating in the United States, including U.S. branches and agencies of foreign banks. The federal banking agencies' regulations require each bank under their supervision to establish and maintain a BSA compliance program, as does the BSA itself.[8] At a minimum, the BSA/AML compliance program must include:

- Internal controls to assure ongoing compliance;
- Independent testing for compliance;
- Designation of an individual or individuals, also referred to as the BSA/AML compliance officer(s), responsible for coordinating and monitoring day-to-day compliance; and
- Training for appropriate personnel.

A bank also has requirements related to suspicious activity reporting,[9] customer identification,[10] customer due diligence, and beneficial ownership.[11] BSA/AML systems are often used to assist the bank in meeting these requirements.

Office of Foreign Assets Control Requirements

OFAC is an office of the U.S. Department of the Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under the President's wartime and national emergency powers, as well as under authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.

All U.S. persons, including U.S. banks, bank holding companies, and nonbank subsidiaries, must comply with OFAC's regulations. OFAC-issued regulations apply not only to U.S. banks but also to their foreign branches and overseas offices and often to subsidiaries. OFAC encourages banks to take a risk-based approach to designing and implementing an OFAC compliance program.[12] In general, the sanctions programs that OFAC administers require banks to do the following:

- Block accounts and other property of specified countries, entities, and individuals.
- Prohibit or reject unlicensed trade and financial transactions with specified countries, entities, and individuals.
- Report blocked property and rejected transactions to OFAC.

Model Risk Management Guidance

On April 4, 2011, the Board and the OCC issued guidance for banks subject to their supervision on effective model risk management (MRM). The FDIC subsequently adopted this guidance in 2017.

Consistent with the federal banking agencies' support of safe and sound banking principles, the MRMG lays out principles for sound MRM in three key areas: (1) Model development, implementation, and use; (2) model validation; and (3) governance, policies, and controls. The guidance describes different MRM responsibilities for different parties within a bank, based on their roles, including those building the models, those independently reviewing the models, and those providing a governance framework for MRM.

Concurrently with the publication of this RFI, the OCC, Board, and FDIC, in consultation with NCUA and FinCEN, have published an ''Interagency Statement on Model Risk Management for Bank Systems Supporting Bank Secrecy Act/Anti-Money Laundering Compliance.'' The MRMG principles provide flexibility for banks in developing, implementing, and updating models. Banks may use some or all of the principles in their risk management processes to support meeting the regulatory requirements of an effective BSA/AML compliance program. The questions posed in this RFI complement the statement and the agencies ask commenters to consider the two documents in conjunction with each other.

II. Request for Information Overview

This RFI seeks information and comment on any aspects of the relationship between BSA/AML and OFAC compliance and the principles conveyed in the MRMG, including how those principles may support compliance and any differences in perceptions regarding their application. This RFI also asks for responses to specific questions outlined below.

Suggested Topics for Commenters

To allow the agencies to evaluate suggestions more effectively, the agencies request that, where possible, comments include:

- Specific discussion of any suggested changes to guidance or regulation, including, in as much detail as possible, the nature of the requested change and supporting data or other information on impacts, costs, and benefits.
- Specific identification of any aspects of the agencies' approach to

[6] 31 CFR 1010.100(e).

[7] The term ''bank'' is used here as in Bank Secrecy Act regulations at 31 CFR 1010.100(d).

[8] 12 CFR 21.21 (OCC), 12 CFR 208.63, 12 CFR 211.5(m) and 12 CFR 211.24(j) (Board); 12 CFR 326.8 (FDIC); 12 CFR 748.2(b) (NCUA). As set forth in 31 CFR 1020.210 (FinCEN), a bank regulated by one of the federal functional regulators is deemed to have satisfied FinCEN's AML program requirements if the bank develops and maintains a BSA compliance program that complies with the regulation of its federal functional regulator governing such programs.

[9] 12 CFR 21.11 and 12 CFR 163.180(d) (OCC); 12 CFR 208.62, 12 CFR 211.5(k), 12 CFR 211.24(f)), and 12 CFR 225.4(f) (Board); 12 CFR 353 (FDIC); 12 CFR 748.1(c) (NCUA); and 31 CFR 1020.320 (FinCEN).

[10] 12 CFR 21.21(c)(2) (OCC); 12 CFR 208.63(b)(2), 211.5(m)(2), and 211.24(j)(2) (Board); 12 CFR 326.8(b)(2) (FDIC); 12 CFR 748.2(b)(2) (NCUA); and 31 CFR 1020.220 (FinCEN).

[11] 31 CFR 1020.210(a)(2)(v) and 31 CFR 1010.230.

[12] Framework for OFAC Compliance Commitments. *See, https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf.*

BSA/AML and OFAC compliance as it relates to MRMG that are working well and those that could be improved, including, in as much detail as possible, supporting data or other information on impacts, costs, and benefits.

The following sections list areas of interest on which commenters may want to focus. This list is meant to assist in the formulation of comments and is not intended to restrict what may be addressed by the public. Commenters may also address matters related to BSA/AML or OFAC compliance and the principles conveyed in the MRMG that do not appear in the list below. The agencies request that, in addressing these questions, commenters identify issues in as much detail as possible and provide specific examples where appropriate. Commenters are requested to comment on some or all of the questions below and are encouraged to indicate in which area your comments are focused. The agencies request that commenters providing suggestions note their highest priorities, where possible, along with an explanation of how or why certain suggestions have been prioritized.

The term ''BSA/AML and OFAC models'' is used in the questions below to describe BSA/AML or OFAC compliance systems that a bank considers models, so its interpretation could vary from bank to bank. When providing feedback, please note that the MRMG principles provide flexibility for banks in developing, implementing, and updating models. The extent and nature of model risk varies across models and banks, and a bank's risk management framework is most appropriately tailored when it is commensurate with the nature and materiality of the risk. The agencies are interested in gathering information about industry practices and welcome responses regarding individual banks, as well as common industry practices.

1. What types of systems do banks employ to support BSA/AML and OFAC compliance that they consider models (*e.g.,* automated account/transaction monitoring, interdiction, customer risk rating/scoring)? What types of methodologies or technologies do these systems use (*e.g.,* judgment-based, artificial intelligence or machine learning, or statistical methodologies or technologies)?

2. To what extent are banks' BSA/AML and OFAC models subject to separate internal oversight for MRM in addition to the normal BSA/AML or OFAC compliance requirements? What additional procedures do banks have for BSA and OFAC models beyond BSA/AML or OFAC compliance requirements?

3. To what extent do banks have policies and procedures, either specific to BSA/AML and OFAC models or applicable to models generally, governing the validation of BSA/AML and OFAC models, including, but not limited to, the validation frequency, minimum standards, and areas of coverage (*i.e.,* which scenarios, thresholds, or components of the model to cover)?

4. To what extent are the risk management principles discussed in the MRMG appropriate for BSA/AML and OFAC models? Please explain why certain principles may be more or less appropriate for bank operations of varying size and complexity? Are there other principles not discussed in the MRMG that would be appropriate for banks to consider?

5. Some bankers have reported that banks' application of MRM to BSA/AML and OFAC models has resulted in substantial delays in implementing, updating, and improving systems. Please describe any factors that might create such delays, including specific examples.[13]

6. Some bankers have reported that banks' application of MRM to BSA/AML and OFAC models has been an impediment to developing and implementing more innovative and effective approaches to BSA/AML and OFAC compliance. Do banks consider MRM relative to BSA/AML an impediment to innovation? If yes, please describe the factors that create the impediments, including specific examples.[14]

7. To what extent do banks' MRM frameworks include testing and validation processes that are more extensive than reviews conducted to meet the independent testing requirement of the BSA? Please explain.

8. To what extent do banks use an outside party to perform validations of BSA/AML and OFAC compliance systems? Does the validation only include BSA/AML and OFAC models, as opposed to other types of models used by the banks? Why are outside parties used to perform validation?[15]

9. To what extent do banks employ internally developed BSA/AML or OFAC compliance systems, third-party systems, or both? What challenges arise with such systems considering the principles discussed in the MRMG? Are there challenges that are unique to any one of these systems?

10. To what extent do banks' MRM frameworks apply to all models, including BSA/AML and OFAC models? Why or why not?

11. Specific to suspicious activity monitoring systems, the agencies are gathering information about industry practices. The agencies welcome responses to the following, regarding individual bank and common industry practices.

a. Suspicious activity monitoring system validation:

i. To what extent do banks validate such systems before implementation?

ii. Are banks able to implement changes without fully validating such systems? If so, please describe the circumstances.

iii. How frequently do banks validate after implementation?

iv. To what extent do banks validate after implementing changes to existing systems (*e.g.,* new scenarios, threshold changes, or adding/changing customer peers or segments)? Please describe the circumstances in which you think this would be appropriate.

v. How do banks validate such systems?

vi. What, if any, compensating controls do banks use if they have not had an opportunity to validate such systems?

b. Suspicious activity monitoring system *benchmarking:* What, if any, external or internal data or models do banks use to compare their suspicious activity systems' inputs and outputs for purposes of benchmarking?

c. Suspicious activity monitoring system *back-testing:* How do banks attempt to compare outcomes from suspicious activity systems with actual outcomes, given that law enforcement outcomes are often unknown?

d. Suspicious activity monitoring system *sensitivity analysis:* How do banks check the impact of changes to inputs, assumptions, or other factors in their systems to ensure they fall within an expected range?

12. To what extent do banks calibrate the scope and frequency of MRM testing and validation for BSA/AML and OFAC

[13] The MRMG recognizes that banks assess different models in different ways: ''The nature of testing and analysis will depend on the type of model and will be judged by different criteria depending on the context.''

[14] In the MRMG, a key determinant of the extent of validation activities is ''materiality.'' Banks may choose to implement less material changes to models without revalidation.

[15] The decision to use an outside party is entirely the bank's own, in accordance with the bank's third-party risk management and model risk management requirements.

models based on their materiality? How do they do so?

Blake J. Paulson,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on or about January 22, 2021.

Debra A. Decker,

Deputy Executive Secretary.

Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration.

AnnaLou Tirol,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2021–07428 Filed 4–9–21; 8:45 am]

BILLING CODE 6210–01–P; 6705–01–P; 4810–33–P

FEDERAL RESERVE SYSTEM

Solicitation of Applications for Membership on the Community Advisory Council

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) established the Community Advisory Council (the ''CAC'') as an advisory committee to the Board on issues affecting consumers and communities. This Notice advises individuals who wish to serve as CAC members of the opportunity to be considered for the CAC.

DATES: Applications received between Monday, April 12, 2021 and Friday, June 11, 2021 will be considered for selection to the CAC for terms beginning January 1, 2022.

ADDRESSES: Individuals who are interested in being considered for the CAC may submit an application via the Board's website or via email. The application can be accessed at *https://www.federalreserve.gov/secure/CAC/Application/*. Emailed submissions can be sent to *CCA-CAC@frb.gov.* The information required for consideration is described below.

If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Jennifer Fernandez, Community Development Analyst, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551, or (202) 452–2412, or *CCA-CAC@frb.gov.* Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board created the Community Advisory Council (CAC) as an advisory committee to the Board on issues affecting consumers and communities. The CAC is composed of a diverse group of experts and representatives of consumer and community development organizations and interests, including from such fields as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building. CAC members meet semiannually with the members of the Board in Washington, DC to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC complements two of the Board's other advisory councils—the Community Depository Institutions Advisory Council (CDIAC) and the Federal Advisory Council (FAC)—whose members represent depository institutions.

The CAC serves as a mechanism to gather feedback and perspectives on a wide range of policy matters and emerging issues of interest to the Board of Governors and aligns with the Federal Reserve's mission and current responsibilities. These responsibilities include, but are not limited to, banking supervision and regulatory compliance (including the enforcement of consumer protection laws), systemic risk oversight and monetary policy decision-making, and, in conjunction with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), responsibility for implementation of the Community Reinvestment Act (CRA).

This Notice advises individuals of the opportunity to be considered for appointment to the CAC. To assist with the selection of CAC members, the Board will consider the information submitted by the candidate along with other publicly available information that it independently obtains.

Council Size and Terms

The CAC consists of at least 15 members. The Board will select members in the fall of 2021 to replace current members whose terms will expire on December 31, 2021. The newly appointed members will serve three-year terms that will begin on January 1, 2022. If a member vacates the CAC before the end of the three-year term, a replacement member will be appointed to fill the unexpired term.

Application

Candidates may submit applications by one of three options:

- *Online:* Complete the application form on the Board's website at *https://www.federalreserve.gov/secure/CAC/Application/* .
- *Email:* Submit all required information to *CCA-CAC@frb.gov.*
- *Postal Mail:* If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

Interested parties can view the current Privacy Act Statement at: *https://www.federalreserve.gov/aboutthefed/cac-privacy.htm*

Below are the application fields. Asterisks (*) indicate required fields.

- First and Last Name*
- Email Address*
- Phone Number*
- Postal Mail Street Address*
- Postal Mail City*
- Postal Mail State, Territory, or Federal District*
- Postal Zip Code*
- Organization*
- Title*
- Organization Type (select one)*
  - ○ For Profit
  - ▪ Community Development Financial Institution (CDFI)
  - ▪ Non-CDFI Financial Institution
  - ▪ Financial Services
  - ▪ Professional Services
  - ▪ Other
  - ○ Non-Profit
  - ▪ Advocacy
  - ▪ Association
  - ▪ Community Development Financial Institution (CDFI)
  - ▪ Educational Institution
  - ▪ Foundation
  - ▪ Service Provider
  - ▪ Think Tank/Policy Organization
  - ▪ Other
  - ○ Government
- Primary Area of Expertise (select one)*
  - ○ Civil rights
  - ○ Community development finance
  - ○ Community reinvestment and stabilization
  - ○ Consumer protection
  - ○ Economic and small business development

○ Labor and workforce development
○ Financial technology
○ Household wealth building and financial stability
○ Housing and mortgage finance
○ Rural issues
○ Other (please specify)
• Secondary Area of Expertise (select one)
○ Civil rights
○ Community development finance
○ Community reinvestment and stabilization
○ Consumer protection
○ Economic and small business development
○ Labor and workforce development
○ Financial technology
○ Household wealth building and financial stability
○ Housing and mortgage finance
○ Rural issues
○ Other (please specify)
• Resume*
○ The resume should include information about past and present positions you have held, dates of service for each, and a description of responsibilities.
• Cover Letter*
○ The cover letter should explain why you are interested in serving on the CAC as well as what you believe are your primary qualifications.
• Additional Information
○ At your option, you may also provide additional information about your qualifications.

Qualifications

The Board is interested in candidates with knowledge of fields such as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building, with a particular focus on the concerns of low- and moderate-income consumers and communities. Candidates do not have to be experts on all topics related to consumer financial services or community development, but they should possess some basic knowledge of these areas and related issues. In appointing members to the CAC, the Board will consider a number of factors, including diversity in terms of subject matter expertise, geographic representation, and the representation of women and minority groups.

CAC members must be willing and able to make the necessary time commitment to participate in organizational conference calls and prepare for and attend meetings two times per year (usually for two days). The meetings will be held at the Board's offices in Washington, DC The Board will provide a nominal honorarium and will reimburse CAC members only for their actual travel expenses subject to Board policy.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–06906 Filed 4–9–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1303; Docket No. CDC–2021–0035]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID–19. The information collection originally pertained to the September 4, 2020 CDC Order of the same name that temporarily halts residential evictions of covered persons for nonpayment of rent from September 4, 2020, through December 31, 2020. The Consolidated Appropriations Act, 2021, statutorily extended CDC's Order until January 31, 2021. On January 29, 2021, the CDC Director renewed the Order until March 31, 2021. As of March 31, the Order is further extended until June 30, 2021. The Declaration in this information collection request will serve as an attestation by a tenant, lessee, or resident that they meet the criteria therein, to prevent an eviction proceeding per the Order issued by the CDC.

DATES: CDC must receive written comments on or before June 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0035 by any of the following methods:

• *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses, and;

5. Assess information collection costs.

Proposed Project

TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID–19—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Recent CDC actions in response to COVID included a temporary eviction moratorium published on September 4, 2020 that was effective through December 31, 2020. The Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. On January 29, 2021, the CDC Director renewed the Order through March 31, 2021. The Order has now been further extended until June 30, 2021.

As of March 25, 2021, over 29,700,000 cases of COVID have been identified in the United States, with new cases reported daily, and over 540,000 deaths due to the disease. To qualify for the Order's protections, tenants, lessees, or residents of residential properties must provide a copy of the Declaration to the landlord, owner of the residential property, or other person who has a right to have the individual evicted or removed. The Declaration provides notification and attestation on behalf of the submitting party that they have met the required criteria to keep from being evicted; it should be given to the landlord, owner of the residential property, or other person who has a right to have the individual evicted or removed. The information collected will be limited to the signature of the tenant, lessee, or resident. The information will not be collected by CDC.

As stated in the Supporting Statement for OMB Control Number 0920–1303, under the request for an Emergency Clearance, OIRA has waived the 60-day comment period requirement. However, because this collection is exceeding 60 days, CDC is seeking additional notice and comment. Specifically, CDC is soliciting comments on the following aspects of the information collection form:

1. Did you find the form was accessible on mobile devices, such as tablets and telephones?

2. Was the from easy to read and understand?

3. Was the form sufficiently understandable by those using it, and how is the form being used?

4. Are there additional accessibility measures CDC should consider?

There will be no anticipated costs to respondents other than their time. Estimated burden for residents who make a maximum of $99,000 annually is 2,916,667 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Tenants, Lessees, or Residents.	DECLARATION UNDER PENALTY OF PERJURY FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID–19.	35,000,000	1	5/60	2,916,667
Total					2,916,667

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–07379 Filed 4–9–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Survey of the National Survey of Child and Adolescent Well-Being (NSCAW) Adopted Youth, Young Adults, and Adoptive Parents (0970–0555)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval for an extension with no changes to a one-time study to examine familial outcomes 8 years or more after a child's adoption from the child welfare system. The primary objective of this study is to estimate the prevalence of instability events that occur in families who have adopted children who have exited the foster care system. The second objective is to understand risk and protective factors associated with post adoption instability. Office of Management and Budget (OMB) approval expires September 30, 2021, and this request is to extend approval to allow for the completion of data collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Through this study, ACF is conducting web or telephone surveys with adopted youth, young adults, and adults as well as adoptive parents who were participants in the first or second cohort of NSCAW (NSCAW I, II; OMB #0970–0202). The surveys are designed to collect information about instability events (such as foster care re-entry or

running away that occurred after a child's adoption) as well as family functioning, perceptions of the adoption relationship, and services and support received after adoption. Due to the COVID–19 pandemic, initial activities to contact potential respondents were delayed. As a result, ACF is requesting an extension to collect data beyond the current OMB expiration date of September 30, 2021.

Respondents: Adopted youth, young adults, adults, and their associated adoptive parents who participated in NSCAW I or II.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents (total over request period)	No. of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Survey of NSCAW Adopted Youth, Young Adults, and Adults	588	1	.5	294	294
Survey of NSCAW Adoptive Parents	554	1	.5	277	277

Estimated Total Annual Burden Hours: 571.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Child Abuse Prevention and Treatment and Adoption Reform Act of 1978.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–07420 Filed 4–9–21; 8:45 am]

BILLING CODE 4184–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0323]

Proposed Information Collection Activity; Child Care Improper Payments Data Collection Instructions

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families is proposing revisions to an approved information collection, Child Care Improper Payments Data Collection Instructions (OMB #0970–0323, expiration 10/31/2021). There are minor changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 2 of the Payment Integrity Information Act of 2019 (PIIA) provides for estimates and reports of improper payments by federal agencies. Subpart K of 45 CFR, Part 98 of the Child Care and Development Fund (CCDF) requires states to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every 3 years.

The Office of Child Care (OCC) is completing the fifth 3-year cycle of case record reviews to meet the requirements for reporting under PIIA. The current data collection forms and instructions expire October 31, 2021. As part of the renewal process, OCC has revised the document with minor changes that do not change the methodology, but provide respondents with additional guidance, clarification, and support to facilitate completeness and accuracy of the required data submissions.

Clarifying language and a question have been added to the revised document to support Lead Agencies that administer all or part of the CCDF program through other governmental or non-governmental agencies to include the following:

- In Section 1 *Introduction* on page 2, a subsection ''Considerations for Administering CCDF Through Other Agencies'' was added to describe how Lead Agency responsibilities in administering the CCDF program through other entities apply to the error rate review process.
- In Section III *Creating the Sampling Decisions, Assurances, and Fieldwork Preparation Plan* on page 11, and the *Sampling Decisions, Assurances, and Fieldwork Preparation Plan Report template* (Attachment 1), a new item was added at Item 3g Case Review Logistics to request information about how a Lead Agency accesses documents stored by other entities if part of eligibility is determined by the other entity.

OCC is particularly interested in feedback about the clarity of these instructions and the ease and accuracy with which respondents can provide information on accessing documents stored by other entities.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Sampling Decisions, Assurances, and Fieldwork Preparation Plan	52	1	106	5,512	1,837
Record Review Worksheet	52	276	6.33	90,848	30,283
State Improper Payments Report	52	1	639	33,228	11,076
Corrective Action Plan	5	2 [a]	156	1,560	520
Estimated Total Annual Burden Hours					43,716

[a] The total number of responses per respondent ranges from one to three, depending on how long it takes respondents to reduce the Improper Payment Rate to below the threshold. Respondents submit a *Corrective Action Plan* that covers a 1-year period; at the end of each year, if respondents have not reduced the Improper Payment Rate to below the threshold, they submit a new *Corrective Action Plan* for the following year. An average of two responses per respondent is used to calculate annual burden estimates.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 45 CFR part 98, subpart K.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–07425 Filed 4–9–21; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following virtual public meeting entitled ''Animal Generic Drug User Fee Act.'' The purpose of the public meeting is to invite public comment on the Animal Generic Drug User Fee Act (AGDUFA) program and suggestions regarding the features FDA should consider for the next reauthorization of the AGDUFA program. The meeting will be open to the public.

DATES: The public meeting will be hosted via a live virtual webcast on Thursday, May 20, 2021, from 11 a.m. to 1 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration dates and information. To permit the widest possible opportunity to obtain comments on all aspects of the public meeting, the docket will remain open for comment throughout the reauthorization process of AGDUFA, until December 1, 2022. In addition to being publicly viewable at *http://www.regulations.gov,* comments received by June 21, 2021, suggesting changes to the program, will also be published on *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings.*

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 1, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 1, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comments will be made public, you are solely responsible for ensuring that your comments do not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0655 for ''Animal Generic Drug User Fee Act.'' Received comments, those filed in a timely manner, will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your

comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

A transcript of the public meeting will be made available in the docket, as well as on the FDA website at: *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings.*

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 240–402–6888, *lisa.kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The authority for AGDUFA expires September 30, 2023. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal generic drug review process for future fiscal years. Prior to beginning negotiations with the regulated industry on AGDUFA reauthorization, section 742(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j-22(d)(2)) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred in section 742(a) of FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's website. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of AGDUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the AGDUFA program thus far?
2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

II. Background

FDA considers the timely review of generic new animal drug submissions to be central to the Agency's mission to protect and promote human and animal health. The AGDUFA program began in FY 2009 and is currently in the third authorization (AGDUFA III). FDA has published a number of reports that provide useful background on AGDUFA I, AGDUFA II, and AGDUFA III. AGDUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports can be found at: *https://www.fda.gov/industry/fda-user-fee-programs/animal-generic-drug-user-fee-act-agdufa.*

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register no later than midnight Eastern Time on May 18, 2021, by emailing complete contact information for each attendee, including name, title, affiliation, address, email, telephone number, and if you need reasonable accommodations due to a disability (*e.g.,* Closed Captioning) to *cvmagdufa@fda.hhs.gov.* Early registration is recommended. Registrants will receive confirmation when their registration has been received and will be provided the webcast link.

Requests for Oral Presentations: During online registration you may indicate if you wish to make an oral presentation during the public meeting. To facilitate agenda development, registrants requesting to present will be contacted to provide information regarding which topics they intend to address and the title of their presentation. We will do our best to accommodate requests to make an oral presentation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate. All requests to make oral presentations must be received by May 7, 2021.

We will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will notify participants by May 11, 2021. Selected presenters planning to use an electronic slide deck must submit an electronic copy of their presentation to Lisa Kable (see **FOR FURTHER INFORMATION CONTACT**) with the subject line ''AGDUFA Public Meeting Presentation'' on or before May 17, 2021. If presenters choose not to use a slide deck, they are requested to submit a single slide with their name, affiliation, title of their presentation, and contact information. No commercial or promotional material will be permitted to be presented at the public meeting.

Dated: April 5, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07375 Filed 4–9–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Stakeholder Consultation Meetings on the Animal Generic Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice: Request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing this notice to request that public stakeholders notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Animal Generic Drug User Fee Act (AGDUFA). The statutory authority for AGDUFA expires September 30, 2023. The Federal Food,

Drug, and Cosmetic Act (FD&C Act) requires that FDA consult with a range of stakeholders—including patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts—in developing recommendations for the next AGDUFA program and hold discussions with these stakeholders at least once every 4 months during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure consistent stakeholder representation at the consultation meetings.

DATES: Submit notification of intention to participate in continued periodic stakeholder consultation meetings regarding AGDUFA reauthorization by May 20, 2021. These stakeholder meetings are expected to commence on July 2021 and will continue at least once every 4 months during reauthorization negotiations with the regulated industry. See the **SUPPLEMENTARY INFORMATION** section for further information regarding notification of intention to participate.

ADDRESSES: The stakeholder meetings will be held virtually.

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 240–402–6888, *Lisa.Kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2018 Congress passed the Animal Generic Drug User Fee Amendments of 2018 (Pub. L. 115–234; AGDUFA III). The authority for AGDUFA III expires September 30, 2023. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees for future fiscal years to fund the generic new animal drug review process. Section 742(d)(1) of the FD&C Act (21 U.S.C. 379j–22(d)(1)) requires that FDA consult with a range of stakeholders in developing recommendations for consideration for the next AGDUFA program, including representatives from patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts. To initiate this process of consultation, elsewhere in this issue of the **Federal Register**, we are announcing a public meeting to be held on May 20, 2021, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The meeting and written comments submitted to the docket will provide critical input as the Agency prepares for reauthorization discussions. Section 742(d)(3) of the FD&C Act further requires that FDA continue meeting with these stakeholders at least once every 4 months during negotiations with the regulated industry to continue discussions of their views on the reauthorization, including suggested changes to the AGDUFA program.

FDA is issuing this **Federal Register** notice to request that stakeholders—including veterinary, patient and consumer groups, as well as scientific and academic experts—notify FDA of their intent to participate in the periodic consultation meetings on AGDUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings is essential in the reauthorization process. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all future stakeholder discussion while FDA negotiates with the regulated industry. If a stakeholder decides to participate in these meetings at a later time, they may still participate in remaining meetings by notifying FDA (see **FOR FURTHER INFORMATION CONTACT**). These stakeholder discussions will satisfy the requirement in section 742(d)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding AGDUFA reauthorization, please submit notification by email to: *cvmagdufa@fda.hhs.gov* by May 18, 2021. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email address, telephone number, and notice of any special accommodations required due to a disability (*e.g.,* Closed Captioning). Stakeholders will receive confirmation and additional information about the first meeting, and subsequent meeting when scheduled, after FDA receives this notification of intent to participate.

Dated: April 5, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07374 Filed 4–9–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1736]

Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and request for comments; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice announcing a public meeting and requesting comments that appeared in the **Federal Register** of October 13, 2020. In that notice, FDA announced a public meeting, which was held on November 16, 2020, and requested public input on a potential revised approach for considering the human medical importance of antimicrobial new animal drugs when assessing and managing the antimicrobial resistance risks associated with the use of antimicrobial drugs in animals. Specifically, the Agency requested comments on the potential revised process for ranking antimicrobials according to their relative importance in human medicine, on the potential criteria for their ranking, and on the resulting ranked list of antimicrobial drugs. We are taking this action in response to technical difficulties submitting comments to the Federal eRulemaking portal.

DATES: Submit either electronic or written comments by April 22, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 22, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 22, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the

instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1736 for ''Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Kelly Covington, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5661, *Kelly.Covington@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 13, 2020, FDA published a notice announcing a public meeting and requesting comments on a concept paper entitled ''Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs,'' giving interested persons until January 15, 2021, to comment on the public meeting and request for comments. In a notice published in the **Federal Register** on November 27, 2020 (85 FR 76081), the Agency extended the comment period to March 16, 2021. The Agency has received several comments from stakeholders of technical difficulties submitting comments to the Federal eRulemaking portal. In consideration of these difficulties, FDA is reopening the comment period for 10 days to allow these stakeholders the opportunity to submit comments. All comments previously submitted, do not need to be resubmitted.

Dated: April 6, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07452 Filed 4–9–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following virtual public meeting entitled ''Animal Drug User Fee Act.'' The purpose of the public meeting is to invite public comment on the Animal Drug User Fee Act (ADUFA) program and suggestions regarding the features FDA should consider for the next reauthorization of the ADUFA program. The meeting will be open to the public.

DATES: The public meeting will be hosted via a live virtual webcast on Thursday, May 20, 2021, from 2 p.m. to 4 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration dates and information. To permit the widest possible opportunity to obtain comments on all aspects of the public meeting, the docket will remain open for comment throughout the reauthorization process of ADUFA, until December 1, 2022. In addition to being publicly viewable at *http://www.regulations.gov,* comments received by June 21, 2021, suggesting changes to the program, will also be published on *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/adufa-meetings.*

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 1, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 1, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery

service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comments will be made public, you are solely responsible for ensuring that your comments do not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0656 for ''Animal Drug User Fee Act.'' Received comments, those filed in a timely manner, will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

A transcript of the public meeting will be made available in the docket, as well as on FDA's website at: *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/adufa-meetings.*

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 240–402–6888, *lisa.kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The authority for ADUFA expires September 30, 2023. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal drug review process for future fiscal years. Prior to beginning negotiations with the regulated industry on ADUFA reauthorization, section 740A(d)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379j–13(d)(2)) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred to in section 740A(a) of the FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's website. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of ADUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the ADUFA program thus far?

2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

II. Background

FDA considers the timely review of new animal drug submissions to be central to the Agency's mission to protect and promote human and animal health. The ADUFA program began in FY 2004 and is currently in the fourth authorization (ADUFA IV). FDA has published a number of reports that provide useful background on ADUFA I, II, III, and IV. ADUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports can be found at: *https://www.fda.gov/industry/fda-user-fee-programs/animal-drug-user-fee-act-adufa.*

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register no later than midnight Eastern Time on May 18, 2021, by emailing complete contact information for each attendee, including name, title, affiliation, address, email, telephone number, and if you need reasonable accommodations due to a disability (*e.g.,* Closed Captioning) to *cvmadufa@fda.hhs.gov.* Early registration is recommended. Registrants will receive confirmation when their registration has been received and will be provided the webcast link.

Requests for Oral Presentations: During online registration you may indicate if you wish to make an oral presentation during the public meeting. To facilitate agenda development, registrants requesting to present will be contacted to provide information regarding which topics they intend to address and the title of their presentation. We will do our best to accommodate requests to make an oral

presentation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate. All requests to make oral presentations must be received by May 7, 2021.

We will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will notify participants by May 11, 2021. Selected presenters planning to use an electronic slide deck must submit an electronic copy of their presentation to Lisa Kable (see **FOR FURTHER INFORMATION CONTACT**) with the subject line ''ADUFA Public Meeting Presentation'' on or before May 17, 2021. If presenters choose not to use a slide deck, they are requested to submit a single slide with their name, affiliation, title of their presentation, and contact information. No commercial or promotional material will be permitted to be presented at the public meeting.

Dated: April 5, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07373 Filed 4–9–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Stakeholder Consultation Meetings on the Animal Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice: Request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing this notice to request that public stakeholders notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Animal Drug User Fee Act (ADUFA). The statutory authority for ADUFA expires September 30, 2023. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that FDA consult with a range of stakeholders—including patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts—in developing recommendations for the next ADUFA program and hold discussions with these stakeholders at least once every 4 months during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure consistent stakeholder representation at the consultation meetings.

DATES: Submit notification of intention to participate in continued periodic stakeholder consultation meetings regarding ADUFA reauthorization by May 20, 2021. These stakeholder meetings are expected to commence in October 2021 and will continue at least once every 4 months during reauthorization negotiations with the regulated industry. See the **SUPPLEMENTARY INFORMATION** section for further information regarding notification of intention to participate.

ADDRESSES: The stakeholder meetings will be held virtually.

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 240–402–6888, *Lisa.Kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2018 Congress passed the Animal Drug User Fee Amendments of 2018 (Pub. L. 115–234; ADUFA IV). The authority for ADUFA IV expires September 30, 2023. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees for future fiscal years to fund the new animal drug review process. Section 740A(d)(1) of the FD&C Act (21 U.S.C. 379j–13(d)(1)) requires that FDA consult with a range of stakeholders in developing recommendations for consideration for the next ADUFA program, including representatives from patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts. To initiate this process of consultation, elsewhere in this issue of the **Federal Register**, we are announcing a public meeting to be held on May 20, 2021, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The meeting and written comments submitted to the docket will provide critical input as the Agency prepares for reauthorization discussions. Section 740A(d)(3) of the FD&C Act further requires that FDA continue meeting with these stakeholders at least once every 4 months during negotiations with the regulated industry to continue discussions of their views on the reauthorization, including suggested changes to the ADUFA program.

FDA is issuing this **Federal Register** notice to request that stakeholders—including veterinary, patient and consumer groups, as well as scientific and academic experts—notify FDA of their intent to participate in the periodic consultation meetings on ADUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings is essential in the reauthorization process. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all future stakeholder discussions while FDA negotiates with the regulated industry. If a stakeholder decides to participate in these meetings at a later time, they may still participate in remaining meetings by notifying FDA (see **FOR FURTHER INFORMATION CONTACT**). These stakeholder discussions will satisfy the requirement in section 740A(d)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding ADUFA reauthorization, please submit notification by email to: *cvmadufa@fda.hhs.gov* by May 18, 2021. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email address, telephone number, and notice of any special accommodations required due to a disability (*e.g.,* Closed Captioning). Stakeholders will receive confirmation and additional information about the first meeting, and subsequent meetings when scheduled, after FDA receives this notification of intent to participate.

Dated: April 5, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07377 Filed 4–9–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: June 18, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD Offices, 6710B Rockledge Drive, Room 2125B, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Derek J. McLean, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2125B, Bethesda, MD 20892–7002, (301) 443–5082, *derek.mclean@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: June 24, 2021.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD Offices, 6710B Rockledge Drive, Room 2125C, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm 2125C, Bethesda, MD 20817, 301–435–6916, *kielbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: April 7, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07435 Filed 4–9–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 25, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD/NIH, 6710B Rockledge Drive, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Helen Huang, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver, National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, 301–435–8207, *helen.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 6, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07378 Filed 4–9–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; PHS Applications and Pre-Award Reporting Requirements (OD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *ProjectClearanceBranch@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Applications and Pre-Award Reporting Requirements, Revision, OMB 0925–0001, Expiration Date 2/28/2023, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: This collection is being revised to omit the Inclusion Enrollment Report form, which is being converted to a Common form to include the Department of Defense (DoD). The Inclusion Enrollment Report is used for all applications involving NIH-defined clinical research. This form is used to report both planned and cumulative (or actual) enrollment, and describes the sex/gender, race, and ethnicity of the study participants. Starting in January 2022, NIH will require will applicants and recipients to provide their Unique Entity Identifier (UEI) instead of the Data Universal Number System (DUNS) number. Also, the application forms will be updated to align with the *Grants.gov* updated Country and State lists. NIH also anticipates adding an optional field to the end of our forms and applications to get a more accurate assessment of the time it takes our applicants to complete the various forms and applications. This collection also continues to includes PHS applications and pre-award reporting requirements: PHS 398 [paper] Public Health Service Grant Application forms and instructions; PHS 398 [electronic] PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper]; Instructions for a Change of Sponsoring Institution for NRSA Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic are currently approved under 0925–0001. All forms expire 2/28/2023. Post-award reporting requirements are simultaneously consolidated under 0925–0002 and include the Research Performance Progress Report (RPPR). The PHS 398 and SF424 applications are used by applicants to request federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements will facilitate NIH's development of data systems to facilitate oversight of clinical trials as well as understand where gaps in the research portfolio may exist. In addition, some of the data collected here will ultimately be accessible to investigators to pre-populate certain sections of forms when registering their trials with *ClinicalTrials.gov.*

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,090,521.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	4,247	1	35	148,645
PHS 398/424—Electronic:				
PHS Assignment Request Form	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	74,239	1	1	74,239
PHS 398 Modular Budget	56,693	1	1	56,693
PHS 398 Training Budget	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form	561	1	90/60	842
PHS 398 Research Plan	70,866	1	10	708,660
PHS 398 Research Training Program Plan	1,122	1	10	11,220
Data Tables	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form	2,251	1	10	22,510
PHS Human Subjects and Clinical Trial Information	54,838	1	13	712,894
Biosketch (424 Electronic)	80,946	1	2	161,892
PHS Fellowship—Electronic:				
PHS Fellowship Supplemental Form (includes F reference letters)	6,707	1	12.5	83,838
PHS Assignment Request Form	3,354	1	30/60	1,677
PHS Human Subjects and Clinical Trial Information	5,030	1	13	65,390
Biosketch (Fellowship)	6,707	1	2	13,414
416–1	29	1	10	290
PHS 416–5	6,707	1	5/60	559
PHS 6031	6,217	1	5/60	518
VCOC Certification	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	1,500	1	15/60	375
Total Annual Burden Hours		421,777		2,090,521

Dated: April 4, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–07396 Filed 4–9–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (OD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *ProjectClearanceBranch@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Post-award Reporting Requirements Including Research Performance Progress Report (RPPR) Collection, Revision, OMB 0925–0002, Expiration Date 2/28/2023, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: This collection is being revised because starting in January 2022, NIH will require will applicants and recipients to provide their Unique Entity Identifier (UEI) instead of the Data Universal Number System (DUNS) number. Also, the application forms will be updated to align with the *Grants.gov* updated Country and State lists. NIH also anticipates adding an optional field to the end of our forms and applications to get a more accurate assessment of the time it takes our applicants to complete the various forms and applications. The RPPR is required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 is used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements as well as continued monitoring and update during the post-award reporting requirements will facilitate NIH's oversight of clinical trials. In addition, some of the data reported in the RPPR will ultimately be accessible to investigators to update certain sections of forms when registering or reporting their trials with *ClinicalTrials.gov*.

Frequency of response: Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated, and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 535,579.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
REPORTING				
PHS 416–7	12,580	1	30/60	6,290

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	18	4,374
RPPR—Core Data	32,098	1	8	256,784
Biosketch (Part of RPPR)	2,544	1	2	5,088
Data Tables (Part of RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of RPPR, includes inclusion enrollment report)	6,420	1	4	25,680
Publication Reporting	97,023	3	5/60	24,256
Final RPPR—Core Data	18,000	1	10	180,000
Data Tables (Part of Final RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of Final RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of RPPR, includes inclusion enrollment report)	3,600	1	4	14,400
PHS 374	479	1	30/60	240
Final Progress Report	2,000	1	1	2,000
SBIR/STTR Phase II Final Progress Report	1,330	1	1	1,330
Reporting Burden Total				535,204
RECORDKEEPING				
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Grand Total	220,983	415,029		535,579

Dated: April 4, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–07397 Filed 4–9–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0190]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0018

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0018, Official Logbook; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 11, 2021.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2021–0190] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2021–0190], and must be received by June 11, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Official Logbook.

OMB Control Number: 1625–0018.

Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches, and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.

Need: Title 46, United States Code (U.S.C.) sections 11301, 11302, 11303, and 11304 require applicable merchant vessels to maintain an Official Logbook. The Official Logbook contains information about the vessel, voyage, crew, and watch. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Logbook serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, disciplinary actions, etc. Absent the Official Logbook, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's commercial vessel safety program would be negatively impacted, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event required to be logged occurred would not have an official record available.

Forms:

- CG–706B, Official Logbook.

Respondents: Shipping companies.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains at 1,750 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 6, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–07440 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0278]

Port Access Route Study: Northern New York Bight

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of study, request for comments.

SUMMARY: The Coast Guard is seeking additional information related to the notice of study that was published on June 29, 2020, regarding the Northern New York Bight Port Access Route Study (NNYBPARS). Following a review of the comments and materials received, we identified several areas of additional inquiry related to the study. We invite your comments and responses to the proposed questions and information requests.

DATES: Comments and related material must be received on or before May 12, 2021. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Daylight Time on the last day of the comment period.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0278 using the Federal eRulemaking Portal *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this supplemental notice of study, call or email Mr. Craig Lapiejko, First Coast Guard District (dpw), U.S. Coast Guard; telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS Atlantic Coast Port Access Route Study
ANPRM Advance Notice of Proposed Rulemaking
AIS Automatic Identification System
COMDTINST Commandant Instruction
DHS Department of Homeland Security
NNYBPARS Northern New York Bight Port Access Route Study
OCS Outer Continental Shelf
PARS Port Access Route Study
TSS Traffic Separation Scheme
U.S.C. United States Code
USCG United States Coast Guard
VMS Vessel Monitoring System
VTR Vessel Trip Report

II. Background and Purpose

On June 29, 2020, the Coast Guard published a Notice of Study and public meetings; request for comments entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (85 FR 38907) to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to New York and New Jersey and international and domestic transit areas in the First Coast Guard District area of responsibility. This undertaking is required by 46 U.S.C. 70003, which calls for the Coast Guard to conduct a PARS prior to establishing fairways or traffic separation schemes (TSSs).

The public was afforded a 60-day comment period, and two public meetings were held via teleconference and webinar to receive public input. The Coast Guard received 24 comments in response to our **Federal Register** Notice, public meetings and other outreach efforts. A preliminary review of the comments and related materials

received identified additional opportunities for inquiry. For instance, obtaining additional vessel traffic and activities data would help inform several aspects of the study. In this notice, we also seek responses supplying quantitative data or suggesting other authoritative sources that specifically address the items listed in section III.

All comments and supporting documents are available in a public docket and can be viewed at *http://www.regulations.gov,* In the ''Search'' box insert ''USCG–2020–0278'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column.

III. Information Requested

Where possible and pertinent, please provide sources, citations and references to back up or justify your responses. Also, for all pertinent responses, please provide a detailed explanation of how you arrived at your conclusion and the underlying assessment that supports your conclusion. Finally, for all numerical responses please provide us with sufficient information to recreate your calculations. We seek public feedback on the following items:

a. The Coast Guard is conducting the NNYBPARS in accordance with COMDTINST 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy. The instruction is available at *https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI_16003_2B.PDF.* The Coast Guard requests information applicable to 1) PARS objectives and 2) data and other information to assist the Coast Guard conduct the NNYBPARS.

1. PARS Objectives;

i. Determine present traffic density; '

ii. Determine potential traffic density;

iii. Determine if existing vessel routing measures are adequate;

iv. Determine if existing vessel routing measures require modifications;

v. Determine the type of modifications;

vi. Define and justify the needs for new vessel routing measures;

vii. Determine the type of new vessel routing measures; and

viii. Determine if the usage of the vessel routing measures must be mandatory for specific classes of vessels.

2. Data and other information;

i. Vessel traffic characteristics and trends (both existing and potential), including traffic volume, size and types of vessels, potential interference with the flow of commercial traffic, presence of any unusual cargoes, and other similar information;

ii. Fishing activity;

iii. Recreational boating traffic;

iv. Commercial ferry traffic;

v. Military activities;

vi. Existing and potential outer continental shelf (OCS) resource development activities;

vii. Environmental information and factors which may be impacted by potential or amended vessel routing measures;

viii. Underway and projected dredging projects;

ix. Port development activities;

x. Native American Tribal activities and impacts of potential or amended vessel routing measures;

xi. Economic (costs and benefits) effects and impacts; and

xii. Any additional information that arises as a result of public comments.

b. The Coast Guard is utilizing automatic information system (AIS) data, vessel monitoring system (VMS) data, vessel trip report (VTR) data, and fisheries observer data to conduct the NNYBPARS. The Coast Guard requests maritime community representatives provide any additional info that may assist the Coast Guard conduct the NNYBPARS.

c. Do maritime community representatives anticipate impacts to navigation as a result of planned or potential future developments, whether in port, inshore or offshore in the areas within or directly adjacent to the Northern New York Bight (please explain and be specific as possible)?

1. How will vessel navigation routes change as a result of planned or potential future developments?

2. Do maritime community representatives request additional routing measures other than those that currently exist or are being proposed via the Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (85 FR 37034, June 19, 2020) related to planned or potential future developments (please explain and be as specific as possible)?

d. The Coast Guard received numerous comments in response to our **Federal Register** Notice, public meetings and other outreach efforts requesting various fairway widths (*i.e.* 4 NM, 5 NM, 9 NM), to extend current traffic separation schemes, or to identify historical anchorage locations.

1. The Coast Guard requests maritime community representatives provide evidence of why routing measures need to be of the requested width.

2. The Coast Guard requests maritime community representatives provide evidence for the need to extend traffic separation schemes in the Northern New York Bight area out to the OCS.

3. The Coast Guard requests maritime community representatives specifically identify historical anchorages that are requested to be federally recognized. Please provide coordinates.

IV. Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials through the Federal portal at *https://www.regulations.gov.* In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this notice of inquiry as being available in the docket, and public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: April 2, 2021.

T.G. Allan Jr.,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2021–07469 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2114]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

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 July 12, 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://www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2114, 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 also 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
Dickinson County, Kansas and Incorporated Areas **Project: 17–07–0009S Preliminary Date: January 15, 2021**	
City of Solomon	City Office, 116 West Main Street, Solomon, KS 67480.
Unincorporated Areas of Dickinson County	Dickinson County Courthouse, 109 East 1st Street, Suite 202, Abilene, KS 67410.
Allegan County, Michigan (All Jurisdictions) **Project: 14–05–0526S Preliminary Date: September 30, 2019 and November 30, 2020**	
City of Allegan	City Hall, 231 Trowbridge Street, Allegan, MI 49010.
City of Fennville	City Hall, 125 South Maple Street, Fennville, MI 49408.
City of Holland	City Hall, 270 South River Avenue, Holland, MI 49423.
City of Otsego	City Hall, 117 East Orleans Street, Otsego, MI 49078.
City of Plainwell	City Hall, 211 North Main Street, Plainwell, MI 49080.
City of Saugatuck	City Hall, 102 Butler Street, Saugatuck, MI 49453.

Community	Community map repository address
City of the Village of Douglas	City Hall, 86 West Center Street, Douglas, MI 49406.
City of Wayland	City Hall, 103 South Main Street, Wayland, MI 49348.
Township of Allegan	Township Hall, 3037 118th Avenue, Allegan, MI 49010.
Township of Casco	Casco Township Hall, 7104 107th Avenue, South Haven, MI 49090.
Township of Cheshire	Cheshire Township Hall, 471 41st Street, Allegan, MI 49010.
Township of Clyde	Clyde Township Hall, 1679 56th Street, Fennville, MI 49408.
Township of Dorr	Township Hall, 4196 18th Street, Dorr, MI 49323.
Township of Fillmore	Fillmore Township Hall, 4219 52nd Street, Holland, MI 49423.
Township of Ganges	Ganges Township Hall, 1904 64th Street, Fennville, MI 49408.
Township of Gun Plain	Gun Plain Township Hall, 381 8th Street, Plainwell, MI 49080.
Township of Heath	Heath Township Hall, 3440 M–40, Hamilton, MI 49419.
Township of Hopkins	Township Hall, 118 East Main Street, Hopkins, MI 49328.
Township of Laketown	Laketown Township Hall, 4338 Beeline Road, Holland, MI 49423.
Township of Lee	Lee Township Hall, 877 56th Street, Pullman, MI 49450.
Township of Leighton	Leighton Township Hall, 4451 12th Street, Suite A, Wayland, MI 49348.
Township of Manlius	Manlius Township Hall, 3134 57th Street, Fennville, MI 49408.
Township of Martin	Township Hall, 998 Templeton Street, Martin, MI 49070.
Township of Monterey	Monterey Township Hall, 2999 30th Street, Allegan, MI 49010.
Township of Otsego	Township Hall, 400 North 16th Street, Otsego, MI 49078.
Township of Overisel	Overisel Township Hall, A–4307 144th Avenue, Holland, MI 49423.
Township of Salem	Salem Township Hall, 3003 142nd Avenue, Burnips, MI 49314.
Township of Saugatuck	Township Hall, 3461 Blue Star Highway, Saugatuck, MI 49453.
Township of Trowbridge	Trowbridge Township Hall, 913 M–40 South, Allegan, MI 49010.
Township of Valley	Valley Township Hall, 2054 North M–40, Allegan, MI 49010.
Township of Watson	Watson Township Hall, 1895 118th Avenue, Allegan, MI 49010.
Township of Wayland	Wayland Township Hall, 1060 129th Avenue, Shelbyville, MI 49344.
Village of Hopkins	Village Hall, 128 South Franklin Street, Hopkins, MI 49328.
Cheboygan County, Michigan (All Jurisdictions) **Project: 14–05–2322S Preliminary Date: September 29, 2020 and January 12, 2021**	
City of Cheboygan	City Hall, 403 North Huron Street, Cheboygan, MI 49721.
Township of Beaugrand	Beaugrand Township Hall, 1999 Old Mackinaw Road, Cheboygan, MI 49721.
Township of Benton	Benton Township Hall, 5012 Orchard Beach Road, Cheboygan, MI 49721.
Township of Mackinaw	Mackinaw Township Hall, 10595 Wallick Road, Mackinaw City, MI 49701.
Village of Mackinaw City	Village Hall, 102 South Huron Avenue, Mackinaw City, MI 49701.
Iron County, Wisconsin and Incorporated Areas **Project: 17–05–0948S Preliminary Date: July 8, 2020**	
City of Hurley	City Hall, 405 5th Avenue North, Hurley, WI 54534.
City of Montreal	City Hall, 54 Wisconsin Avenue, Montreal, WI 54550.
Unincorporated Areas of Iron County	Iron County Comprehensive Planning, Land and Zoning Department, 300 Taconite Street, Suite 115, Hurley, WI 54534.

[FR Doc. 2021–07465 Filed 4–9–21; 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–2121]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

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 July 12, 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–2121, 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
Gadsden County, Florida and Incorporated Areas **Project: 12–04–0466S Preliminary Date: April 11, 2018**	
City of Gretna	City Hall, 14615 Main Street, Gretna, FL 32332.
City of Midway	City Hall, 50 Martin Luther King Boulevard, Midway, FL 32343.
City of Quincy	City Hall, 404 West Jefferson Street, Quincy, FL 32351.
Town of Greensboro	Town Hall, 150 East 11th Street, Greensboro, FL 32330.
Town of Havana	Cecil G. Trippe Municipal Building, 711 North Main Street, Havana, FL 32333.
Unincorporated Areas of Gadsden County	Gadsden County Edward J. Butler Governmental Complex, 9–B East Jefferson Street, Quincy, FL 32353.
Leon County, Florida and Incorporated Areas **Project: 12–04–0466S Preliminary Date: April 11, 2018**	
Unincorporated Areas of Leon County	Leon County Courthouse, 301 South Monroe Street, Tallahassee, FL 32301.
Rankin County, Mississippi and Incorporated Areas **Project: 14–04–0108S and 20–04–0001S Preliminary Date: April 28, 2020 and November 18, 2020**	
City of Brandon	City Hall, 1000 Municipal Drive, Brandon, MS 39042.
City of Florence	City Hall, 203 College Street, Florence, MS 39073.
City of Flowood	Engineering Building, 109 Woodline Drive, Flowood, MS 39232.
City of Jackson	Department of Public Works, Warren Hood Building, 5th Floor, 200 South President Street, Jackson, MS 39201.
City of Pearl	City Hall, 2420 Old Brandon Road, Pearl, MS 39208.
City of Richland	City Hall, 380 Scarbrough Street, Richland, MS 39218.
Pearl River Valley Water Supply District	Building and Permit Department, 1864 Spillway Road, Brandon, MS 39047.

Community	Community map repository address
Unincorporated Areas of Rankin County	Rankin County Old Court House, 117 North Timber Street, Brandon, MS 39042.
Beaverhead County, Montana and Incorporated Areas Project: 17–08–0252S Preliminary Date: January 15, 2020	
City of Dillon	City Hall, 125 North Idaho Street, Dillon, MT 59725.
Town of Lima	Beaverhead County Courthouse, 2 South Pacific Street, Suite 7, Dillon, MT 59725.
Unincorporated Areas of Beaverhead County	Beaverhead County Courthouse, 2 South Pacific Street, Suite 7, Dillon, MT 59725.

[FR Doc. 2021–07464 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0013; OMB No. 1660–0002]

Agency Information Collection Activities: Proposed Collection; Comment Request; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning Disaster Assistance Registration and COVID–19 Funeral Assistance Registration.

DATES: Comments must be submitted on or before June 11, 2021.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments.

Online. Submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0013. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate, 540–686–3602. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288) (the Stafford Act), as amended, is the legal basis for FEMA to provide financial assistance and services to individuals who apply for disaster assistance benefits in the event of a federally-declared disaster. Regulations in Title 44 of the Code of Federal Regulations, Subpart D, ''Federal Assistance to Individuals and Households,'' implement the policy and procedures set forth in section 408 of the Stafford Act. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that are unable to be met through other means. Individuals and households may apply for assistance (Registration Intake) under the Individuals and Households program in person, via telephone, or internet. As a result of the Consolidated Appropriations Act, 2021, to be considered for COVID–19 Funeral Assistance, applicants who are responsible for a deceased individual's funeral expenses must contact FEMA to complete a disaster assistance registration via telephone.

Collection of Information

Title: Disaster Assistance Registration.

Type of Information Collection: Extension, without change, of a currently approved information collection number.

OMB Number: 1660–0002.

FEMA Forms: FEMA Form 009–0–1T (English), Tele-Registration, Disaster Assistance Registration; FEMA Form 009–0–1T–COVID–FA (English), Tele-Registration, COVID–19 Funeral Assistance; FEMA Form 009–0–1Int (English), internet, Disaster Assistance Registration; FEMA Form 009–0–2Int (Spanish), internet, Registro Para Asistencia De Desastre; FEMA Form 009–0–1 (English), Paper Application/Disaster Assistance Registration; FEMA Form 009–0–2 (Spanish), Solicitud en Papel/Registro Para Asistencia De Desastre; FEMA Form 009–0–3 (English), Declaration and Release; FEMA Form 009–0–4 (Spanish), Declaración Y Autorización; FEMA Form 009–0–5 (English), Manufactured Housing Unit Revocable License and Receipt for Government Property; FEMA Form 009–0–6 (Spanish), Las Casas Manufacturadas Unidad Licencia Revocable y Recibo de la Propiedad del Gobierno; Request for Information (RFI).

Abstract: The forms in this collection are used to obtain pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses they are unable to meet. This extension, without change, will also support the continued ability to provide COVID–19 Funeral Assistance to individuals who responsible for a deceased individual's funeral expenses.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,004,488.

Estimated Number of Responses: 2,004,488.

Estimated Total Annual Burden Hours: 662,708.

Estimated Total Annual Respondent Cost: $23,220,781.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $203,187,715.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Senior Manager, Records Management Branch, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2021–07461 Filed 4–9–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2120]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

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 July 12, 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–2120, 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
Lake County, Illinois and Incorporated Areas Project: 13–05–4213S Preliminary Date: May 19, 2020	
City of Highland Park	Public Services Building, 1150 Half Day Road, Highland Park, IL 60035.
City of Lake Forest	City Hall, 220 East Deerpath Road, Lake Forest, IL 60045.
City of North Chicago	City Hall, 1850 Lewis Avenue, North Chicago, IL 60064.
City of Waukegan	Public Works Building, 1700 North McAree Road, Waukegan, IL 60085.
City of Zion	City Hall, 2828 Sheridan Road, Zion, IL 60099.
Unincorporated Areas of Lake County	Lake County Central Permit Facility, 500 West Winchester Road, Unit 101, Libertyville, IL 60048.
Village of Beach Park	Village Hall, 11270 West Wadsworth Road, Beach Park, IL 60099.
Village of Grayslake	Village Hall, 10 South Seymour Avenue, Grayslake, IL 60030.
Village of Gurnee	Village Hall, 325 North O'Plaine Road, Gurnee, IL 60031.
Village of Lake Bluff	Village Hall, 40 East Center Avenue, Lake Bluff, IL 60044.
Village of Libertyville	Schertz Building, 200 East Cook Avenue, Libertyville, IL 60048.
Village of Lindenhurst	Village Hall, 2301 East Sand Lake Road, Lindenhurst, IL 60046.
Village of Old Mill Creek	Village Hall, 19020 West Old Town Court, Old Mill Creek, IL 60046.
Village of Round Lake Beach	Village Hall, 1937 North Municipal Way, Round Lake Beach, IL 60073.
Village of Third Lake	Village Hall, 87 North Lake Avenue, Third Lake, IL 60030.
Village of Wadsworth	Village Hall, 14155 West Wadsworth Road, Wadsworth, IL 60083.
Village of Winthrop Harbor	Village Hall, 830 Sheridan Road, Winthrop Harbor, IL 60096.
Oconto County, Wisconsin and Incorporated Areas Project: 13–05–4197S Preliminary Date: June 25, 2020	
City of Oconto	City Hall, 1210 Main Street, Oconto, WI 54153.
Unincorporated Areas of Oconto County	Oconto County Courthouse, 301 Washington Street, Oconto, WI 54153.

[FR Doc. 2021–07463 Filed 4–9–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2020–0046]

Agency Information Collection Activities: Homeland Security Acquisition; Regulation (HSAR) Regulation on Agency Protests

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension without change of a currently approved collection, 1600–0004.

SUMMARY: The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on Monday, November 16, 2020 for a 60-day public comment period. No comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 12, 2021. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR) and 48 CFR Chapter 1 provide general procedures on handling protests submitted by contractors to Federal agencies. FAR Part 33.103, Protests, Disputes and Appeals, prescribes policies and procedures for filing protests and for processing contract disputes and appeals. While the FAR prescribes the procedures to be followed for protests to the agency, it allows agencies to determine the method of receipt. DHS will utilize electronic mediums (email or facsimile) for collection of information and will not prescribe a format or require more information than what is already required in the FAR. If DHS determines there is a need to collect additional information outside of what is required in the FAR, DHS will submit a request to the Office of Management and Budget (OMB) for approval.

The prior information collection request for OMB No. 1600–0004 was approved through November 30, 2021 by OMB in a Notice of OMB Action. This justification supports a request for an extension of the approval.

The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with DHS. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of protests.

Agency protest information is contained in each individual solicitation document, and provides the specified contracting officer's name, email, and mailing address that the contractors would use to submit its response. The FAR does not specify the format in which the contractor should submit protest information. However, most contractors use computers to prepare protest materials and submit time sensitive responses electronically (email or facsimile) to the specified Government point of contact. Since the responses must meet specific timeframes, a centralized mailbox or website would not be a practical method of submission. Submission of protest information through contracting officers' email or through facsimile are the best methods to use to document receipt of protest information, and are

the methods most commonly used in the Government protest process.

This information collection may involve small business contractors, depending on the particular transaction. The burden applied to small businesses is minimal and consistent with the goals of achieving timely resolution of agency protests. This information is collected only when contractors choose to file a protest. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level claims.

DHS/ALL/PIA–006 General Contact Lists covers the basic contact information that must be collected for DHS to address these protests. The other information collected will typically pertain to the contract itself, and not individuals. However, all information for this information collection is submitted voluntarily. Technically, because this information is not retrieved by personal identifier, no SORN is required. However, DHS/ALL–021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information. There is no assurance of confidentiality provided to the respondents.

The burden estimates provided are based upon reports of protest activities submitted to the GAO or the Court of Federal Claims in Fiscal Year 2019. No program changes have occurred or changes to the information being collected, however, the burden was adjusted to reflect an agency adjustment decrease of 6 respondents within DHS for Fiscal Year 2019, as well as an increase in the average hourly wage rate.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Homeland Security Acquisition Regulation (HSAR) Regulation on Agency Protests.

OMB Number: 1600–0004.

Frequency: On occasion.

Affected Public: Private Sector.

Number of Respondents: 93.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 186.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2021–07371 Filed 4–9–21; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2020–0045]

Agency Information Collection Activities: Homeland Security Acquisition; Regulation (HSAR) Various Homeland Security Acquisitions Regulations, DHS Form 700–1, DHS Form 700–2, DHS Form 700–3, DHS Form 700–4

AGENCY: Department of Homeland Security, (DHS).

ACTION: 30-Day notice and request for comments; extension without change of a currently approved Collection, 1600–0002.

SUMMARY: The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on Monday, November 16, 2020 for a 60-day public comment period. No comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 12, 2021. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: This information collection is associated with the forms listed below and is necessary to implement applicable parts of the HSAR (48 CFR Chapter 30). There are four forms under this collection of information request that are used by offerors, contractors, and the general public to comply with requirements in contracts awarded by the Department of Homeland Security (DHS). The information collected is used by contracting officers to ensure compliance with terms and conditions of DHS contracts. The forms are as follows:

(1) DHS Form 700–1, Cumulative Claim and Reconciliation Statement (see (HSAR) 48 CFR 3004.804–507(a)(3)
(2) DHS Form 700–2, Contractor's Assignment of Refund, Rebates, Credits and Other Amounts (see (HSAR) 48 CFR 3004.804–570(a)(2)
(3) DHS Form 700–3, Contractor's Release (see (HSAR) 48 CFR 3004.804–570(a)(1)
(4) DHS Form 700–4, Employee Claim for Wage Restitution (see (HSAR) 48 CFR 3022.406–9

These forms will be prepared by individuals, contractors or contract employees during contract administration. The information collected includes the following:

- DHS Forms 700–1, 700–2 and 700–3: Prepared by individuals, contractors or contractor employees prior to contract closure to determine whether there are excess funds that are available for deobligation versus remaining (payable) funds on contracts; assignment or transfer of rights, title, and interest to the Government; and release from liability. The contracting officer obtains the forms from the contractor for closeout, as applicable. Forms 700–1 and 02 are mainly used for calculating costs related to the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts; and, Form 700–3 is mainly used for calculating costs related to the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts but can be used for all contract types.
- DHS Form 700–4 is prepared by contractor employees making claims for unpaid wages. Contracting officers must obtain this form from employees seeking restitution under contracts to provide to the Comptroller General. This form is applicable to all contract types, both opened and closed.

The prior information collection request for OMB No. 1600–0002 was

approved through November 30, 2021 by OMB in a Notice of OMB Action. This justification supports a request for an extension of the approval.

The purpose of the information collected is to ensure proper closing of physically complete contracts. The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration and the Department of Labor (DOL). If this information is not collected, DHS could inadvertently violate statutory or regulatory requirements and DHS's interests concerning inventions and contractors' claims would not be protected.

The four DHS forms are available on the DHS Homepage (*https://www.dhs.gov/acquisition-policy*). These forms can be filled in electronically and submitted via email or facsimile to the specified Government point of contact. Since the responses must meet specific timeframes, a centralized mailbox or website would not be an expeditious or practical method of submission. The use of email or facsimile is the best solution and is most commonly used in the Government. The information requested by these forms is required by the HSAR. The forms are prescribed for use in the closeout of applicable contracts and during contract administration.

Information collection may or may not involve small business contractors. The burden applied to small business is the minimum consistent with the goals of ensuring responsiveness to Government requirements. To reduce burden on small businesses and other small entities, the HSAR is continuously reviewed to determine whether the requirements remain valid.

- DHS Form 700–1, Cumulative Claim and Reconciliation Statement: Less frequent incidence of collecting such information would result in inadequate closeout data. The office administering the contract would not have the necessary information to (1) determine settlement of indirect costs; and (2) adequately closeout cost-reimbursement, time-and-materials, and labor-hour contracts.

There are FAR and HSAR clauses that require protection of rights in data and proprietary information if requested and designated by an offeror or contractor. Additionally, disclosure or non-disclosure of information is handled in accordance with the Freedom of Information Act. There is no assurance of confidentiality provided to the respondents.

No PIA is required as the information is collected from DHS personnel (contractors only). Although, the DHS/ALL/PIA–006 General Contacts lists PIA does provided basic coverage. And technically, because this information is not retrieved by personal identifier, no SORN is required. However, DHS/ALL–021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information.

The burden estimates provided are based upon contracts reported by DHS and its Components to the FPDS for Fiscal Year 2019. No program changes occurred and there were no changes to the information being collected. However, the burden was adjusted to reflect an agency adjustment decrease of 22,225 in the number of respondents within DHS for Fiscal Year 2019, and an increase in the average hourly wage rate.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, (DHS).

Title: Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Various Homeland Security Acquisitions Regulations.

OMB Number: 1600–0002.

Frequency: On Occasion.

Affected Public: Private Sector.

Number of Respondents: 34,013.

Estimated Time per Respondent: 1 Hour.

Total Burden Hours: 34,013.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2021–07372 Filed 4–9–21; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Request for Applicants for Appointment to the Aviation Security Advisory Committee

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; Request for Applicants.

SUMMARY: The Transportation Security Administration (TSA) is requesting applications from individuals who are interested in being appointed to serve on the Aviation Security Advisory Committee (ASAC). All applicants must represent one of the constituencies specified below in order to be eligible for appointment. ASAC's mission is to provide advice and recommendations to the TSA Administrator on improving aviation security matters, including developing, refining, and implementing policies, programs, rulemaking, and security directives pertaining to aviation security, while adhering to sensitive security guidelines.

DATES: Applications for membership must be submitted to TSA using one of the methods in the **ADDRESSES** section below on or before May 3, 2021.

ADDRESSES: Applications must be submitted by one of the following means:

- *Email: ASAC@tsa.dhs.gov.*
- *Mail:* Tamika McCree Elhilali, ASAC Designated Federal Officer, Transportation Security Administration (TSA–28), 6595 Springfield Center Drive, Springfield, VA 20598–6028.

See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Tamika McCree Elhilali, ASAC Designated Federal Officer, Transportation Security Administration (TSA–28), 6595 Springfield Center Drive, Springfield, VA 20598–6028, *ASAC@tsa.dhs.gov,* 571–227–2632.

SUPPLEMENTARY INFORMATION: ASAC is an advisory committee established pursuant to 49 U.S.C. 44946. The committee is composed of individual members representing key constituencies affected by aviation

security requirements. As required by statute, the ASAC is composed of individuals representing not more than 34 member organizations. Each organization is represented by one individual (or the individual's designee).

Balanced Membership Plans

TSA is seeking applications for the membership categories scheduled to expire in May 2021, which are marked with an asterisk in this section below. Individuals are appointed by the TSA Administrator to represent 19 key constituencies affected by aviation security requirements, as defined at 49 U.S.C. 44946(c)(1)(C). The following list provides the 19 key constituencies and identifies with an asterisk (*) the constituencies for whom the current representative's term is expiring:

1. Air carriers
2. All-cargo air transportation *
3. Labor organizations representing air carrier employees *
4. Aircraft manufacturers *
5. Airport operators *
6. General aviation *
7. Travel industry *
8. Victims of terrorist acts against aviation *
9. Law enforcement and security experts
10. Indirect air carriers *
11. Aviation security technology industry (including screening technology and biometrics)
12. Airport-based businesses (including minority-owned small businesses) *
13. Passenger advocacy groups
14. Businesses that conduct security operations at airports (Screening Partnership Program contractors) *
15. Labor organizations representing transportation security officers *
16. Airport construction and maintenance contractors
17. Labor organizations representing employees of airport construction and maintenance contractors
18. Privacy organizations
19. Aeronautical repair stations

ASAC does not have a specific number of members allocated to any membership category and the number of members in a category may change to fit the needs of the Committee, but each organization shall be represented by one individual. Members will serve as representatives and speak on behalf of their respective constituency group, and will not be appointed as Special Government Employees as defined in 18 U.S.C. 202(a). Membership on ASAC is personal to the appointee and a member may not send an alternate to a Committee meeting. Pursuant to 49 U.S.C. 44946(c)(3), members shall not receive pay, allowances, or benefits from the Government by reason of their service on ASAC.

Committee Meetings

The ASAC typically convenes four times per year. Additional meetings may be held with the approval of the Designated Federal Official. While at least one meeting per year is open to the public, due to the sensitive nature of the material discussed, the other meetings are typically closed to the public. In addition, members are expected to participate on ASAC subcommittees that typically meet more frequently to deliberate and discuss specific aviation matters.

Committee Membership

Committee members are appointed by and serve at the pleasure of the TSA Administrator for a 2-year term or until a successor is appointed. Members who are currently serving on the Committee are eligible to reapply for membership. A new application is required.

Application for Advisory Committee Appointment

TSA is seeking applications for the membership categories scheduled to expire in May 2021, which are marked with an asterisk in the Balanced Membership Plans section above. Any person wishing to be considered for appointment to ASAC must provide the following:

- Complete professional resume.
- Statement of interest and reasons for application, including the membership category, how you represent a significant portion of that constituency and also provide a brief explanation of how you can contribute to one or more TSA strategic initiative, based on your prior experience with TSA, or your review of current TSA strategic documents that can be found at *www.tsa.gov/about/strategy.*
- Home and work addresses, telephone number, and email address.

Please submit your application to the Responsible TSA Official in the **ADDRESSES** section noted above by May 3, 2021.

Dated: April 6, 2021.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2021–07362 Filed 4–9–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–OLE–2021–N003; FF09L01300/FXLE12200900000/201; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; U.S. Fish and Wildlife Service Law Enforcement Training System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 12, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–Acadis in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection

requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On October 9, 2020, we published in the **Federal Register** (85 FR 64157) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on December 8, 2020. We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: The Branch of Training and Inspection (BTI) in the Service's Office of Law Enforcement coordinates and conducts training for Service special agents, wildlife inspectors, and administrative staff, as well as for State, Native American, and foreign individuals responsible for wildlife and habitat protection. Over the past decade, there have been substantial increases in the numbers of programs and individuals trained, hours of training provided, and numbers of training sites.

There is a critical need for a comprehensive, reliable, and secure internet-based system capable of enhancing the Service's ability to plan, coordinate, and track the increased training-associated information and workflow, as well as the associated equipment, materials, and supplies required to successfully accomplish and sustain our vital training environments.

The BTI purchased the Acadis Readiness Suite, by Envisage Technologies. This software suite provides the Service with the opportunity to enhance the standardization of many of the internal processes associated with training and also provides us with an improved ability to respond to inquiries from Congress, the Department of the Interior, and other external agencies. The software suite will enhance the ability of the BTI to:

- Schedule/track internal and external training events;
- Improve the ability to register/track both our internal and external student population;
- To maintain training records throughout the career of Service personnel;
- To improve the ability to test and survey Service student populations;
- To establish a robust lesson plan repository; and
- To respond to inquiries from internal and external agencies.

In order to administer this proposed collection of information, the Service (in consultation with trainee recommendations provided to the Service by U.S. Embassies and the State Department) will collect the following information from prospective trainees as part of the registration process:

- Applicant's full legal name;
- Photograph;
- Biography;
- Gender;
- Date of birth;
- Last four digits of Social Security Number;
- Email address;
- Home address and telephone number;
- Years of law enforcement officer experience;
- Highest education level;
- Agency name and address, title/rank, and level in agency;
- Emergency contact name and phone number; and
- Supervisor's name, email address, and phone number.

In addition to the required information above, international course participants will also be required to provide the following, which would be used only in the event of an emergency:

- Passport number and country of issue;
- Passport expiration date;
- National ID number; and
- Languages spoken.

We will use two separate registration forms, one for U.S. citizens attending the domestic training programs and the other for international students who will attend training programs here in the United States. The U.S. citizens do not need a current passport or international identification number, because they will not be entering into the United States. Our international partners will be entering the United States and thus will need to ensure their documentation is valid for entry into the country.

Participants will each automatically receive the post-course evaluation form, which asks them to provide feedback on the following:

- Length of experience;
- Program length;
- Overall ratings;
- Content, presentation, and course materials;
- Labs, practical exercises, and written exams;
- Program outcomes; and
- General comments.

The Service will use the information collected to record, track, and manage training records of domestic and foreign students affiliated with law enforcement agencies who attend training offered by the Service. The information will provide us with the capability to search the records of previous attendees (upon official inquiry only) by name, country of origin, or specific identifying number. We will only use students' information in the Acadis Readiness Suite for administrative functions such as signing up/registering for training, training history, and training requirements. In the international survey, we also ask specific questions about language proficiency to determine what type and how many interpreters will be needed in the program; this information assists us in creating breakout groups.

The authorities for the Service to collect the required information necessary to administer training programs utilizing the Acadis Readiness Suite include:

- Bald and Golden Eagle Protection Act (16 U.S.C. 668–668c);
- Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378);
- National Wildlife Refuge System Administration Act (16 U.S.C 668dd–668ee);
- Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718h);
- Migratory Bird Treaty Act (16 U.S.C. 703–712);

- Endangered Species Act (16 U.S.C. 1531–1543);
- Marine Mammal Protection Act (16 U.S.C. 1361–1407);
- Refuge Recreation Act (16 U.S.C. 460k–460k-4);
- Tariff Act of 1930 (19 U.S.C. 1202–1527);
- Uniform Federal Crime Reporting Act (28 U.S.C. 534);
- USA PATRIOT Act of 2001 (Pub. L. 107–56);
- USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177);
- Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458);
- Homeland Security Act of 2002 (Pub. L. 107–296);
- Homeland Security Presidential Directive 12—Policy for a Common Identification Standard for Federal Employees and Contractors; and
- Criminal Intelligence Systems Operating Policies, 28 CFR part 23.

Title of Collection: U.S. Fish and Wildlife Service Law Enforcement Training System.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Domestic and international students who attend the law enforcement/conservation training offered by the Service's BTI.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for the initial registration, and on occasion for training session selections and post-course evaluations.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (mins)	Estimated annual burden hours
Account Registration:					
State/Local/Tribal Govt	100	1	100	15	25
Foreign Government	1,000	1	1,000	15	250
Post Course Evaluation:					
State/Local/Tribal Govt	100	1	100	15	25
Foreign Government	1,000	1	1,000	15	250
Totals:	*2,200*		*2,200*		*550*

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 7, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–07462 Filed 4–9–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX21EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public webinar meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The webinar meeting will be held on Tuesday, April 27, 2021 from 1:00 p.m. to 5:00 p.m., and on Wednesday, April 28, 2021 from 1:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held via webinar and teleconference. Send your comments to Ms. Dionne Duncan-Hughes, Group Federal Officer by email to *gs-faca-mail@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), USGS, 909 First Avenue, Suite 800, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix 2), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of the Geospatial Data Act of 2018 (GDA) and Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics:

—FGDC Update
—GDA Reporting
—Landsat Advisory Group
—3D Elevation Program
—Stakeholder Engagement
—GeoPlatform
—National Spatial Data Infrastructure Strategic Plan Implementation
—Public-Private Partnerships
—Public Comments

Meeting Accessibility/Special Accommodations: The webinar meeting is open to the public and will take place from 1:00 p.m. to 5:00 p.m. on April 27 and from 1:00 p.m. to 5:00 p.m. on April 28. Members of the public wishing to attend the meeting should contact Mr. John Mahoney by email at *jmahoney@usgs.gov* to register. Webinar/conference line instructions will be provided to registered attendees prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Mr. John Mahoney at the email stated above or by telephone at (206) 220–4621 at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: There will be an opportunity for public comment during the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the Committee for consideration. To allow for full consideration of information by the Committee members, written comments must be provided to John Mahoney, FGDC, USGS, 909 First Avenue, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621, at least three (3) business days prior to the meeting. Any written comments received will be provided to the committee members before the meeting.

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.

Authority: 5 U.S.C. Appendix 2.

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2021–07424 Filed 4–9–21; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.10200000.DF0000. LXSSH1080000.20X.HAG 21–0028]

Notice of Public Meeting for the San Juan Islands National Monument Advisory Committee, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 and the U.S. Department of the Interior, Bureau of Land Management (BLM), the San Juan Islands National Monument Advisory Committee (MAC) will meet as follows.

DATES: The MAC will hold a public meeting on Wednesday, May 12, 2021. This meeting will run from 9:00 a.m. to 3:30 p.m. A public comment period will be available in the afternoon.

ADDRESSES: The meeting will be held online using the Zoom meeting application, or at the Lopez Community Center for the Arts, 204 Village Road, Lopez Island, WA 98261, if allowed. Those wishing to participate in the Zoom meeting can contact the Spokane District Public Affairs Officer, Jeff Clark, for the link or call-in number (see **FOR FURTHER INFORMATION CONTACT**). The link and final agenda will also be provided on the BLM San Juan Islands National Monument Advisory Committee website at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/san-juan-islands-mac* and on social media accounts. The public may send written comments to the MAC at BLM Spokane District, Attn: MAC, 1103 N Fancher, Spokane Valley, WA 99212.

FOR FURTHER INFORMATION CONTACT: Jeff Clark, Spokane District Public Affairs Officer, 1103 N Fancher, Spokane Valley, WA 99212, (509) 536–1297, or *jeffclark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Clark during normal business hours. This service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The San Juan Islands MAC is comprised of 12 members representing a wide array of interests, including recreation, Tribal, education, environmental organizations, and landowners. The May meeting will begin at 9:00 a.m. with a welcome of the new MAC members. After introductions, the members will spend time reviewing the Proposed Resource Management Plan and Environmental Impact Statement and clarifying items from the BLM. This discussion/review will continue until a working lunch at noon. At noon, members of the public will have the opportunity to make comments to the MAC during a 1-hour public comment period. The review will continue after the public comment period, if necessary. The next topic will be to consider opportunities for the MAC to support implementation of the management plan once the record of decision is signed. A roundtable discussion on local landscape status over the last 3 years by each of the committee members and by the BLM will be the next agenda item. The MAC will adjourn no later than 3:30 p.m. All advisory council meetings are open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM by 11:00 a.m. on the meeting day at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The BLM appreciates all comments.

(Authority: 43 CFR 1784.4–2)

Kurt Pindel,

Spokane District Manager.

[FR Doc. 2021–07382 Filed 4–9–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031672; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Bixby Memorial Free Library, Vergennes, VT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bixby Memorial Free Library, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Bixby Memorial Free Library. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Bixby Memorial Free Library at the address in this notice by May 12, 2021.

ADDRESSES: Patricia Reid, Bixby Memorial Free Library, 258 Main Street, Vergennes, VT 05491, telephone (802) 877–2211, email *patricia.reid@bixbylibrary.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Bixby Memorial Free Library, Vergennes, VT, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime before 1968, three cultural items were removed from Tennessee. In 1968, these items were given to the Bixby Memorial Free Library by Ernst Bilhuber, a Euro-American collector of Native American objects and resident of the Vergennes area. The three items are one bowl portion of a Bird Effigy Pipe (inventory number 1968.1.20), one Fish Effigy Bowl (inventory number 1968.1.134), and one Chickasaw Red Bird Effigy Footed Water Jug (inventory number 1968.1.140).

The Bird Effigy Pipe is made of brown sandstone. The pipe is carved to resemble the head of a bird, and the bowl is carved into the top of the head. A stem for smoking would have been attached to the bird's neck. The Fish Effigy Bowl is made of Mississippian grayware. The object is round with a fish head protruding from one end and fish tail protruding from the opposite side. There are also several ''fins'' protruding from the sides of the bowl.

The Chickasaw people have a link to the southeastern United States, including Tennessee, as documented in the Treaty of 1816. During consultation with representatives of The Chickasaw Nation, the three objects listed in this notice were recognized by the Chickasaw team as funerary in nature, and similar to previously repatriated associated funerary objects that had been removed from ancestral burials in their homelands, which encompass the Tennessee area. Consequently, the Bixby Memorial Free Library has determined that a relationship of shared group identity can reasonably be traced between The Chickasaw Nation and the Muskogean linguistic cultures connected with the items listed in this notice.

Determinations Made by the Bixby Memorial Free Library

Officials of the Bixby Memorial Free Library have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Chickasaw Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Patricia Reid, Bixby Memorial Free Library, 258 Main Street, Vergennes, VT 05491, telephone (802) 877–2211, email *patricia.reid@bixbylibrary.org,* by May 12, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Chickasaw Nation may proceed.

The Bixby Memorial Free Library is responsible for notifying The Chickasaw Nation that this notice has been published.

Dated: March 26, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–07407 Filed 4–9–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–31]

Jennifer L. St. Croix, M.D.; Decision and Order

I. Introduction

On April 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Jennifer L. St. Croix, M.D. (hereinafter, Respondent), of Covington, Tennessee. OSC, at 1. The OSC proposed the revocation of Respondent's DEA Certificate of Registration No. FS2669868 and the denial of ''any pending application to modify or renew such registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) for the reason that . . . [her] continued registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f).'' *Id.*

The substantive grounds for the proceeding, as alleged in the OSC, are that Respondent '' 'committed such acts as would render . . . [her] registration . . . inconsistent with the public interest.' *See* 21 U.S.C. 824(a)(4).'' *Id.* at 3. Specifically, the OSC alleged that Respondent violated the commitments she made to DEA when she executed a three-year Memorandum of Agreement (hereinafter, MOA) effective June 25, 2011. *Id.* at 2. According to the OSC, Respondent's MOA commitments, to ''abide by all Federal, State, and local laws and regulations pertaining to controlled substances'' and to ''maintain a log of all controlled substances prescribed, administered or dispensed to patients at . . . [her] registered premises or elsewhere, including call-in prescriptions, for review by DEA personnel at any time,'' were what permitted her to maintain an unrestricted registration. *Id.*

First, according to the OSC, Respondent continued to issue ''prescriptions to individuals who are intimate or close acquaintances, and provided prescription drug logs to DEA that were noncompliant with the terms of the June 2011 MOA'' due to the falsities included in ten of them.[1] *Id.* The OSC also alleged that Respondent failed to maintain medical records pertaining to her prescribing of controlled substances, and that she prescribed controlled substances to an individual with whom she had a ''romantic interaction.'' *Id.* The authorities that the OSC listed for these allegations are 21 U.S.C. 843(a)(4)(A), 21 CFR 1306.04(a), Tenn. Code Ann. § 63–6–214(b)(1), Tenn. Code Ann. § 63–6–214(b)(12), Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(a)(4) and (e), and Tenn. Tenn. Comp. R. & Regs. R. 0880–2–.14(8)(a) (adopting opinion 8.14 of the American Medical Association Code of Ethics). *Id.* at 2–3.

Second, the OSC alleged that Respondent failed to submit MOA-required prescription drug logs to DEA for six months even though ''DEA's subsequent review of prescription data revealed that . . . [she] issued controlled substance prescriptions during'' those months.[2] *Id.* at 3. The OSC cited 21 U.S.C. 823(f)(5) as the statutory basis for this allegation. *Id.*

Third, according to the OSC, Respondent ''stored controlled substances in an exterior storage shed at

[1] The charged falsities were alleged to be in Respondent's drug log submissions dated August, October, and November of 2012, February, May, June, July, October, and November of 2013, and January 2014. OSC, at 2.

[2] The six months during which Respondent allegedly issued controlled substance prescriptions without submitting prescription drug logs to DEA were February, March, and April 2012 and January, March, and April 2013. OSC, at 3.

. . . [her] private residence . . . for dispensing from . . . [her] private residence . . . sometime between March 7, 2013 and November 6, 2013.'' *Id.* The OSC cited 21 CFR 1301.12(a) as the basis for the allegation that Respondent stored controlled substances at an unregistered location. *Id.*

Fourth, the OSC charged Respondent with violating 21 CFR 1301.71(a), failure to provide effective controls or procedures to guard against the theft or diversion of controlled substances, due to her admission that ''the door to . . . shed did not close securely.'' *Id.*

Fifth, connected to the charge that Respondent purchased controlled substances ''for dispensing from . . . [her] private residence,'' the OSC alleged that Respondent ''did not conduct an initial inventory of controlled substances received on March 7, 2013, nor did . . . [she] maintain records of . . . [her] dispensing these drugs as required by 21 CFR 1304.03(a) and (b), 1304.04(g), 1304.11(b) and (e), and 1304.21(a). *Id.*

In sum, the OSC alleged that Respondent's actions, when judged under 21 U.S.C. 823(f)(2), (f)(4) and (f)(5), ''render[ ] . . . [her] continued registration with the DEA to handle controlled substances inconsistent with the public interest.'' *Id.* at 3–4.

The OSC notified Respondent of her right to request a hearing on the allegations or to submit a written statement while waiving her right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 4 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to file a corrective action plan. OSC, at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge (hereinafter, ALJ) John J. Mulrooney, II. The parties submitted ten stipulations.[3] Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, RD), at 3–4. In addition, the Chief ALJ took official notice of two documents concerning Respondent issued by the Tennessee Board of Medical Examiners (hereinafter, TBME) after giving the parties notice of his intent to do so and receiving no objection. Official Notice Order dated March 1, 2018, attaching Notice of Charges and Memorandum of Assessment of Civil Penalty and Costs dated June 3, 2016 (hereinafter, Notice of Charges) and Final Order dated May 24, 2017 (hereinafter, TBME Final Order).

The hearing in this matter took place in Nashville, Tennessee on March 13 and 14, 2018. The Chief ALJ filed the RD on May 10, 2018.[4] RD, at 1. Noting that Respondent had already been ''afforded the administrative grace'' of a MOA, the Chief ALJ recommended that Respondent's registration be revoked and that any pending applications for its renewal be denied. *Id.* at 68, 70. Respondent filed exceptions to the RD on May 30, 2018. Letter of the Chief ALJ to the Acting Administrator dated June 7, 2018, at 1. The Government neither filed exceptions nor responded to Respondent's Exceptions. *Id.* After the Chief ALJ certified the record and transmitted it to me, Respondent, on July 12, 2018, submitted a Motion to Consider Amended Corrective Action Plan (hereinafter, MCACAP).

Having examined and considered the record in its entirety, I agree with the conclusion of the Chief ALJ that Respondent's registration should be revoked and that all pending applications for its renewal or modification should be denied.[5] I make the following findings.

II. Findings of Fact

A. Respondent's Controlled Substance Registration

The parties stipulated that Respondent is ''currently registered . . . as a practitioner in Schedules II–V under DEA registration number FS 2669868'' in Covington, Tennessee.[6] Prehearing Ruling dated June 12, 2017 (hereinafter, Prehearing Ruling), at 1; RD, at 3. The parties and the Chief ALJ further agreed that Respondent's registration ''remains current based upon Respondent's submission of an application for renewal of registration on January 31, 2017.''[7] RD, at 3; *see also* Order Denying the Government's Motion for Termination of Proceedings dated July 25, 2017, at 6.

B. The Investigation of Respondent

In March of 2011, Respondent applied for a registration. GX 3 (MOA), at 1. The ensuing investigation of the application resulted in four allegations ''which if proven in an administrative hearing, could constitute grounds to deny . . . [Respondent's] application for registration.'' *Id.* at 1; *see also id.* at 1–2. According to the four allegations, Respondent was arrested in Colorado and Nebraska for felony drug possession and in Wisconsin for aggravated battery/intent to cause great harm, and Respondent ''admitted to prescribing controlled substances to friends and family members including her mother in law as well as some neighbors and friends of her former husband,'' ''admitted to working for a Telemedicine Organization in which the legitimacy of many of the prescriptions could be called into question,'' and admitted that her relationship with her ex-husband ''resulted in often questionable behavior in regards to prescribing . . . [and] her being around illegal drugs at times.'' *Id.* at 1–2.

According to the MOA, DEA agreed to grant Respondent's application for a registration in Schedules II through V and Respondent agreed to five specific courses of conduct. *Id.* at 2–3.[8] First, Respondent agreed ''to abide by all Federal, State and local laws and regulations pertaining to controlled substances'' as well as the ''additional obligations imposed upon . . . [her] pursuant to'' the MOA. *Id.* at 2. Second, Respondent agreed that ''she will not prescribe, administer or dispense any controlled substances to family members'' and that, if she does, she agreed ''to immediately execute a DEA Form 104, Voluntary Surrender of Controlled Substances Privileges, thereby relinquishing all authority to prescribe, administer or dispense controlled substances.'' *Id.*

Third, Respondent agreed to ''maintain a log of all controlled substances prescribed, administered or dispensed to patients at her registered premises or elsewhere, including call-in prescriptions, for review by DEA personnel at any time.'' *Id.* The MOA specified the elements to be captured in the log—patient, date, and the name, strength, and quantity of the prescribed controlled substance—and how

[3] The tenth stipulation states that ''Respondent did not treat patients referred to in the record as Patient JJ or Patient NJ at Methodist Fayette Hospital, Baptist Memorial Hospital, and/or McNairy Regional Hospital. RD, at 4; *see also infra* section II.D.

[4] The Chief ALJ's Corrected Page Order was filed on May 11, 2018.

[5] I reviewed, and agree with, the ultimate rulings and conclusions of all of the Chief ALJ's procedural decisions.

[6] The parties agreed to nine additional stipulations. Prehearing Ruling, at 1–2; RD, at 3–4. Eight of these nine concern the scheduling history of oxycodone, Percocet, Tussionex, Lortab, Xanax, Soma, Ambien, and phentermine. *Id.*

[7] The parties also agreed that Respondent submitted a request to modify the registered address of her registration from Tennessee to the Virgin Islands on January 31, 2017. Prehearing Ruling, at 1–2; RD, at 3.

[8] Respondent also agreed to multiple specific matters such as having advice of Counsel and ''knowledge of the events descried herein,'' comprehending all of the MOA, and entering the MOA voluntarily. GX 3, at 2; *see id.* 2–4.

Respondent was to maintain and transmit the log to DEA. *Id.*

Fourth, Respondent agreed that ''DEA personnel may enter her office and/or registered location at any time during regular business hours without prior notice to verify compliance with'' the MOA. *Id.* Respondent specifically agreed ''to permit entry of DEA personnel without an Administrative Inspection Warrant or other written notices or other means of entry.'' *Id.* Fifth, Respondent agreed ''to immediately notify the DEA prior to any change of business address and/or change in status of her State medical license and/or state controlled substance authority'' and ''to promptly notify the DEA of any change of address or requests for modification of registration.'' *Id.* at 3. Respondent agreed to make these notifications in writing and to transmit them to the specific Diversion Group Supervisor ''by certified mail with return receipt requested.'' *Id.*

The MOA's terms included that it was the ''full and complete agreement'' of Respondent and DEA, that ''[n]o other promises or agreements will be binding unless placed in writing and signed by both parties,'' and that the ''terms and provisions . . . [were] executed in good faith.'' *Id.*

In March of 2014, according to the testimony of the Diversion Investigator assigned to the matter (hereinafter, DI), a Tennessee Department of Health employee (hereinafter, TDHI) investigating a complaint against Respondent contacted DEA. Tr. 38–39. TDHI's investigative work was related to allegations that Respondent reported controlled substances as stolen and was providing medical care to her boyfriend, J.J., and his brother, N.J. *Id.* at 40. The DEA investigation that led to the issuance of this OSC ensued.

C. The Government's Case

The Government's case includes fifteen exhibits, one of which has twelve parts, and two witnesses, DI and Stephen Loyd, M.D. All but one of the Government's exhibits—GX 10—were admitted into the record. When the Government initially moved the admission of GX 10, purporting it to be J.J.'s medical record, the Chief ALJ sustained Respondent's objections, citing foundation and relevance. *Id.* at 132–33 (Chief ALJ ruling that ''I'll sustain the objection . . . I have every confidence that it is the document that . . . [DI] received from . . . [TDHI]. But I just don't know what . . . [TDHI] sent him or what the purpose of it was or where she got it. And that being the case, then I wouldn't know how to use the document. . . . [F]or the time being, . . . [GX 10] I'm going to exclude based on the objections without prejudice for . . . [Government Counsel] to make, as I said, another run at it.''); *see also id.* at 127–131. The Government did not end up being successful at introducing GX 10.

DI followed up on the telephone call he received from TDHI by gathering information. He obtained a copy of the MOA. DI served an administrative subpoena on the Tennessee Department of Health Controlled Substance Monitoring Database (hereinafter, CSMD) to obtain a list of controlled substance prescriptions that Respondent issued. *Infra.* He secured a copy of the DEA Form 106 that Respondent submitted about the theft or loss of controlled substances, GX 5 (hereinafter, DEA theft report). *Id.* at 45–49. The DEA theft report shows that Respondent reported the theft or loss of Testosterone Cyp, Zolpidem Tartrate, Phentermine, and Alprazolam. GX 5, at 1–2.

I agree with the Chief ALJ's assessment of DI's credibility, that DI ''presented as an objective, experienced regulator with no apparent agenda, who provided answers that, even in some difficult areas . . . rang true.'' RD, at 14. I also agree with the Chief ALJ that DI ''resisted the temptation to embellish the statements purportedly made by the Respondent, . . . [J.J., and N.J.] although it was arguably clear that doing so would have strengthened the case for a sanction.'' *Id.* Accordingly, I agree with the Chief ALJ and find that DI's ''testimony was sufficiently detailed, plausible, and internally consistent to be afforded full credibility in these proceedings,'' and I make corresponding findings of fact as a result. *Id.*

DI investigated how it came to be that Respondent possessed the controlled substances that she reported as stolen on the DEA theft report. Tr. 50–73. Over Respondent's objections, the Government successfully moved the admission of the entire twelve-page packet of McKesson Medical-Surgical Inc. (hereinafter, McKesson), parent of Moore Medical Inc. (hereinafter, Moore Medical purchase packet), ''records of all purchases made'' by Respondent.[9] GX 6. The first two pages of the Moore Medical purchase packet are the Declaration of a McKesson employee whose job responsibilities include ''obtaining [McKesson] documentation and information in response to subpoenas and other requests.'' *Id.* at 1–2; Tr. 51–53. According to the Declaration, the rest of GX 6 had originally been produced in response to a Grand Jury Subpoena served in March 2017. Tr. 50–69.

The third page of the Moore Medical purchase packet is the ''Controlled Substance Report'' showing the controlled substances shipped to Respondent in March 2013. GX 6, at 3; Tr. 53–54. According to the Controlled Substance Report, Zolpidem, Testosterone Cyp, Phentermine, Carisoprodol, and Alprazolam were shipped to Respondent at ''969 Tennessee Avenue South, Parsons TN 38361.''[10] GX 6, at 3. DI testified that he compared the content of the DEA theft report, GX 5, with the content of this ''Controlled Substance Report'' and concluded that the quantity of the controlled substances reported on the DEA theft report is identical to the quantity of controlled substances received from Respondent's purchase from Moore Medical. Tr. 49–50. (''I looked at the number where they listed the quantity lost and compared that to a[n] invoice that I obtained under subpoena from Moore Medical, and the numbers of the amounts that were taken or reported as taken in this agreed with what was the number of containers that were taken or delivered to . . . [Respondent].'').

The fourth page of the Moore Medical purchase packet includes much of the same information as appears on the third page plus the date Respondent ordered the controlled substances, February 26, 2013, and the method of payment, ''credit card.'' GX 6, at 4; Tr. 54. The fifth page of the Moore Medical purchase packet shows, among other things, that Respondent's ''Company Name'' in the McKesson records is ''St. Croix LLC.'' GX 6, at 5; *see also* Tr. 55–56. The fifth page also shows the shipping address as ''969 Tennessee Ave South, Decauter [sic] Cgh.'' GX 6, at 5; *see also* Tr. 55–56.

The sixth page of the Moore Medical purchase packet summarizes a

[9] Respondent objected to the admission of page 6 of GX 6 on the grounds of scope (Respondent is ''not charged with a crime in using the hospital's credit card, as stated here'') and prejudice, arguing that the page ''should not be considered by the Court in assessing penalties against'' Respondent. Tr. 56, 66; *see also id.* at 56–59, 66–69. In admitting the entirety of GX 6, the Chief ALJ stated that ''[i]t seems to me to eliminate that part of it [page 6] would leave an analytical hole in the documents that were provided. . . . I don't know how the evidence is going to turn out, but if the evidence turns out that this unauthorized use of a credit card is relevant because she wasn't supposed to be getting those drugs, and it was all part of a plan to keep them in an unauthorized way, and that reflects on her, I probably would consider that. But the fact that she violated some rule about a credit card, that's not charged, and I don't think it impacts much beyond arguably credibility.'' *Id.* at 68. I agree with the Chief ALJ.

[10] This was Respondent's registered address at the time.

telephone call from an individual at Decatur County General Hospital on March 5, 2013. GX 6, at 6; Tr. 59–60. According to that ''Account Note,'' the individual ''wanted to advise us'' of his belief that Respondent, a ''contractor at the Hospital,'' placed an Order and ''has left with the product.'' GX 6, at 6; *see also* Tr. 56, 59–60. It states that the individual is ''going to contact their Local Police to file charges.'' GX 6, at 6; *see also* Tr. 59–60. Page 6 of the Moore Medical purchase packet also suggests that ''Decauter Cgh'' means ''Decatur County General Hospital.'' GX 6, at 6; Tr. 59–60.

The seventh page of the Moore Medical purchase packet includes two views of Respondent's registration, FS2669868, showing the expiration date of February 28, 2014. GX 6, at 7; Tr. 60. The address on the registration captured on this page is ''969 Tennessee Avenue South, Parsons, TN 38361–0000.'' GX 6, at 7; *see also* GX 2, at 1 (DEA Certification of Respondent's Registration History stating that ''969 Tennessee Avenue'' was Respondent's registered address as of June 13, 2011, and that Respondent's registered address changed on January 3, 2014).

The eighth page of the Moore Medical purchase packet is titled ''Declaration of Controlled Substances Purchases,'' is signed by Respondent, and is dated February 12, 2013. GX 6, at 8; Tr. 60–61. The Declaration includes information appearing on previous pages of GX 6: ''Jennifer St. Croix, M.D./St. Croix LLC'' (for ''customer name''), ''969 Tennessee Ave S, Parsons TN 38361'' (for ''address, city and state''), and ''FS2669868'' (for ''DEA registration #''). GX 6, at 8. Respondent ''declare[d] and attest[ed]'' that she ''fully complies with all federal and state laws and regulations on the dispensing of controlled substances including but not limited to dispensing to patients only pursuant to a legitimate prescription issued in the course of an established doctor-patient relationship . . . and only for a legitimate medical purpose.'' *Id.* Regarding her purchase of so-called ''Lifestyle Drugs,'' such as Phentermine and Alprazolam, Respondent stated that her ''requirements for [their] purchase[ ] . . . are necessary for [the] [a]ddition of Age Management Medicine, weight loss & wellness to private practice.'' *Id.; see also* Tr. 60–61 (DI's testimony that this record is used to ''verify a reasoning behind the purchase from a practitioner to verify that what they're ordering is for a legitimate purpose or get the reasoning behind ordering the controlled substances.''). Respondent ''certifie[d]'' that she ''made sufficient inquiry to be able to make this declaration truthfully, accurately, and without material omissions.'' GX 6, at 8. She also ''affirm[ed] by signing this declaration that the above is true and correct to the best of . . . [her] knowledge and belief.'' *Id.*

The ninth through twelfth pages of the Moore Medical purchase packet contain the label ''invoice.'' *Id.* at 9–12. In two places on the ninth page, the record shows Respondent's home address. *Id.* at 9; Tr. 62, 65. The ninth page also shows the ''ship to'' registered address for the order, the same address as Respondent's registered address, which is also the address of Decatur County General Hospital. GX 6, at 9; Tr. 62, 65. The data points addressed in the invoice are item number, item description, order quantity, ship quantity, ''B/O Qty,'' dollar unit price, ''U/M,'' ''$ Extended,'' sales tax, and ''ship from.'' GX 6, at 9, 11–12. The items described on the invoice are both controlled substances and medicines that are not controlled. *Id.* The invoice does not list the controlled substances separately from the medicines that are not controlled. *Id.*

DI testified that his investigation included attempting to contact the individual with Decatur County General Hospital whose call was memorialized as an ''Account Note'' on the sixth page of the Moore Medical purchase packet. Tr. 70–72. According to DI, he ended up speaking with the Decatur County General Hospital Chief Executive Officer who succeeded that individual (hereinafter, DCGH CEO). *Id.* at 71–72. A result of that telephone conversation with DCGH was DI's receipt of an ''incident report'' indicating to him ''that there was possibly the diversion of controlled substances.'' [11] *Id.* at 73. DI testified that his follow-up included an unannounced interview of Respondent at her residence on May 19, 2014.[12] *Id.* at 73–74.

DI testified that during the interview, Respondent admitted that she had ordered a ''small amount'' of controlled substances, telling DI she did so because ''she was thinking about starting her own private practice,'' although she added that she never did. *Id.* at 76. DI testified that Respondent told him that ''she received the controlled substances at Decatur County General [Hospital], she brought them to her residence and secured them in an outside storage shed that was behind her residence.'' *Id.* at 77. DI testified that if Respondent were ''going to administer or if she's going to dispense controlled substances or she's going to hold controlled substances for dispensing, she would have to have a registration there'' but, to his knowledge, Respondent's residence was never a DEA registered location. *Id.* at 76, 78; *see also* GX 2, 1–2. DI recounted that Respondent said ''she didn't look in the storage shed again until she went there to conduct an inventory that was requested by the Tennessee Department of Health Office of Investigations.'' Tr. 77–78. At that time, she learned that the controlled substances were missing from the shed. GX 4 (Memphis Police Department Incident Report dated November 6, 2013) (hereinafter, Memphis Police Incident Report), at 1, 3; *see also* Tr. 121–22. According to the Memphis Police Incident Report, Respondent told the police that the controlled substances went missing ''anytime between March and . . . [November 6, 2013] as she never goes into the shed.'' GX 4, at 3. The Memphis Police Incident Report also stated that ''There was no scene to process. There was no damage to the shed, as the door was unlocked.'' *Id.*

According to DI, Respondent asked if he would like to see the shed where she had stored the controlled substances and took the two Diversion Investigators ''behind her residence outside'' to the shed that was ''built onto the back of her townhouse'' and was ''about the size of a closet . . . [p]robably about four feet across, maybe four feet deep[,] and maybe eight feet tall.'' Tr. 79–81; *see also id.* at 154 (shed was attached to Respondent's residence). The shed did not have a window, DI stated. *Id.* at 84. DI testified that the shed ''was probably about 30 yards or so'' from the street and that ''[t]here was no fence or anything at the rear of her house. It was just open all the way back, and there were other townhouses that were adjacent to hers that opened up to this area.'' *Id.* at 79; *see also id.* at 82–83. DI described the shed's door as a ''hollow-core door'' with ''just a regular doorknob that would be operated with a key,'' but stated that Respondent ''just turned it and opened it right up.'' *Id.* at 81–82. DI testified that the door ''was rather beat up, and the frame of the door was kind of damaged some, and also where the lock was, . . . [Respondent] stated that it didn't shut very well.'' *Id.* at 82; *see also id.* at 83–84 (DI adding that the shed door ''looked like it would be fairly easy to open up'' and that he could not ''positively say'' that he saw any signs of break-in).

DI testified that his interview of Respondent also addressed controlled substance recordkeeping requirements.

[11] The Government did not offer the ''incident report'' into evidence and, therefore, I am not considering it.

[12] DI testified that another Diversion Investigator assisted him with the interview of Respondent. Tr. 74–75.

Id. at 84–85. He testified that he asked Respondent if she had created an initial inventory and that her response was ''she had never created a regulatory or an initial inventory.'' *Id.* at 85–87.

DI testified that Respondent told him she is not treating any family members. *Id.* at 88. He stated that she admitted treating J.J. and N.J., telling DI she treated them ''on the side,'' and referred to J.J. as her boyfriend with whom she had a romantic relationship ''for a brief time.'' *Id.* at 89; *see also id.* at 182–85, 189, 199–200; *contra* GX 6, at 8 (Respondent's declaration and attestation that she ''dispens[es controlled substances] to patients only pursuant to a legitimate prescription issued in the course of an established doctor-patient relationship''). DI testified that J.J. also stated that he had a romantic relationship with Respondent ''for a brief period of time.'' *Id.* at 196–97. DI stated that N.J. said ''he saw . . . [Respondent] either at his brother's [J.J.'s] house—on one occasion he saw her at a pharmacy . . . in a parking lot.'' *Id.* at 198–99. Both J.J. and N.J., during DI's interviews of them, told DI that ''the drugs [Respondent prescribed for them] were based on a complaint of injuries that they had.'' *Id.* at 201–02. DI testified that Respondent told him she did not maintain medical records for either J.J. or N.J. *Id.* at 89; *see also id.* at 188–90.

When DI followed up on Respondent's statement that she did not maintain medical records, he learned from an attorney in the Office of General Counsel of the Tennessee Department of Health that the attorney had received a medical record purportedly for J.J. from Respondent's previous Counsel. *Id.* at 127–28. DI testified that the attorney emailed him what she had received from Respondent's previous Counsel. *Id.* at 128–30; GX 10. DI stated that the purported chart ''didn't have a name on it.'' Tr. 129. He testified that, since Respondent ''had told me that she had not kept patient charts for N.J. or J.J. when I interviewed her at her residence . . . [,] I was doubtful about where these charts—the alleged—the charts may have come from . . . [o]r if they had been created after the fact.'' *Id.* at 133.

Respondent's Counsel objected to the admission of GX 10 because, she stated, it was ''represented as a complete medical chart'' for J.J. *Id.* at 131. The Chief ALJ sustained her objection based on foundation and relevance. *Id.* at 132–33. His ruling, he advised, was without prejudice for Government's Counsel to ''make . . . another run at it.'' *Id.* at 132. Government's Counsel subsequently presented arguments to the Chief ALJ for the admission of GX 10. *Id.* at 136–37. His argument included that Respondent had noticed she would be relying on ''virtually the same exhibit'' as a medical record for J.J. consisting of five more pages than GX 10. *Id.* at 138–39. The Chief ALJ did not change his ruling; GX 10 was never admitted. *Id.* at 139–42. I agree with this and the other evidentiary rulings of the Chief ALJ during the hearing.

As already discussed, DI stated that he served a subpoena on the CSMD seeking a ''listing of all the prescriptions that . . . [Respondent] had listed in the CSMD'' for the period of June 2011 through March or April 2014. *Id.* at 91. He testified that he found ''several prescriptions that were attributed to'' J.J. and N.J. *Id.* at 92. Then, DI testified, he obtained the original prescriptions issued to J.J. and N.J. from the pharmacies where they were filled. *Id.* at 93. He stated that he issued subpoenas to the three hospitals on whose paper the prescriptions were purportedly written seeking medical records for J.J. and N.J.[13] *Id.* at 94. The three ''no-record'' responses that DI received from the hospitals were admitted into evidence. GX 8.

DI also subpoenaed the prescriptions that Respondent issued to J.J. and N.J. Tr. 99–101. DI identified GX 9 as consisting of copies of eighteen original controlled substance prescriptions, front and back, that Respondent issued for J.J. *Id.* at 99–100. The eighteen controlled substance prescriptions were issued for Percocet, Zolpidem, Alprazolam, and Tussionex. GX 9. The prescriptions in GX 9 were issued on either ''Methodist Healthcare Discharge Prescription Orders,'' ''McNairy Regional Hospital Elite Emergency Services,'' or ''Baptist Memorial Hospital—Tipton'' paper. *Id.*

DI also testified that GX 11 consists of copies of original controlled substance prescriptions that Respondent issued for N.J. Tr. 101. According to GX 11, Respondent issued controlled substance prescriptions to N.J. for Tussionex and Lortab. GX 11. The prescriptions in GX 11 were issued on either ''Methodist Healthcare Discharge Prescription Orders'' or ''Baptist Memorial Hospital Tipton Discharge Medications'' paperwork. *Id.*

DI testified that GX 12a through GX 12l contain ''copies of some of the prescription logs that were submitted to the [DEA] Nashville District Office.'' Tr. 104–05. He clarified that the contents of GX 12a through GX 12l ''list N.J. and J.J., I believe.'' *Id.* at 106.

During his testimony, DI pointed out that Respondent's April 2014 MOA-required drug log does not include a controlled substance prescription that Respondent issued to N.J. for Tussionex on April 30, 2014.[14] *Compare* GX 11, at 5 and GX 12l, at 10; Tr. 116–17.

Regarding the OSC charge that Respondent failed to provide six MOA-required drug logs, DI described during his testimony the steps he took to ascertain whether DEA received those logs. Tr. 106–14; *see also id.* at 148–52. He also testified that, given his belief that Respondent sent the drug logs to DEA by certified or registered mail, he asked her about certified return receipt cards when he interviewed Respondent at her residence. *Id.* at 147; *see also id.* at 148 (DI's testimony that Respondent told him that ''she sent everything in certified mail.''). ''[S]he went to a back portion of her house and came back with about four or five cards,'' he reported. *Id.* at 147. When DI asked her if she had any more cards, she answered in the negative. *Id.*

After DI's testimony, the Government called Stephen Loyd, M.D., its second and final witness. *Id.* at 203–83. Dr. Loyd is a practitioner whose medical license in Tennessee and DEA registration were in good standing and were never subject to discipline. *Id.* 206. His professional experience includes being a hospital ''residency program director for internal medicine,'' practicing hospital medicine, and working in a hospital emergency department. *Id.* at 231. Dr. Loyd testified that ''the course that's required for every physician in the State of Tennessee on controlled substances, I teach.'' *Id.* at 249–50. Having read and analyzed all of the record evidence, I agree with the Chief ALJ's determination to recognize Dr. Loyd as an expert in internal medicine with an emphasis on the proper prescribing of controlled substances in Tennessee.[15] *Id.* at 214.

Dr. Loyd testified that the 1995 Policy Statement of the Tennessee Board of Medical Examiners, entitled ''Management of Prescribing with Emphasis on Addictive or Dependence-Producing Drugs,'' GX 15 (hereinafter, Tennessee Controlled Substance Prescribing Policy Statement), applies to Respondent's allegedly unlawful controlled substance prescribing as Tennessee's chronic pain guidelines did not go into effect until after the time period alleged in the OSC. *Id.* at 211–12; *see also id.* at 281–82. I agree with

[13] The six subpoenas were admitted into evidence. GX 7.

[14] Government Counsel ''withdrew'' his statement to the Chief ALJ that ''[w]e'll go through'' the other pages of GX 11 and GX 12l to identify any other discrepancies between GX 11 and GX 12l. Tr. 119–20.

[15] Respondent's Counsel did not object to this determination. Tr. 214.

Dr. Loyd's assessment and the application of the Tennessee Controlled Substance Prescribing Policy Statement to this proceeding.

Dr. Loyd correctly characterized the Tennessee Controlled Substance Prescribing Policy Statement as setting out the nine ''steps that were accepted practice for the proper prescribing of when . . . [controlled substance] medications were indicated'' for acute or chronic pain. *Id.* at 215–16. He explained the first step, having a ''workup sufficient to support a diagnosis,'' as the ''establishment of a proper diagnosis that would indicate a need for a controlled substance for pain.'' *Id.* at 216; GX 15, at 1. Dr. Loyd testified that the workup sufficient to support a diagnosis begins with the patient's chief complaint, ''[a]ll of the things surrounding that chief complaint, the who, what, where, when, why, how, around that chief complaint,'' and ''then the history of present illness.'' Tr. 224. He noted that pain is a symptom, not a disease, and ''so the first part . . . is establishing a diagnosis as to the root of the pain, so you can address that, rather than the symptom.'' *Id.* at 218.

For pain patients in general, including chronic pain patients, Dr. Loyd testified that ''it's vitally important that you have some kind of subjective statements from the patient as to the limitations the pain is causing and their activities of daily living.'' *Id.* at 224. Knowing the patient's limitations caused by the pain is important, he explained, because the purpose of a practitioner's intervention is ''to try to improve that patient's functioning with whatever condition that they have.'' *Id.* at 225. If the patient's limitations are ''very little,'' he suggested that the associated risks would render a controlled substance intervention inappropriate. *Id.* He also suggested that the efficacy of the intervention is judged by the intervention's impact or lack of impact on the patient's limitations caused by the pain. *Id.*

In a similar vein, Dr. Loyd summarized the second and third steps as concerning ''the use of non-controlled substance modalities to try to address the pain issues first, before moving onto a controlled substance.'' *Id.* at 216.

Regarding the fourth step, Dr. Loyd pointed out that ''the reality here is that these [controlled substance] medications are very effective, but they also have abuse potential.'' *Id.* at 217. As such, he testified, ''you have to weigh the risk versus benefits, and so . . . there are some things that you need to do to try to ascertain your patients' risk for abusing one of these prescribed controlled substances.'' *Id.* ''One of the big risk factors for misusing prescribed controlled substances,'' he explained, ''is someone that has a history or a family history of substance use disorder,'' including alcohol and prescription pills. *Id.* at 226. Urine drug screens, he testified, are ''sometimes the truth serum for that history'' and assist with the practitioner's determination of whether an ''underlying substance use disorder . . . [is] really the problem, instead of the problem that they're presenting.'' *Id.* at 227–28; *see also id.* at 230. Dr. Loyd reported that, initially, he will ''usually do a 10 or 12 panel [urine drug screen] that has a mixture of prescribed drugs, as well as illicit drugs, and the common illicit drugs are on there, methamphetamine, cocaine, marijuana.'' *Id.* at 228–29. Subsequently, if he prescribed a controlled substance for treatment, the urine drug screen he orders will test ''to make sure those drugs are in their system'' and, if not, he ''want[s] to know where they're going. And most of the time that's diversion.'' *Id.* at 229; *see also id.* at 230 (Someone would ''pretty much live under a rock not to know what's going on in our state in Tennessee right now with regards to prescription drug abuse. So we have a lot of pills that are diverted.'').

Along these lines, Dr. Loyd described the fifth step, obtaining informed consent ''as to the risk of developing a dependence and addiction on the prescribed medication, even if it's for [a] legitimate medical need.'' *Id.* at 218. Dr. Loyd explained that ''the approach has been to start with the least invasive, least dangerous things first, so as in the treatment of any disease, you want to be as least invasive as possible.'' [16] *Id.*

Regarding the standard of care for the general practice of medicine, Dr. Loyd described the initial patient visit as when the practitioner ''establish[es] the framework and the groundwork of where you're starting, and subsequent medical visits will be . . . based on the intervention that you make in the first medical visit and what kind of improvements or not improvements that you have at subsequent visits.'' *Id.* at 223. Further, he characterized patient safety as the practitioner's ''first consideration,'' citing to the Hippocratic Oath as ''First, do no harm'' and then ''Second, then try to help.'' *Id.* at 224.

Dr. Loyd also testified about the importance of obtaining medical records from previous treating practitioners. *Id.* at 225. A practitioner uses the information in other practitioners' treatment records to inform what treatment to prescribe and what treatments not to prescribe. *Id.* at 225–26.

Dr. Loyd testified that he worked with physician contractors in a hospital setting. *Id.* at 231. He testified that, in his experience, hospital physician contractors work in a group and report to the contractor head of the group. *Id.* at 232. The contractor group head, in turn, is ''accountable to the hospital for the services they contract for,'' Dr, Loyd continued. *Id.* He specifically testified that contractor physicians are ''subject to the record-keeping that's required by the accrediting bodies, Joint Commission, as well as Medicare, Medicaid, all the insurance companies and most commonly, the hospital that you're working for, and you're also subject to peer review within that same hospital.'' *Id.* at 232–33. Regarding record-keeping, Dr. Loyd testified that ''there's a lot of risk with . . . not maintaining a patient record and safety would be the biggest one.'' *Id.* at 235–36. He continued that ''it will violate . . . standards from accrediting bodies, such as Joint Commission.'' *Id.* at 236. Concluding, Dr. Loyd added that ''you also get into the fact that if you don't have a medical record and you billed for that service to an insurance company, you don't have the documentation to support a level of care for that reimbursement, so that gets into what's considered to be fraud.'' *Id.*

Dr. Loyd continued to testify in increasing detail about the importance of maintaining medical records, or patient charts, during his testimony about GX 9 (prescriptions Respondent issued to J.J.), GX 11 (prescriptions Respondent issued to N.J.), and GX 14 (Dr. Loyd's report on Respondent's controlled substance prescribing for N.J. dated October 1, 2016). Medical records are the ''crux,'' he stated, the ''foundation of what we're trying to do here.'' Tr. 240. He explained that they are ''going to establish . . . history, present illness, past medical history, surgical history, social history, physical examination, assessment and plan, . . . [and they are] going to validate how a diagnosis was arrived at and the subsequent treatment plan for that diagnosis . . . [and] for a lot of other things, other than that.'' *Id.* Dr. Loyd testified that he would expect Respondent to take a history, including a personal drug history, conduct a physical examination, make a diagnosis, start any intervention with a treatment that has the highest potential for benefit and the lowest amount of risk, and

[16] ''Somebody has chest pain, you don't move straight to open-heart surgery,'' Dr. Loyd analogized. Tr. 218. ''There are things that you do prior to that and open-heart may be where you wind up, but definitely not where you start.'' *Id.*

establish and document informed consent before prescribing a controlled substance. *Id.* at 241–44.

As memorialized in his report regarding N.J., GX 14, Dr. Loyd explained that he received copies of three controlled substance prescriptions Respondent issued to N.J., but no medical record by Respondent about N.J. ''so I couldn't comment as to the thoroughness of the history, the appropriateness of the diagnosis.'' *Id.* at 246; *see also id.* at 241 (discussing the controlled substances that Respondent prescribed for N.J.) As such, Dr. Loyd's report summarizing his ''findings for the material that . . . [he] reviewed that day'' was five sentences, including the statement that ''[t]here were no medical records to support the history, physical examination and thought process that led to the prescribing of these medications.'' *Id.* at 246; GX 14, at 1. Dr. Loyd's report concluded that ''[e]ssentially, the controlled substances were prescribed with nothing to support their use'' and, thus, that the ''controlled substances prescribed for . . . [N.J.] were prescribed outside the scope of accepted medical practice and were not for a legitimate medical purpose.'' GX 14, at 1.

Respondent's Counsel, among other things, asked Dr. Loyd whether he had been ''advised since the preparation of . . . [his] report that there are, in fact, medical records that exist for N.J.'' and whether he had ''seen those records.'' [17] Tr. 259. Dr. Loyd responded affirmatively to both questions. *Id.* at 259–60. He testified that he did not supplement his initial report after seeing those records. *Id.* at 260. Dr. Loyd also indicated that he was provided ''nothing [on which] to base'' an opinion about whether N.J. ''exhibited any signs of drug dependency, . . . drug abuse . . . [or] drug-seeking behavior . . . [, or whether N.J. was] diverting these drugs to anyone else . . . [or] suffered any harm because of these prescriptions.'' *Id.* at 260–61.

Thereafter, Government's Counsel asked Dr. Loyd whether the ''proposed'' N.J. medical records included ''any personal history of substance abuse with regard to any of the prescriptions that were issued.'' *Id.* at 261, 271. Dr. Loyd answered that ''[t]here was a block on the ED chart that asked about substance use and . . . [N.J.] denied alcohol or . . . [illicit] drugs. So she did do it, yes.'' *Id.* at 271. He continued his answer by stating that he would have expected to see documentation of follow-up to verify this information due to the ''potential health risk for sure in combining substances that work in the central nervous system'' with alcohol use since it would increase the ''risk of a bad outcome.'' *Id.* at 273. He testified, though, that he did not see any documentation of Respondent's having addressed with N.J. the potential risks of mixing the controlled substances she prescribed for him with alcohol and of dependence and/or addiction with prolonged use. *Id.* at 273–74.

Government's Counsel asked Dr. Loyd whether the ''proposed'' N.J. medical records indicated ''any settings where . . . [N.J.] was purportedly treated.'' *Id.* at 267; *see also id.* at 274. Dr. Loyd opined the ''emergency department as well as I can tell.'' *Id.* at 267–68. He also testified that he would expect a medical record's statement about the setting at which medical treatment was provided to be accurate. *Id.* at 275. Dr. Loyd also testified that he ''was surprised that once that initial [emergency department] visit happened, that from then on . . . [N.J.'s respiratory and pain issues were] not taken care of in a primary care setting . . . or his primary care physician or a pain medicine specialist setting.'' [18] *Id.* at 269. He indicated that he ''absolutely'' would have expected to see coordination of treatment between an emergency department physician and a primary care physician given N.J.'s extended period of treatment in an emergency room setting, but found no evidence of it in the ''proposed'' N.J. medical records. *Id.* He also noted that, ''whenever we're talking about a case like this, . . . [seeking treatment at the emergency department] would have been a red flag that somebody is coming in here explicitly for narcotics.'' *Id.* at 278. He elaborated by asking ''why are they not presenting to their other doctor, to their primary care physician, who knows them much better than we do.'' *Id.*

Government's Counsel asked Dr. Loyd whether he saw any evidence of urine drug screening in the ''proposed'' N.J. medical records. *Id.* at 269–70. Dr. Loyd testified that he would have expected to see urine drug screening ''[g]iven that a controlled substance was prescribed on multiple occasions,'' but he did not. *Id.* Dr. Loyd stated that he would have expected N.J. to give informed consent ''prior to the prescribing [of] controlled substances,'' but that he ''did not see informed consent in the [proposed N.J.] medical record.'' *Id.* at 270. He elaborated by testifying that N.J.'s family history of alcoholism, alcohol abuse, or alcohol misuse put N.J. ''by definition at increased risk to misuse prescribed controlled substances'' such that he would want to give N.J. ''informed consent of the risk and benefits of using . . . [controlled] medication including his risk for possible misuse and development of subsequent dependence and/or addiction.'' *Id.* at 270–71.

Further, Government's Counsel asked Dr. Loyd whether he saw any evidence in the ''proposed'' N.J. medical records that Respondent had ''explore[d] limitations on N.J.'s activities as a result of pain.'' *Id.* at 276. Dr. Loyd responded that he thought, although he ''could have misread this,'' that ''there was concern of whether or not . . . [N.J.] would be able to maneuver himself with regards to his weapon.'' [19] *Id.; see also id.* at 268 (Dr. Loyd's testimony about N.J.'s ''proposed'' medical records that ''there was some concern that he was having problems with maneuvering in his job with regards to . . . the pain that he was having.''). Dr. Loyd testified that he saw nothing in N.J.'s ''proposed'' medical records that Respondent explored any treatment modality for N.J. other than a controlled substance. *Id.* at 276. Dr. Loyd also testified that Respondent did not document, in the ''proposed'' N.J. medical records, that she followed up with N.J. during any subsequent visit about whether the controlled substance prescription she issued for him was effective by, for example, asking him whether he was able to maneuver as he needed to do his job after starting the controlled substance therapy. *Id.* at 276–77.

Dr. Loyd summarized the ''fundamental issues'' he had with the ''proposed'' N.J. medical records ''as far as the proper prescribing [of] controlled substance[s],'' stating that the ''root of the issue is really in the establishment of the diagnosis being such that it would have required a controlled substance before trying any other non-controlled substance modality for treatment.'' *Id.* at 274. He testified that, after reviewing the ''proposed'' medical records for N.J., he did not change his opinion that Respondent prescribed controlled substances for N.J. for no legitimate purpose. *Id.* at 277.

I agree with the Chief ALJ that Dr. Loyd ''presented as knowledgeable, objective, and thoughtful in his answers,

[17] The Government did not mention a medical record for N.J. in its Exhibit List or in either of its Pre-Hearing Statements. Presumably, Respondent provided her Counsel with the medical records for N.J. about which Respondent's Counsel asked Dr. Loyd. Tr. 259.

[18] Dr. Loyd stated that he has seen patients use emergency departments for medical treatment due to ''economic reasons,'' such as no health insurance. Tr. 277–78.

[19] The testimonies of both DI and Dr. Loyd indicate that N.J. worked for the Sheriff, possibly as a Deputy Sheriff. Tr. 200, 268.

without any indication of an agenda.'' RD, at 17. In this Decision/Order, I give controlling weight to Dr. Loyd's testimony as did the Chief ALJ because Dr. Loyd ''has extensive experience practicing, writing, and lecturing on the subject matter of his testimony.'' *Id.* Further, I note that Respondent did not put on a case or proffer a witness, let alone an expert, to rebut Dr. Loyd's testimony. As such, in addition to the independent persuasiveness of Dr. Loyd's testimony, his testimony is unrebutted in the record before me.

D. Respondent's Case

Immediately after the Government rested, Respondent's Counsel moved for summary disposition on the ground that the Government had not established a *prima facie* case. Tr. 285–86. Among other things, the motion was based on the theory that the Government introduced no evidence that the drug logs Respondent submitted to DEA were ''falsified,'' as opposed to simply ''not correct,'' because the incorrect material was not a mandated data point in the MOA. *Id.* at 286–87. The motion argued that the MOA does not prohibit Respondent from issuing controlled substance prescriptions to J.J. because it only prohibits prescribing to ''family members,'' and boyfriends, friends, and ''intimate acquaintances'' are not ''family members.'' *Id.* at 287.

The summary disposition motion argued that the Government failed to establish a violation based on Respondent's medical care of J.J. ''in that those records are not before the Court . . . ''[s]o there's really nothing to consider.'' *Id.* at 287–88. The summary disposition motion explicitly acknowledged the existence of the charge that Respondent created no medical records for N.J. while claiming that ''any criticisms were not . . . presented to [Respondent] as far as the quality of the care, the need for those prescriptions and so she, therefore, was not prepared to respond to those.''[20] *Id.* at 288.

Regarding the allegation that Respondent did not store controlled substances securely, the summary disposition motion argued that ''according to the [G]overnment's own witness, if . . . [Respondent] kept . . . [controlled substances] in a locked, secure cabinet within the shed, that would have been in compliance with the . . . plain language of the regulations.'' *Id.* at 289. According to the motion, ''[t]here is no evidence that . . . [Respondent] dispensed any medications from this residence, that she operated any business or that she intended to operate a business'' and, therefore, ''many of the regulations that were cited . . . [in the OSC] are not applicable.''[21] *Id.*

The summary disposition motion counted initial inventory requirements among the ''many'' inapplicable regulations cited in the OSC. *Id.* at 291. Referring to the legal argument that the invoice Respondent received in connection with the Moore Medical purchase satisfied the ''initial inventory'' requirement, the motion admitted that the invoice ''failed to specify'' whether the ''inventory'' was taken at the beginning or the end of the day. *Id.* The motion minimized this deficiency, arguing that ''this was not an ongoing concern,'' that Respondent ''was the only one who had control of these drugs,'' and that ''[i]f this case is about the fact she didn't say whether it was the beginning or the end of the day, I mean that's not why we're here.'' *Id.* at 291–92. According to the motion, Respondent ''had not yet commenced a business.'' *Id.* at 294. ''I think they're reading way too much into'' the declaration in the Moore Medical purchase packet, the motion argued, and ''[t]here's no evidence that she had any kind of any ongoing—that she had a medical clinic that she was operating, that she . . . dispense[d] any of these drugs . . . [– s]he didn't charge for seeing patients, which is—that's conducting a business.'' *Id.* The motion argued that ''[t]hese regulations are designed for people who are seeing patients and dispensing these drugs and documenting the distribution thereof'' and ''[i]t's imposing far too many requirements on somebody who is just anticipating doing so in the future.'' *Id.; see also id.* at 295.

The Chief ALJ provided input during the presentation of Respondent's summary disposition motion. Tr. 290–310. The Chief ALJ pointed out the weaknesses and deficiencies of the motion's arguments while agreeing with their strengths. *Id.* For example, the Chief ALJ agreed that the burden is on the Government to present a *prima facie* case, and stated clearly that the ''question is, in viewing the evidence in the light most favorable to the [G]overnment, have they put some evidence on everything they would need to make out a *prima facie* case.'' *Id.* at 295; *see also id.* at 299 (Chief ALJ's statements pointing to record evidence countering the argument that the Government had not met its burden for the allegation that Respondent did not submit all of the MOA-required drug logs); *id.* at 300–01 (Chief ALJ's assessment of whether the Government presented sufficient evidence to establish its case, and views on the appropriateness of a sanction); *id.* at 301–03 (discussion involving Respondent's Counsel and Chief ALJ about the record evidence to date about MOA compliance); *id.* at 303–05 (conversation between Respondent's Counsel and the Chief ALJ about unlawful prescribing allegations); *id.* at 305–07 (focused analysis of the existing record evidence and stipulation concerning the documentation of Respondent's controlled substance prescribing); *id.* at 307–09 (targeted discussion of ''nonsense'' and ''anomalies'' in Respondent's controlled substance prescribing documentation).

In addition to hearing the back-and-forth between her Counsel and the Chief ALJ, Respondent also had the benefit of hearing the position of Government's Counsel on several issues, substantive and procedural. *Id.* at 310–15. For example, Government's Counsel repeatedly argued that Respondent's Counsel had presented argument about her ''theory of the case,'' as opposed to ''sworn testimony.'' *Id.* at 310–11. He explicitly addressed the Government's position that, ''as the record stands now, there are no patient charts in the record [for either J.J. or N.J.,] one of the charges . . . in the charging documents.'' *Id.* at 313.

The analyses and discussions that took place in Respondent's presence also included the Chief ALJ's ruling on Respondent's motion for summary disposition. *Id.* at 311–12, 314–15, 322–29. In denying Respondent's summary disposition motion, the Chief ALJ provided input on specific matters at issue in the proceeding. First, he specifically stated that the Government had ''put forth some evidence that some information on the dispensing logs, including the location where patients N.J. and J.J. were treated may be inaccurate.'' *Id.* at 324. The Chief ALJ added that, for the Government to prevail on this allegation, ''there is no requirement that purported falsehoods be restricted to information that was specifically required by the terms of the MOA.'' *Id.*

[20] The summary disposition motion stated that DI ''did not determine that the drugs were being diverted or there was nothing indicating it was for anything other than a legitimate medical purpose from his perspective as a non-physician.'' Tr. 288. She added that N.J., himself, ''offer[ed]'' that there was a legitimate medical purpose for the controlled substance prescriptions. *Id.*

[21] According to Respondent's summary disposition argument, her residence ''was not a principal place of business or professional practice. She did not manufacture, distribute, import, export, or dispense drugs at that location. That is undisputed under the record.'' Tr. 289.

Second, the Chief ALJ stated that he was reserving Respondent's motion as to whether Respondent violated the MOA by prescribing controlled substances to J.J., assuming that Respondent and J.J. were romantically involved. *Id.* at 324–25. The Chief ALJ noted that the Government cited to ''authority under Tennessee law that prescribing to a patient . . . [with] whom the physician has a romantic involvement falls below the applicable standard of care in prescribing, and thus this aspect of the motion is denied.'' *Id.* at 325. He also noted that ''a precise timeline of the romantic involvement [between Respondent and J.J.] was not established.'' *Id.* Third, the Chief ALJ also stated that the Government presented ''at least some evidence that controlled substance prescribing to patient J.J. in the face of a potential romantic relationship and in the absence of medical documentation . . . could place the prescribing as outside the course of a professional practice and without a legitimate medical purpose[ ], and in violation of Tennessee state law.'' *Id.* at 325–26.

Fourth, on the allegation of unlawful controlled substance prescribing to N.J., the Chief ALJ similarly denied Respondent's motion, stating that the Government presented ''at least some evidence that the prescribing was done without medical documentation, and even if medical documentation that had been previously presented by the Respondent, albeit presented late were presumed valid, that it was inadequate to establish that the prescribing was done for [a] legitimate medical purpose and within the course of a professional practice.'' *Id.* at 326.

Fifth, the Chief ALJ denied Respondent's motion for summary disposition on the allegation that Respondent failed to provide DEA with all of the drug logs required by the MOA. *Id.* at 326–27. He stated that DI testified about how the relevant DEA office processes mail and about the search DI conducted for Respondent's drug logs. *Id.* at 327.

Sixth, the Chief ALJ stated that the Government presented ''some evidence that the Respondent did maintain controlled substances in this residential outside shed'' and reserved the ''legal issue as to whether their registration was required.'' *Id.* Seventh, also regarding the allegation that Respondent stored controlled substances in a shed with inadequate security, the Chief ALJ denied Respondent's summary disposition motion because the Government presented ''some evidence that the Respondent stored controlled substances in a shed with a modest lock under conditions that arguably did not satisfy the security requirements set forth in the regulations actually or substantially.'' *Id.* at 328.

Eighth, the Chief ALJ denied Respondent's motion concerning the initial controlled substance inventory requirement because the Government presented ''some evidence that the Respondent admitted to DI . . . that she never prepared or maintained an initial inventory as well as evidence in a declarations signed by the Respondent that she was expanding an already existing practice.'' *Id.* at 328–29. He added that ''an invoice prepared by the vendor would not satisfy her inventory obligation under the regulations.'' [22] *Id.* at 329.

After the Chief ALJ ruled on her motion for summary disposition, Respondent stipulated that she did not treat J.J. or N.J. at a hospital. *Id.* at 330–31; *see also supra* n.3. She also obtained the Chief ALJ's approval to receive into evidence her corrective action plan as Administrative Law Judge Exhibit 29. Tr. 334–35 (Chief ALJ's statement that the ''corrective action plan is not something that the administrative law judge deals with,'' ''[i]t's not part of what I have to recommend,'' ''I can include it in the record or not,'' and ''[i]t needs to go to the Office of Diversion Control.'').

Thereafter, Respondent's Counsel advised the Chief ALJ that Respondent was not going to present a case, stating that her client ''would like to accept responsibility for her errors in this case'' and ''[w]e would just request leniency in your recommendations.'' Tr. 335. The Chief ALJ appropriately pointed out that, for a respondent to prevail, prior Agency decisions require a respondent's unequivocal acceptance of responsibility and the submission of appropriate remedial measures. *Id.* at 336–37 (Chief ALJ's statements, including ''I want to make you aware of it. . . . I just wanted to raise that with you before you've rested.''). Respondent reaffirmed her decision to rest after consulting again with her Counsel during a break that the Chief ALJ took specifically for that purpose. *Id.* at 337–39.

Accordingly, I find that Respondent's decision not to present a case was communicated to the Chief ALJ after she had been present at the hearing, after she had the opportunity to observe and hear the Government's evidence in support of the OSC's allegations, and after she had the opportunity to hear the Chief ALJ's ruling denying her motion for summary disposition. I find that Respondent's decision not to present a case was communicated after the Chief ALJ received her corrective action plan into evidence and after she stipulated that she never treated J.J. or N.J. in a hospital. I further find that after Respondent's decision not to present a case was first communicated to the Chief ALJ, the Chief ALJ offered his interpretation of past Agency decisions' statements about the unequivocal acceptance of responsibility and his practical reflection that her not presenting a case ''cuts off any other evidence coming in.'' *Id.* at 338. I also find that, after the Chief ALJ offered his interpretation and practical reflection, Respondent's Counsel asked for and received ''a few minutes to confer with my client in response to Your Honor's comments.'' *Id.* at 337. Finally, I find that Respondent consulted with her Counsel before the initial communication of her decision not to present a case, and had the additional opportunity to consult with her Counsel after the Chief ALJ offered his interpretation and practical reflection. *Id.* at 338 (Respondent's Counsel, responding to the Chief ALJ's question about how much time ''will be enough'' to confer with her client about whether to present a case, stating that ''I mean, we've discussed it, so there's not much additional we need to discuss, but just in light of the point Your Honor has raised, I want to just make sure that I have an opportunity for her to talk about this before making any final decisions.'').

Respondent's decision not to present a case means that there are no factual disagreements between witnesses' testimonies that I need to resolve.

E. Allegation That Respondent Continued To Issue Controlled Substance Prescriptions to Individuals Who Are Intimate or Close Acquaintances, and to an Individual With Whom She had a ''Romantic Interaction'' in Violation of Tenn. Comp. R. & Regs. R. 0880–2–.14(8)(a) and Tenn. Code Ann. § 63–6–214(b)(1)

The OSC charged Respondent with ''issuing prescriptions to individuals who are intimate or close acquaintances.'' OSC, at 2. DI testified that both Respondent and J.J. told him that they were in a romantic relationship for a brief period time.[23] I credit DI's testimony. I find, however,

[22] When Respondent's Counsel asked for the Chief ALJ's ruling on the allegation that Respondent did not complete dispensing logs, he indicated that his ruling was subsumed in the rulings he issued. Tr. 329.

[23] When DI interviewed him, N.J. also stated that Respondent and J.J. were girlfriend-boyfriend. Tr. 199.

that this evidence of a boyfriend-girlfriend relationship, a romantic relationship, or any other record evidence detail neither the parameters of the romantic involvement of Respondent and J.J. nor the period of time of that romantic involvement.

F. Allegations That Respondent Provided Controlled Substance Prescription Drug Logs to DEA With Falsified Entries ''Noncompliant With Terms of the June 2011 MOA'' in Violation of 21 U.S.C. 843(a)(4)(A), and ''Provid[ed] Misleading Information to Investigating Agents'' Implicating 21 U.S.C. 823(f)(5)

The OSC alleged that Respondent's drug log submissions to DEA for August, October, and November of 2012, February, May, June, July, October, and November of 2013, and January 2014 contained false entries ''noncompliant with the terms of the June 2011 MOA'' because they ''represented that . . . [she] issued controlled substance prescriptions to J.J. and his brother N.J. . . . while treating these individuals at Methodist Fayette Hospital in Somerville, Tennessee; Baptist Memorial Hospital in Covington, Tennessee; and/or McNairy Regional Hospital in Selmer, Tennessee.'' OSC, at 2. It also alleged that Respondent ''provid[ed] misleading information to investigating agents, 21 U.S.C. 823(f)(5).'' *Id.* at 3.

I find that the record evidence includes twelve instances when Respondent submitted drug logs to DEA with entries concerning J.J. and/or N.J. whose cover transmittal letters and specific J.J. and N.J. entries falsely, according to one of the parties' stipulations, indicate that ''[a]ll prescriptions were written while on duty as the ER physician at the named hospital for registered patients.'' GX 12a, at 1, 4, and 5 (October 2012, two for J.J. and two for N.J.); GX 12b, at 1 and 4 (November 2012, two for J.J.); GX 12c, at 1, 6, and 7 (February 2013, two for J.J. and one for N.J.); GX 12d, at 1, 9, and 16 (April–May 2013, two for J.J. and one for N.J.); GX 12e, at 1, 7, and 18 (May–June 2013, two for J.J. and one for N.J.); GX 12f, at 1 and 9 (July 2013, one for N.J.); GX 12g, at 1, 6, and 17 (August 2013, two for J.J. and one for N.J.); GX 12h, at 1 and 3 (October 2013, two for J.J.); GX 12i, at 1, 4, and 7 (November 2013, two for J.J.); GX 12j, at 1 and 2 (January 2014, one for J.J.); GX 12k, at 1 and 5 (February 2014, one for J.J.); GX 12l, at 1 and 3 (April 2014, one for J.J.); *see also supra,* section II.C. and section II.D. (discussing the stipulation reached during the hearing). Likewise, I find that the stipulation Respondent agreed to during the hearing that she did not treat J.J. or N.J. at a hospital is Respondent's implicit admission that those twelve cover transmittal letters she sent DEA with the MOA-required drug logs contained in GX 12a through GX 12l and the individual entries for J.J. and N.J. in those drug logs are not fully accurate. *Supra,* section II.D. (discussing the stipulation reached during the hearing).

Accordingly, I find substantial unrebutted record evidence that Respondent provided controlled substance prescription drug logs to DEA with falsified entries, thereby providing misleading information to DEA investigators.

G. Allegation That Respondent Issued Controlled Substance Prescriptions to J.J. and N.J. for No Legitimate Medical Purpose and Outside the Usual Course of Professional Practice in Violation of 21 CFR 1306.04(a), Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(a)(4) and (e), and Tenn. Code Ann. § 63–6–214(b)(12)

The OSC alleged that Respondent ''issued controlled substances . . . [to J.J. and N.J.] for no legitimate medical purpose and outside the usual course of professional practice,'' citing provisions of federal and state law. OSC, at 2. I find that DI's unrebutted testimony, in conjunction with GX 7, GX 8, and GX 9, establish that Respondent issued controlled substance prescriptions to J.J. on paperwork from a hospital at which Respondent did not treat J.J. GX 7, GX 8, GX 9, Tr. 99–103; *see also supra,* section II.D. (discussing the stipulation reached during the hearing). I further find that these prescriptions were written over the course of eighteen months and were for Percocet (eleven prescriptions for this Schedule II controlled substance), Tussionex (two prescriptions for this Schedule II controlled substance), Zolpidem (one prescription for this Schedule IV controlled substance), and Alprazolam (four prescriptions for this Schedule IV controlled substance).

I also find that DI's unrebutted testimony, in conjunction with GX 7, GX 8, and GX 11, establish that Respondent issued controlled substance prescriptions to N.J. on paperwork from a hospital at which Respondent did not treat N.J. GX 7, GX 8, GX 11, Tr. 100–03; *see also supra,* section II.D (discussing the stipulation reached during the hearing).

As already discussed, the Exhibits entered into the record do not include medical records purporting to be either for J.J. or for N.J. I note that this matter is due, in part, to Respondent's successful objection to the admission of a proposed Government exhibit purporting to be Respondent's medical record for J.J. and to her decision during the administrative hearing not to present a case.[24] *Supra* section II.D. Accordingly, I find that substantial record evidence shows that Respondent did not adequately document in a medical record her controlled substance prescribing for either J.J. or N.J.[25]

H. Allegation That Respondent Failed To Maintain Medical Records Pertaining to Her Prescribing of Controlled Substances to N.J. in Violation of Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(e)(3)(i) and Tenn. Code Ann. § 63–6–214(b)(12)

Similarly, the OSC alleged that Respondent ''fail[ed] to maintain treatment records pertaining to . . . [her] prescribing of controlled substances to N.J.'' OSC, at 2. The record certified to me contains no admitted exhibit constituting a medical record that Respondent created for N.J. The unrebutted record evidence shows that DI subpoenaed the medical records of the three hospitals at which Respondent served as a contract emergency medicine physician and that all three of the hospitals provided a ''no record'' response for N.J. medical records. GX 7, GX 8. This OSC charge puts the Government in a position of proving a negative. Despite this hurdle, I find substantial record evidence that Respondent did not maintain medical records adequately documenting her controlled substance prescribing for N.J. There are six reasons for my finding.

First, as already discussed, I find that the relevant three hospitals sent ''no record'' responses after receiving DI's subpoenas for N.J. medical records. Second, I find that, if medical records existed concerning her controlled substance prescribing for N.J., Respondent certainly would know about them and be able to raise their existence in furtherance of her defense against the

[24] The record also shows the awareness of Respondent's Counsel of a ''proposed'' medical record for N.J. and her decision not to take steps to have it introduced into the record. *Supra* section II.C; *infra* section II.H.

[25] In addition, this Agency has applied, and I apply here, the ''adverse inference rule.'' As the D.C. Circuit explained, ''Simply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.'' *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW)* v. *Nat'l Labor Relations Bd.,* 459 F.2d 1329, 1336 (D.C. Cir. 1972). The Court reiterated this rule in *Huthnance* v. *District of Columbia,* 722 F.3d 371, 378 (D.C. Cir. 2013). According to this legal principle, Respondent's decision not to provide evidence within her control gives rise to an inference that the evidence is unfavorable to Respondent.

OSC. She chose not to do so and she did not do so. Instead, after raising the matter herself by questioning Dr. Loyd about whether he was ''advised since the preparation of . . . [his expert] report that there are, in fact, medical records that exist for N.J.'' and asking him whether he has ''seen those records,'' Respondent chose not to delve into the content of ''those records'' or Dr. Loyd's opinion of them. Tr. 259–61. Instead, she asked him about whether he updated his expert report, (he answered in the negative), she questioned him further about the content of his expert report, and she inquired about matters not addressed in his expert report before ending her cross-examination. *Id.* at 260–61. After the Government's second question on re-direct, she objected about not having received Dr. Loyd's ''new opinions'' because he had not supplemented his expert report and claimed to be ''blind-sided'' and ''sandbagged.'' *Id.* at 261–67. After the Chief ALJ announced his finding that she had ''opened the door'' and denied her objections, decisions with which I agree, Respondent heard the Government's extensive re-direct of Dr. Loyd.

Third, I find that that Government re-direct of Dr. Loyd focused largely on the insufficiency of the ''proposed'' medical records for N.J. as documentation for the prescribing of controlled substances. *Id.* at 267–77. The re-direct explored what the ''proposed'' N.J. medical record indicated about N.J.'s multiple visits to Respondent, a physician practicing emergency medicine, as opposed to visits to a primary care physician, and the lack of evidence of coordination of treatment between Respondent and N.J.'s primary care physician. *Id.* at 267–69. It addressed the lack of urine drug screening despite the multiple controlled substance prescriptions and the lack of documented informed consent. *Id.* at 269–70. The re-direct also explored the lack of evidence that Respondent addressed with N.J. his increased risk of misusing controlled substances given his family history of substance use disorder, the lack of evidence that Respondent followed up on N.J.'s report of ''occasional alcohol use,'' and the lack of evidence that Respondent warned N.J. about the potential risk of mixing alcohol and controlled substances. *Id.* at 270–74. It concerned the lack of evidence that Respondent explored with N.J. treatment modalities other than controlled substances and the lack of evidence that Respondent asked N.J. about the impact of the controlled substance therapy on his mobility. *Id.* at 276–77. Finally, it concluded with Dr. Loyd's testimony that his review of the ''proposed'' N.J. patient chart did not change his opinion that Respondent prescribed controlled substances to N.J. without a legitimate medical purpose. *Id.* at 277. Despite her hearing the damaging testimony the Government elicited from Dr. Loyd on re-direct, Respondent declined the opportunity for re-cross, allowing this damaging testimony to stand, unrebutted. *Id.* at 279.

Fourth, I apply the ''adverse inference rule,'' as the Agency has done in the past, to the fact that Respondent did not offer into evidence any medical records she created in conjunction with her controlled substance prescribing for N.J. As the D.C. Circuit explained, ''Simply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.'' *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW)* v. *Nat'l Labor Relations Bd.,* 459 F.2d 1329, 1336 (D.C. Cir. 1972). The Court reiterated this rule in *Huthnance* v. *District of Columbia,* 722 F.3d 371, 378 (D.C. Cir. 2013). According to this legal principle, Respondent's decision not to provide evidence within her control gives rise to an inference that any such evidence is unfavorable to her.

Fifth, I find that Respondent, after hearing Dr. Loyd's damaging expert testimony, agreed to a joint stipulation admitting that she did not treat N.J. (or J.J.) at any of the three hospitals at which Respondent practiced as a contract emergency physician at the time and to which DI had issued subpoenas for J.J. and N.J. medical records. Tr. 330–31. In this context, the stipulation is damaging to Respondent's OSC defense because the record evidence was that Respondent wrote the controlled substance prescriptions she issued to N.J. (and J.J.) on the paper of one of these three hospitals. GX 9 and GX 11. The stipulation thus highlights an irregularity in Respondent's controlled substance prescribing for N.J. (and J.J.).

Sixth, for all of these reasons, I find that Respondent was aware of the existence of the ''proposed'' N.J. medical records and did not seek their admission because she did not consider them to be records that adequately documented her controlled substance prescribing for N.J.

I. Allegation That Respondent Violated the Terms of the MOA by Failing To Provide Drug Logs to DEA for Periods During Which She Issued Controlled Substance Prescriptions, Implicating 21 U.S.C. 823(f)(5)

The OSC alleged that Respondent ''failed to provide drug logs to DEA in February, March, and April 2012; and January, March and April 2013'' although she ''issued controlled substance prescriptions during the above periods.'' OSC, at 3. The record includes documentary evidence that Respondent issued a controlled substance prescription, for Tussionex, to N.J. on April 30, 2014. GX 11, at 5. The drug log that Respondent submitted to DEA for April 2014, however, does not include this Tussionex prescription issued to N.J. on April 30, 2014. GX 12l. Accordingly, I find that Respondent submitted to DEA a drug log for April 2014 that did not comply with the MOA because it did not include the April 30, 2014 controlled substance prescription she issued to N.J. for Tussionex.

At the hearing, the Government suggested, but subsequently ''withdrew'' its suggestion, that Respondent issued other controlled substance prescriptions that she did not document in a drug log submitted to DEA. Tr. 117, 119–20. I compared the prescriptions Respondent issued for J.J. and N.J. according to GX 9 and GX 11 with Respondent's drug logs in the record, GX 12a through GX 12l. The only discrepancy that I found, based on the prescriptions in the record for which there is a drug log in the record, is the same prescription about which DI testified: To N.J. for Tussionex, dated April 30, 2014.

Further, I found two prescriptions, one each in GX 9 (J.J.) and GX 11 (N.J.) for which there is no Respondent drug log in the record: To J.J. for Alprazolam dated January 16, 2013, and to N.J. for Tussionex dated September 13, 2012. Both September 2012 and January 2013 are months covered by the MOA's drug log requirement. The issue, therefore, is whether Respondent provided DEA with a drug log for the months of September 2012 and January 2013 or whether, as Respondent suggests, she provided DEA a drug log for those months but DEA misfiled them.

DI's unrefuted testimony is that Respondent admitted to him that she used certified mail to send her drug logs to DEA, and that Respondent did not provide DI with certified mail proof of having sent the missing MOA-required drug logs to DEA. *Supra* section II.C. As already discussed, the Agency has applied, and I am applying here, the ''adverse inference rule.'' *Supra* section

II.G. and section II.H. According to that rule, Respondent's failure to provide relevant evidence within her control, in this case certified mail proof of having sent the September 2012 and January 2013 MOA-required drug logs to DEA, gives rise to an inference that the evidence is unfavorable to her. My application of the ''adverse inference rule'' is particularly appropriate in this case because the MOA requires Respondent to maintain her controlled substance prescribing, administering, and dispensing records ''in a separate file or log, in chronological order,'' *a copy* of which shall be sent to DEA monthly. GX 3, at 2. In other words, the MOA requirement to which Respondent agreed calls for her to maintain the controlled substance records and to send a copy of them to DEA monthly. *Id.* As such, Respondent should have had a complete set of the MOA-required records to provide the DI on his demand, not merely incomplete proof that she sent DEA the MOA-required logs every month by certified mail.

Accordingly, I find that the record includes substantial evidence that Respondent did not provide drug logs to DEA for the months of September 2012 and January 2013 even though she issued a controlled substance prescription in each of those two months. The OSC noticed the lack of a drug log for January 2013, so I sustain that specific OSC charge. OSC, at 3. The OSC did not notice the lack of a drug log for September 2012, so I do not consider my finding that Respondent did not provide a drug log to DEA for that month in this Decision and Order. I do not sustain the other charges in paragraph 4 of the OSC due to the lack of substantial record evidence to support them. *Id.*

J. Allegation That Respondent Stored Controlled Substances at an Unregistered Location in Violation of 21 CFR 1301.12(a)

The OSC alleged that Respondent stored controlled substances in an exterior storage shed at her residence, an unregistered location. OSC, at 3. Respondent admitted that she stored controlled substances in the exterior storage shed attached to her residence. *See, e.g.,* GX 4, at 3; *see also supra* section II.C. The record includes no evidence that the address of Respondent's residence and attached shed appears on a certificate of registration issued to her. GX 1 (Facsimile of Respondent's DEA Certificate of Registration), at 1; GX 2 (Certification of Respondent's Registration History), at 1–2; GX 4, at 1 (address of Respondent's residence and attached shed).

Further, Respondent represented to a controlled substance supplier that she required the controlled substances she was purchasing for her ''private practice'' of medicine, and gave that controlled substance supplier ''St Croix LLC'' as her company's name. GX 6, at 8, 5. After having those controlled substances shipped to the address on her registration, the address of one of the hospitals at which she worked as a contract physician, she moved the controlled substances to a shed attached to her residence. GX 6, at 6, 8; GX 2, at 1; TBME Final Order, at 2. She admitted ''writing prescriptions for controlled substances for . . . J.J. who she treated at her home.'' TBME Final Order, at 3. She subsequently reported that the controlled substances had been stolen from the shed attached to her residence. GX 4, at 1, 3.

Accordingly, I find that the record includes substantial evidence that Respondent stored controlled substances at the shed attached to her residence, an unregistered location.

K. Allegation That Respondent Failed To Provide Effective Controls or Procedures To Guard Against the Theft or Diversion of Controlled Substances as Required by 21 CFR 1301.71(a)

The OSC alleged that Respondent ''failed to provide effective controls or procedures to guard against the theft or diversion of controlled substances as required by 21 CFR 1301.71(a). OSC, at 3. The undisputed record evidence is that Respondent reported to the Memphis Police Department the ''theft'' of controlled substances from the ''shed attached to . . . [her] residence.'' GX 4, at 1–3. According to the Memphis Police Department Incident Report, ''[t]here was no damage to the shed, as the door was unlocked.'' *Id.* at 3. DI also testified that the shed had a ''regular doorknob that would be operated with a key,'' among other things. Tr. 81; *see also supra* section II.C. Accordingly, I find that the record includes substantial evidence that Respondent stored controlled substances in an inadequately-secured shed, that she reported the theft of the controlled substances from that shed, and that controlled substances she stored in the shed attached to her residence were stolen from that shed.

L. Allegations That Respondent Did Not Conduct an Initial Inventory of Controlled Substances Received on March 7, 2013, and That Respondent Did Not Maintain Records of the Controlled Substances She Dispensed as Required by 21 CFR 1304.03(a) and (b), 1304.04(g), 1304.11(b) and (e), and 1304.21(a)

The OSC alleged that Respondent ''did not conduct an initial inventory of controlled substances received on March 7, 2013.'' OSC, at 3. The record evidence does not include an initial inventory, or any inventory, of the controlled substances Respondent purchased and received that meets regulatory requirements. Further, according to DI's uncontroverted testimony, Respondent admitted to him that ''she had never created a regulatory or an initial inventory.'' *Id.* at 86–87. Accordingly, I find both that Respondent did not conduct an initial inventory of the controlled substances she received on March 7, 2013, and that she admitted she did not conduct such an initial inventory.

The OSC also alleged that Respondent did not ''maintain records of . . . [her] dispensing'' of the controlled substances she received on March 7, 2013. OSC, at 3. The record does not include substantial evidence that Respondent dispensed any of the controlled substances she received on March 7, 2013. *Supra* section II.C. Accordingly, I find that this allegation is not supported by substantial record evidence.

III. Discussion

Allegation That Respondent's Registration Is Inconsistent With the Public Interest

Under Section 304 of the Controlled Substances Act (hereinafter, CSA), ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''physician,'' Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the . . .

distribution[ ] or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

According to Agency decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Akhtar-Zaidi,* 841 F.3d at 711; *Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as appellate courts have recognized, findings under a single factor are sufficient to support the revocation of a registration. *MacKay,* 664 F.3d at 821.

Under DEA's regulation, ''[a]t any hearing for the revocation . . . of a registration, the . . . [Government] shall have the burden of proving that the requirements for such revocation . . . pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors, the Government's evidence in support of its *prima facie* case is confined to Factors One, Two, Four, and Five.[26] I find that the Government's evidence satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f). I further find that Respondent chose not to put on a case to rebut the Government's prima facie case.

A. Factor One—Recommendation of the Appropriate State Licensing Board

Factor One calls for consideration of the ''recommendation of the appropriate state licensing board or professional disciplinary authority'' in the public interest determination. 21 U.S.C. 823(f)(1). The record evidence does not include a direct recommendation to the Agency from the TBME about Respondent's continued registration.

As already discussed, the Chief ALJ, without objection from either party, took official notice of the TBME Final Order concerning Respondent. *Supra* section I. The TBME Final Order concerns some of the matters addressed in the OSC and in this proceeding: The MOA, Respondent's purchase of controlled substances and the Declaration of Controlled Substances Purchases in the Moore Medical purchase packet, the Memphis Police Incident Report, and Respondent's controlled substance prescribing for J.J. TBME Final Order, at 2–3. The TBME found facts sufficient to establish that Respondent engaged in unprofessional, dishonorable or unethical conduct in violation of Tenn. Code Ann. § 63–6–214(b)(1), failed to create and maintain medical records in violation of Tenn. Comp. Rules & Regs. 0880–02–.15(4)(a), and violated Tenn. Comp. Rules & Regs. 0880–02–.15(4)(d) by failing to include, in all medical records produced in the course of the practice of medicine for all patients, all information and documentation listed in Tenn. Code Ann. § 63–2 101(c)(4) and such additional information necessary to ensure that a subsequent reviewing or treating physician can both ascertain the basis for the diagnoses, treatment plan and outcomes, and provide continuity of care.

The TBME ordered the reprimand of Respondent's Tennessee medical license, ordered her to complete successfully multiple specific medical courses, ordered her to ''maintain good and lawful conduct,'' and ordered her to pay assessed civil penalties and costs. *Id.* at 5–6.

While the TBME Final Order is not a ''direct recommendation'' for purposes of Factor One, it does indicate a recommendation on a subset of the allegations and evidence before me. *John O. Dimowo, M.D.,* 85 FR 15,800, 15,810 (2020).[27] I apply the same analysis and reach the same conclusion here given the differences between the allegations and evidence set out in the TBME Final Order and the allegations and evidence before me. In sum, while the terms of the TBME Final Order are not dispositive of the public interest inquiry in this case and are minimized due to the differences in the evidence in the TBME Final Order and the uncontroverted record evidence before me, I consider the TBME Final Order's reprimand of Respondent's Tennessee medical license and give it minimal weight in Respondent's favor since the TBME charges could have resulted in the suspension or revocation of her medical license.[28] Notice of Charges, at 1.

Factors Two and/or Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

1. Allegation That Respondent Continued To Issue Controlled Substance Prescriptions to Individuals Who Are Intimate or Close Acquaintances, and to an Individual With Whom She Had a ''Romantic Interaction'' in Violation of Tenn. Comp. R. & Regs. R. 0880–2–.14(8)(a) and Tenn. Code Ann. § 63–6–214(b)(1)

The first Tennessee authority the OSC cited for this allegation adopts Opinion 8.14 of the American Medical Association Code of Ethics. This Opinion concerns observing professional boundaries and meeting professional responsibilities. *https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinions-observing-professional-boundaries-and-meeting-professional/2015-05.*[29]

[26] As to Factor Three, there is no evidence in the record that Respondent has a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency decisions have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808 (10th Cir. 2011). Agency decisions have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

[27] The *John O. Dimowo, M.D.* Agency decision stands for the proposition that ''[a]lthough statutory analysis [of the CSA] may not definitively settle . . . [the breadth of the cognizable state 'recommendation' referenced in Factor One], the most impartial and reasonable course of action is to continue to take into consideration all actions indicating a recommendation from an appropriate state.'' 85 FR at 15,810.

[28] Respondent's Exceptions to Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated May 30, 2018 (hereinafter, Resp Exceptions), at 14.

[29] American Medical Association Code of Ethics Opinion 8.14 was updated in March of 1992 and then again in June of 2016. The text of Opinion 8.14 on the website that is dated 2015, therefore, was in effect at the time relevant to the allegations underlying this proceeding.

According to the Opinion, ''sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct.'' AMA Code of Ethics Opinion 8.14 (2015).

As already discussed, the Government did not present substantial evidence that Respondent issued controlled substance prescriptions to J.J. concurrent with a period during which they engaged in sexual contact. *Supra* section II.E. Accordingly, I find that the Government did not present sufficient evidence to support this allegation and, therefore, I find that there is no factual basis in the record to support this allegation.

2. Allegation That Respondent Issued Controlled Substance Prescriptions to J.J. and N.J. for No Legitimate Medical Purpose and Outside the Usual Course of Professional Practice in Violation of 21 CFR 1306.04(a), Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(a)(4) and (e), and Tenn. Code Ann. § 63–6–214(b)(12), and

3. Allegation That Respondent Failed To Maintain Medical Records Pertaining to Her Prescribing of Controlled Substances to N.J. in Violation of Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(e)(3)(i) and Tenn. Code Ann. § 63–6–214(b)(12).

According to the CSA, ''Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . distribute, . . . dispense, or possess with intent to . . . distribute[ ] or dispense, a controlled substance.'' 21 U.S.C. 841(a)(1). The CSA's implementing regulations state, among other things, that a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Respondent's registration is for her medical practice in Tennessee. As such, I also evaluate the record evidence according to the applicable laws and standard of care in Tennessee.[30] The Government alleged that Respondent violated the standard of care in Tennessee, citing Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(a)(4) and (e), Tenn. Code Ann. § 63–6–214(b)(12), and Tennessee Controlled Substance Prescribing Policy Statement, GX 15.[31]

According to these Tennessee authorities, a physician may be disciplined for prescribing a controlled substance ''not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition.'' Tenn. Code Ann. § 63–6–214(b)(12). These Tennessee authorities state that the prescribing of a controlled substance will be presumed to be legitimate if, among other things, it takes place ''[a]fter a documented medical history . . . and physical examination . . . including an assessment and consideration of the pain, physical and psychological function, any history, any potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a . . . controlled substance.'' Tenn. Comp. R. & Regs. R. 0880–2–.14(6)(e)(3)(i); *see also supra* section II.C. (standard of care testimony of Dr. Loyd); GX 15, at 1–2 (Tennessee Controlled Substance Prescribing Policy Statement that ''It is not what you prescribe, but how well you manage the patient's care, and document that care in legible form, that is important,'' ''What the Board *does* have is the expectation that physicians will create a record that shows: –Proper indication for the use of drug or other therapy; –Monitoring of the patient where necessary; –The patient's response to therapy based on follow-up visits; and –All rationale for continuing or modifying the therapy,'' ''Before beginning a regimen of controlled drugs, make a determination through trial or through a documented history that *non-addictive modalities are not appropriate or they do not work,*'' and ''To reiterate, one of the most frequent problems faced by a physician when he or she comes before the Board or other outside review bodies is *inadequate records.*''); GX 14 (''There were no medical records to support the history, physical examination and thought process that led to the prescribing of these medications. Essentially, the controlled substances were prescribed with nothing to support their use. The controlled substances prescribed for N.J. were prescribed outside the scope of accepted medical practice and were not for a legitimate medical purpose.''); Tr. 277 (the ''proposed'' medical records for N.J. did not change Dr. Loyd's opinion that Respondent prescribed controlled substances for N.J. for no legitimate purpose); *id.* at 240 (Dr. Loyd's testimony that the medical record is the ''crux.'' It is the foundation that establishes history, present illness, past medical history, surgical history, social history, physical examination, assessment and plan, and that is going to validate how a diagnosis was arrived at and the subsequent treatment plan for that diagnosis.).

I already found that the substantial record evidence is that Respondent did not document in a medical record her controlled substance prescribing for either J.J. or N.J., and that there is substantial record evidence that Respondent did not maintain records adequately documenting her controlled substance prescribing for N.J. *Supra* sections II.C., II.G., and II.H. Based alone on a subset of the Tennessee legal requirements for legitimate controlled substance prescribing, the uncontroverted record evidence is that Respondent's prescribing of controlled substances for J.J. and N.J. was not legitimate. For example, it did not take place after Respondent documented a medical history for, and physical exam of, either J.J. or N.J. *Supra* sections II.C. and II.G. In fact, as the record evidence does not even include a medical record for J.J. or N.J., Respondent's controlled substance prescribing does not, by definition, satisfy applicable Tennessee legal authorities.[32] Accordingly, I sustain both of these OSC charges, finding that Respondent's controlled substance prescribing for J.J. and N.J. was not for a legitimate medical purpose and was outside the usual course of professional practice in Tennessee.

4. Allegation That Respondent Stored Controlled Substances at an Unregistered Location in Violation of 21 CFR 1301.12(a)

The regulations implementing the CSA require that a ''separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are . . . dispensed by a person.'' 21 CFR 1301.12(a). The CSA defines ''dispense'' to ''include[e] the prescribing . . . of a controlled substance''—a fact that Respondent's arguments and exceptions downplay. 21 U.S.C. 802(10); *see also* OSC, at 3; Resp Exceptions, at 1–4. Respondent asks me to find that her storage of controlled substances in the shed attached to her residence was lawful because her residence was not a principal place of business or professional practice and she did not ''dispense'' controlled substances from

[30] *See Gonzales* v. *Oregon,* 546 U.S. 243, 269–71 (2006).

[31] Respondent did not offer any exhibit purporting to address or memorialize the Tennessee standard of care. She did not object when the Chief ALJ proposed to take official notice of GX 15. Tr. 332–33.

[32] For all of these reasons, I reject Respondent's claim that it is a ''legal fiction'' that Respondent had ''no medical records'' for J.J. and N.J. Resp Exceptions, at 12.

there. *Id.* According to her Exceptions, Respondent only had the ''intention of eventually opening a private practice'' and ''[t]here is simply no evidence in the record that Respondent issued a single prescription for a controlled substance from her residence.'' *Id.* at 1, 4. I decline to do so.

First, Respondent submitted no record evidence, let alone substantial record evidence, providing a factual basis for her argument. Indeed, the substantial record evidence includes Respondent's representation that she was engaged in private practice, called St. Croix LLC, and that her justification for purchasing controlled substances was to support the ''addition'' of age management medicine, weight loss, and wellness to her private practice. GX 6, at 8; *see also* TBME Final Order, at 3 (Respondent's admission that she wrote controlled substance prescriptions for J.J. whom ''she treated at her home''). Second, her argument conflicts with a core principle of the CSA, the establishment of a closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels.'' *Gonzales* v. *Raich,* 545 U.S. 1, 13–14, 27 (2005). Respondent's proposal would be a danger to public health and safety as it would allow the storage of controlled substances anywhere, as long as no dispensing took place at the location. Respondent offers no convincing argument that the CSA gives me authority to adopt her proposal. Further, there is none and I decline to establish such a dangerous policy.

I already found that the record includes substantial, uncontroverted evidence, including Respondent's admission, that Respondent stored controlled substances at an unregistered location. *Supra* section II.J. I found substantial, uncontroverted evidence that Respondent represented to her controlled substance supplier that the controlled substances she ordered were required for her ''private practice.'' *Id.* I also found substantial, uncontroverted evidence that Respondent admitted writing controlled substance prescriptions for J.J. whom she admitted she treated at her home. *Id.* Accordingly, I sustain the OSC charge that Respondent stored controlled substances at an unregistered location.

5. Allegation That Respondent Failed To Provide Effective Controls or Procedures To Guard Against the Theft or Diversion of Controlled Substances as Required by 21 CFR 1301.71(a)

According to 21 CFR 1301.71(a), ''[a]ll applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.'' As already discussed, I found substantial record evidence that Respondent stored controlled substances in an inadequately secured shed and that she reported the theft of the controlled substances from that shed. *Supra* section II.K. By itself, the fact that controlled substances were stolen from the shed in which Respondent stored them is substantial record evidence that she did not provide ''effective'' controls or procedures to guard against theft or diversion of controlled substances. If more evidence were required, the uncontroverted record evidence also details the out-in-the-open location of the shed in which Respondent chose to put the controlled substances she had purchased and the minimally protective door, knob, and lock Respondent put between the outside world and the controlled substances. *Supra* section II.C. and section II.K. For all of these reasons, I reject Respondent's claims that the shed was ''securely locked . . . [and] substantially constructed.'' Resp Exceptions, at 8–11.

Accordingly, I find that Respondent failed to provide effective controls or procedures against the theft or diversion of controlled substances in violation of 21 CFR 1301.71(a).

6. Allegations That Respondent Did Not Conduct an Initial Inventory of Controlled Substances Received on March 7, 2013 and That Respondent Did Not Maintain Records of the Controlled Substances She Dispensed as Required by 21 CFR 1304.03(a) and (b), 1304.04(g), 1304.11(b) and (e), and 1304.21(a)

The OSC alleges that Respondent did not conduct an initial inventory of the controlled substances she received on March 7, 2013. I already found both that Respondent did not conduct an initial inventory of the controlled substances she received on March 7, 2013, and that she admitted she did not conduct such an initial inventory. *Supra* section II.L.

Among her arguments concerning this allegation, Respondent posited that it is acceptable to use the Moore Medical purchase invoice for the controlled substances as an initial inventory. *See, e.g.,* Tr. 292–93; Resp Exceptions, at 7–8. I reject Respondent's arguments and her positions that minimize the inventory requirement in general. I also reject Respondent's dismissal of the deficiency, the failure to specify whether the inventory was taken at the beginning or the end of the day, that renders the Moore Medical purchase invoice an insufficient substitute for an initial inventory. *See, e.g.,* Tr. 291–95.

I note, however, that Respondent accurately pointed out that the portion of the regulation stating that inventories ''may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory'' was not alleged in the OSC. Tr. 292; 21 CFR 1304.11(a). I agree that the OSC did not notice section 1304.11(a) and that Respondent did not consent to litigate it. Accordingly, although I found substantial evidence that Respondent violated this inventory requirement, I find that the OSC did not give Respondent adequate notice of 21 CFR 1304.11(a) and, as a result, I do not sustain the OSC allegation that Respondent did not conduct an initial inventory of the controlled substances she received on March 7, 2013.[33]

The OSC also alleges that Respondent did not maintain records of the controlled substances she dispensed. 21 CFR 1304.03(b). The Government, however, did not present substantial evidence that Respondent dispensed controlled substances. *Supra* section II.L. I find that a predicate to finding substantial evidence that Respondent did not maintain records of the controlled substances she dispensed is substantial evidence that Respondent actually dispensed controlled substances. Accordingly, the record does not include substantial evidence that Respondent dispensed controlled substances and, therefore, there is no factual basis on which the allegation that Respondent failed to maintain dispensing records may stand.

Factor Five—Respondent's ''Conduct Which May Threaten the Public Health and Safety.''

1. Allegations That Respondent Provided Prescription Drug Logs to DEA With Falsified Entries ''Noncompliant With Terms of the June 2011 MOA'' in Violation of 21 U.S.C. 843(a)(4)(A), and ''Provid[ed] Misleading Information to Investigating Agents'' Implicating 21 U.S.C. 823(f)(5)

The OSC cites 21 U.S.C. 843(a)(4)(A) as the basis for the allegation that Respondent provided non-MOA compliant falsified controlled substance prescription drug logs to DEA. OSC, at 2. The Government has not, however, established the existence of each of the

[33] Citing 21 CFR 1304.11(b), Respondent argues in her exceptions that she was not under a duty to conduct an initial inventory for the controlled substances she received on March 7, 2013. Resp Exceptions, at 4–7. I disagree with Respondent's arguments for the reasons already discussed and reiterate that I am not sustaining the OSC's initial inventory allegation solely because it was not noticed adequately.

elements of 21 U.S.C. 843(a)(4)(A). For example, according to the provision, the furnished or omitted ''false or fraudulent material information'' must pertain to ''any application, report, record, or other document required to be made, kept, or filed.'' 21 U.S.C. 843(a)(4)(A). The Government did not establish that Respondent's controlled substance drug logs constitute a document ''required to be made, kept, or filed'' under any provision from 21 U.S.C. 801 through 21 U.S.C. 971. In sum, the Government has not established all of the elements of 21 U.S.C. 843(a)(4)(A) and, therefore, the Government has not proven that this provision applies to the facts of this case. Accordingly, I do not sustain the OSC allegation based on 21 U.S.C. 843(a)(4)(A).[34]

I already found that there is substantial record evidence that Respondent provided misleading information to investigating DEA agents. *Supra* section II.F. This misleading information ''may threaten the public health and safety'' by, for example, impeding DEA's investigative efforts. Accordingly, I shall consider Respondent's provision of misleading information to DEA under Factor Five. 21 U.S.C. 823(f)(5).

2. Allegation That Respondent Violated the Terms of the MOA by Failing To Provide Drug Logs to DEA for Periods During Which She Issued Controlled Substance Prescriptions, Implicating 21 U.S.C. 823(f)(5)

The MOA that Respondent signed calls for her to ''maintain a log of all controlled substances prescribed, administered or dispensed to patients at her registered premises or elsewhere,'' for her to ''maintain'' the controlled substance prescribing, administering, and dispensing information ''in a separate file or log, in chronological order,'' and for her to send a copy of the log to DEA every month. GX 3, at 2. The uncontroverted record evidence is that Respondent did not comply fully with this requirement. *Supra* section II.I. (my findings that Respondent submitted to DEA an incomplete controlled substance prescription drug log for April 2014 and that Respondent did not provide a drug log to DEA for the month of January 2013, even though the record contains substantial evidence that she issued a controlled substance prescription in that month).

Respondent's argument that she sent DEA the MOA-required logs rings hollow because the MOA also requires that she maintain the required information herself. Had she done so, she would have been able to provide DI with complete evidence of her full compliance with the MOA controlled substance prescription drug log requirement. As she apparently did not, or at least chose not to submit evidence that she did, I find that Respondent failed to provide fully-compliant controlled substance prescription drug logs to DEA for periods during which she issued controlled substance prescriptions. Accordingly, I shall consider Respondent's failure to comply fully with the MOA controlled substance prescription drug log requirement under Factor Five. 21 U.S.C. 823(f)(5).

Summary of Factors One, Two, Four, and Five

As found above concerning Factor One, while the TBME Final Order is not a ''direct recommendation'' for purposes of Factor One, it indicates a recommendation on a subset of the allegations and evidence before me. As such, while the terms of the TBME Final Order are not dispositive of the public interest inquiry in this case and are minimized due to the differences in the evidence laid out in the TBME Final Order and the uncontroverted record evidence before me, I consider the TBME Final Order's reprimand of Respondent's Tennessee medical license minimally in her favor because the TBME charges could have resulted in the suspension or revocation of her medical license.

Regarding Factors Two and Four, the Government did not establish with substantial evidence that Respondent engaged in ''sexual misconduct'' by issuing controlled substance prescriptions to J.J. ''concurrent'' with having ''sexual contact'' with him. The Government also did not establish with substantial evidence that Respondent failed to maintain records of the controlled substances she dispensed. Although there is substantial record evidence that Respondent did not conduct an initial inventory of the controlled substances she received on March 7, 2013, I am not weighing this charge against her due to OSC notice insufficiencies.

Also regarding Factors Two and Four, there is substantial evidence in the record before me that Respondent issued controlled substance prescriptions over the course of eighteen months, including fifteen Schedule II controlled substances, for no legitimate medical purpose and outside the usual course of professional practice, that Respondent failed to maintain medical records pertaining to her prescribing of controlled substances, that Respondent stored controlled substances at an unregistered location, and that Respondent failed to provide effective controls or procedures to guard against the theft or diversion of controlled substances.

Regarding Factor Five, although the Government did not establish all of the elements of a violation of 21 U.S.C. 843(a)(4)(A), the Government did put substantial evidence into the record that Respondent submitted a drug log to DEA that did not include every controlled substance prescription she issued during the period covered by the drug log. The Government also put substantial evidence into the record that Respondent did not comply with the MOA by failing to provide a drug log to DEA for a month during which she issued a controlled substance prescription. The Government also put substantial evidence into the record that Respondent included misleading information in the drug logs she submitted to DEA about the locations at which she issued controlled substance prescriptions. OSC, at 3.

Accordingly, I conclude that it would be ''inconsistent with the public interest'' for Respondent to have a registration due to the substantial evidence of her violations of the CSA and its implementing regulations. 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f); *see Wesley Pope,* 82 FR 14,944, 14,985 (2017).

Sanction

Where, as here, the Government presented a *prima facie* case that it would be ''inconsistent with the public interest'' for Respondent to retain a registration, and Respondent did not rebut the Government's *prima facie* case, the ''burden of proof shifts'' to Respondent ''to show why . . . [she] can be trusted with a registration.'' *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018), quoting *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *see also MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009) quoting *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005)). Further, past performance is the best predictor of future performance and, when a registrant has ''failed to comply with . . . [her] responsibilities in the past, it makes sense for the agency to consider whether . . . [she]

[34] Given my decision not to sustain the 21 U.S.C. 843(a)(4)(A) allegation, I need not address Respondent's exception to the Chief ALJ's conclusion that Respondent ''intentionally or knowingly submitted false information'' to DEA. Resp Exceptions, at 11–12.

will change . . . [her] behavior in the future.'' *Pharmacy Doctors Enterprises, Inc.* v. *Drug Enf't Admin.,* 789 F. App'x, 724, 733 (citing *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d at 831 (citing *MacKay* v. *Drug Enf't Admin.,* 664 F.3d at 820 (''[T]hat consideration is vital to whether continued registration is in the public interest.'') and *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995) (''An agency rationally may conclude that past performance is the best predictor of future performance.'')).

Circuit courts have also approved the Agency's acceptance of responsibility requirement. *Pharmacy Doctors Enterprises, Inc.* v. *Drug Enf't Admin.,* 789 F. App'x, at 732; *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d at 830 (citing *MacKay* v. *Drug Enf't Admin.,* 664 F.3d at 820 (''The DEA may properly consider whether a physician admits fault in determining if the physician's registration should be revoked.''); *see also Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972–73 (2019) (unequivocal acceptance of responsibility); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009) (collecting cases). The Agency has decided that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases); *Samuel Mintlow, M.D.,* 80 FR at 3652 (''Obviously, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction.''). The Agency has also considered the need to deter similar acts in the future by Respondent and by the community of registrants. *Id.*

In terms of egregiousness, the violations that the record evidence shows Respondent committed go to the heart of the CSA—not complying with the closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels'' and not prescribing controlled substances in compliance with the applicable standard of care and in the usual course of professional practice. *Gonzales* v. *Raich,* 545 U.S. at 13–14, 27.

Respondent did not testify. As already noted, after the Chief ALJ issued his Recommended Decision, in which he concluded that Respondent's acceptance of responsibility through her Counsel was ''ineffectual'' and did not ''point[ ] to anything that she was acknowledg[ing] that she did wrong,'' Respondent submitted her MCACAP. Supra section I; RD, at 66. In the MCACAP, Respondent submitted a signed and notarized Affidavit dated July 11, 2018. In the Affidavit, Respondent stated that she:

> accept[ed] responsibility for the mistakes and inadvertent errors in judgment I made that are the subject of this matter, including, but not necessarily limited to: a. Failing to appreciate the importance of accurate record-keeping as it relates to the logs required by my 2011 Memorandum of Agreement with the DEA; b. Failing to keep better treatment records for J.J. and N.J.; c. Failing to keep better prescription records for J.J. and N.J.; d. Failing to have more thorough and detailed treatment plans for J.J. and N.J.; [and] e. Listing J.J. and N.J. as patients of any hospital in my DEA logs.

MCACAP Affidavit, at 2. While Respondent's Affidavit-based acceptance of responsibility points to areas in which she admits to making ''mistakes and inadvertent errors of judgment,'' she admits that her Affidavit does not go to the trouble of naming all of her ''mistakes and inadvertent errors of judgment.'' *Id.* Further, the Affidavit describes the areas for which she takes responsibility in general terms only, and the areas do not include all of the violations the Government proved with substantial evidence. For example, while Respondent's Affidavit states that she failed to ''keep better treatment records,'' ''keep better prescription records,'' and ''have more thorough and detailed treatment plans,'' the record certified to me contains no ''treatment records,'' no ''prescription records,'' and no ''treatment plans'' whatsoever. *Supra* section II.G. and II.H.

DEA agreed to grant Respondent's last application for a registration upon her execution of the MOA. MOA, at 2 (''Upon execution by all parties to this agreement, DEA agrees to grant . . . [Respondent's] application for DEA registration in Schedules II through V.''). A term of the MOA is that Respondent ''agrees to abide by all Federal, State and local laws and regulations pertaining to controlled substances.'' *Id.* As already discussed, I found that Respondent failed to abide by ''all Federal, State and local laws and regulations pertaining to controlled substances.'' *Supra* sections III.B.2., III.B.3., III.B.4., III.B.5., III.C.1., and III.C.2. Yet, while the MCACAP indicates that Respondent subsequently attended and passed the courses required by the TBME Final Order plus others, nothing in the MCACAP and certified record convinces me that Respondent learned from those courses and will apply consistently going forward what those courses taught about the CSA's recordkeeping requirements and prescribing controlled substances in compliance with the applicable standard of care and in the usual course of professional practice. For example, Respondent's Affidavit states that she acknowledges ''failing to seek legal and compliance counsel, as well as educating . . . [herself] on the pertinent rules and regulations of controlled substance, prior to taking any actions related to my desire to open a private practice.'' *Id.* Instead of being reassuring, this portion of Respondent's acknowledgement is very concerning because it exhibits her view that her need to become educated on the ''pertinent rules and regulations of controlled substances'' is tied to her opening a private practice, not to her being entrusted with a registration.

Further, Respondent's Affidavit does not address her ordering controlled substances for delivery at her registered address and her removal of those controlled substances from her registered address to the shed attached to her home. Even after reading the MCACAP and Respondent's Affidavit, I see nothing in them or in the record certified to me suggesting that Respondent appreciates that Congress passed, and the President of the United States signed into law, a statute that requires registrants to take specific actions to keep controlled substances in a closed regulatory system created to ''prevent the diversion of drugs from legitimate to illicit channels.'' There is little in the record before me showing that Respondent appreciates the difference between ordering controlled substances and ordering groceries.[35] In sum, given Respondent's failure to comply with the MOA's provisions and her failure to demonstrate her ability to apply the information conveyed in the courses Respondent attended and passed, it is not reasonable for me, at this time, to believe that Respondent's future handling and prescribing of controlled substances will comply with legal requirements.[36] *Alra Labs., Inc.* v.

[35] Respondent's eighth Exception asserts that the ''record as a whole establishes that the continued registration of Respondent . . . would be consistent with the public interest.'' Resp Exceptions, at 13. The Exception does not elaborate on this assertion, and the fact that Respondent did not present a case contributes substantially to the assertion's incredibility. The Exception's statements that J.J. and N.J. ''affirmed that the prescriptions issued by Respondent were to treat them for injuries they had'' and that the ''Government produced no competent evidence that the prescriptions were *not* for legitimate medical needs'' are not helpful. The legitimacy of controlled substance prescriptions is assessed by applicable federal and state legal standards and standards of care, not by the opinions of those to whom the prescriptions were issued. *Supra* section II.G., II.H., III.B.2., and III.B.3; *see also* Resp Exceptions, at 13–14.

[36] I do not consider remedial measures when a Respondent does not unequivocally accept responsibility. Respondent's MCACAP presentation

Drug Enf't Admin., 54 F.3d at 452 (''An agency rationally may conclude that past performance is the best predictor of future performance.''). Accordingly, I shall order that Respondent's registration be revoked and that all pending applications to renew or modify Respondent's registration, and any application for a new registration in Tennessee, be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. FS2669868 issued to Jennifer L. St. Croix, M.D. I further hereby deny any pending application of Jennifer L. St. Croix, M.D., to renew or modify this registration, as well as any other pending application of Jennifer L. St. Croix, M.D. for registration in Tennessee. This Order is effective May 12, 2021.

D. Christopher Evans,

Acting Administrator.

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of remedial efforts was limited, unpersuasive, and not reassuring.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Rescue Plan Act of 2021, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of the availability of the model health care continuation coverage notices required by the American Rescue Plan Act of 2021.

SUMMARY: On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP). Section 9501(a)(5)(D) and (6)(D) of ARP directs the Department of Labor (Department) to develop model notices for use by group health plans and other entities that, pursuant to the ARP, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model notices.

DATES: April 12, 2021.

FOR FURTHER INFORMATION CONTACT: David Sydlik, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693–8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created the health care continuation coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and title XXII of the Public Health Service Act (PHS Act). These provisions are commonly referred to as the COBRA continuation provisions, and the continuation coverage that they mandate is commonly referred to as COBRA continuation coverage. Under the ARP, premium assistance is available to certain individuals who are eligible for COBRA continuation coverage due to a qualifying event that is a reduction in hours or an involuntary termination. If an individual qualifies for the premium assistance, the individual need not pay any of the COBRA premium otherwise due to the plan. This premium assistance is available for COBRA continuation coverage for periods of coverage from April 1, 2021 through September 30, 2021. Group health plans subject to the COBRA continuation provisions are subject to the ARP's premium assistance provisions, notice requirements, and an additional election period. Federal COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. However, participants and beneficiaries of group health plans sponsored by employers with fewer than 20 employees may be eligible for the premium assistance under state laws that provide comparable coverage, often referred to as ''mini-Cobra,'' with an alternative notice required under the ARP for these plans not subject to federal COBRA laws.[1]

The ARP requires group health plans to provide four notices: (1) A ''General Notice,'' (2) an ''Alternative Notice,'' (3) a ''Notice in Connection with Extended Election Periods,'' and (4) a ''Notice of Expiration of Period of Premium Assistance.'' Under ARP section 9501(a)(5)(B), the General Notice, the Alternative Notice, and the Notice in Connection with Extended Election Periods must include:

- A prominent description of the availability of the premium assistance, including any conditions on the entitlement;
- a form to request treatment as an ''Assistance Eligible Individual''[2];
- the name, address, and telephone number of the plan administrator (and any other person with relevant information about the premium assistance);
- a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan and the penalty for failing to meet this obligation; and
- (if applicable) a description of the opportunity to switch coverage options.

The Notice in Connection with Extended Election Periods must also include a description of the extended election period. The ARP also requires group health plans to provide a Notice of Expiration of Period of Premium Assistance to individuals whose premium assistance is coming to an end (whether due to the expiration of their COBRA continuation coverage or the expiration of the period of premium assistance), which must explain that the premium assistance for such individual will expire soon; include a prominent identification of the date of such expiration; and explain that such individual may be eligible for coverage without any premium assistance through—(I) COBRA continuation coverage; or (II) coverage under a group health plan. This notice must be provided within the period that is 45 days before the date of such expiration and ending on the day that is 15 days before the date of such expiration. The Departments of Labor and the Treasury share jurisdiction for enforcement of the COBRA continuation provisions. The Department of Labor is committed to

[1] Under COBRA, group health plans must provide covered employees and their families with certain notices explaining their COBRA rights. A group health plan must provide covered employees and qualified beneficiaries with a notice which describes their right to COBRA continuation coverage and how to make an election (election notice). The ARP provides that COBRA election notices already provided for qualifying events occurring during this time period but which did not include information on the availability of the premium assistance are not complete. As such, the end of the 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. Moreover, although under COBRA a timely election generally requires a plan to make coverage available retroactively to the date of the loss of coverage, the ARP allows an individual to elect COBRA continuation coverage with premium assistance for a period beginning on or after April 1, 2021.

[2] In general, an ''Assistance Eligible Individual'' is, with respect to coverage beginning April 1, 2021 and ending September 30, 2021, an individual who is eligible for COBRA continuation coverage as a result of a reduction in hours or an involuntary termination of employment; and who elects COBRA coverage (when first offered or during the additional election period).

ensuring that individuals receive the benefits to which they are entitled to under ARP. Failure to satisfy the COBRA continuation coverage requirements, including the failure to provide these required notices, may subject a plan to an excise tax under Internal Revenue Code section 4980B. This tax could be as much as $100 per qualified beneficiary, but not more than $200 per family, for each day that the taxpayer is in violation of the COBRA rules.

Finally, the ARP provides that premium assistance is not available for months of coverage beginning on or after the date the individual becomes eligible for coverage under a group health plan (other than excepted benefits, a health flexible spending account (FSA), or a qualified small employer health reimbursement arrangement (QSEHRA)) or the individual becomes eligible for Medicare. Additionally, the ARP provides that the health coverage tax credit may not be claimed for months of COBRA continuation coverage with premium assistance.[3] The ARP requires assistance eligible individuals receiving the premium assistance to notify their plan if they become eligible for coverage under another group health plan (not including excepted benefits, a QSEHRA, or a health FSA), or if they become eligible for Medicare, and failure to do so can result in a tax penalty. Such notice must be provided to the group health plan in such time and manner as specified by the Department of Labor. The Department has provided a model ''Participant Notification'' form in the Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021, to be provided with the ARP General Notice, a Notice in Connection with Extended Election Periods, and the Alternative Notice.

II. Description of the Model Notice Disclosures

a. In General

In an effort to ensure that participants and beneficiaries receive all of the information required under the ARP while minimizing the burden imposed on group health plans and issuers, the Department created several model documents. These model documents include an ARP General Notice, a Notice in Connection with Extended Election Periods, an Alternative Notice, and a Notice of Expiration of Period of Premium Assistance. These documents are discussed further below. In addition to these model documents, the Department also developed a Summary of ARP requirements to include the following supplemental disclosures, which should be included with the ARP General Notice, the Alternative Notice, and the Notice in Connection with Extended Election Periods:

i. A summary of the ARP's premium assistance provisions.

ii. A form to request the premium assistance under the ARP.

iii. A form for an individual to use to satisfy the ARP's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage (other than coverage consisting of only excepted benefits, coverage under a health FSA, or coverage under a QSEHRA) or that the individual is eligible for Medicare.

Each model notice is designed for a particular group of qualified beneficiaries. When provided in combination with these supplemental disclosures, these model documents contain all of the information needed to satisfy the content requirements for the ARP's notice provisions.

b. ARP General Notice

Group health plans subject to the COBRA continuation provisions must provide a general notice including the required disclosures under ARP section 9501(a)(5)(B) (ARP General Notice) to all qualified beneficiaries, not just covered employees, who have experienced any COBRA qualifying event at any time from April 1, 2021 through September 30, 2021.

The ARP General Notice includes information related to the premium assistance, and other rights and obligations under the ARP, as well as all of the information required in an election notice required pursuant to the Department of Labor's final COBRA notice regulations under 29 CFR 2590.606–4(b). This notice also provides additional information on the Health Insurance Marketplace®,[4] Medicaid, and interaction with Medicare. Providing the ARP General Notice (with the supplemental disclosure summarizing the ARP requirements discussed above) to individuals who have experienced a qualifying event from April 1, 2021 through September 30, 2021 will satisfy the Department of Labor's existing requirements for the content of this COBRA election notice as well as those required by ARP.[5]

c. Notice in Connection With Extended Election Periods

Section 9501(a)(5)(C) of the ARP requires group health plans to provide a Notice in Connection with Extended Election Periods that includes the required disclosures under ARP section 9501(a)(5)(B) to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect) who became entitled to elect COBRA continuation coverage before April 1, 2021. This notice must be provided by May 31, 2021, which is 60 days after the first day of the first month after the ARP was enacted.

d. Notice of Expiration of Period of Premium Assistance

Section 9501(a)(6) of the ARP requires a notice of expiration of period of premium assistance. This notice must include a written notice, in clear and understandable language, that the premium assistance for such individual will expire soon and the prominent identification of the date of such expiration; and that such individual may be eligible for coverage without any premium assistance through—(I) COBRA continuation coverage; or (II) coverage under a group health plan. This notice is not required to be provided if eligibility for the premium assistance ends because the individual has become eligible for another group health plan (excluding excepted

[3] A former employee will not be eligible for a premium tax credit, or advance payments of the premium tax credit, for Marketplace coverage for months the individual is enrolled in COBRA continuation coverage with premium assistance. Treas. Reg. sec. 1.36B–2(c)(3)(v). Additionally, a current employee who is offered COBRA continuation coverage with premium assistance by the employee's employer may not be eligible for a premium tax credit, or advance payments of the premium tax credit, for Marketplace coverage.

[4] Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services.

[5] In general, qualified beneficiaries have 60 days to respond to a COBRA election notice. Due to the COVID–19 National Emergency, the Department of Labor, the Department of the Treasury, and the Internal Revenue Service issued a Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID–19 Outbreak (''Joint Notice''). 85 FR 26351 (May 4, 2020). This notice provided relief for certain actions related to employee benefit plans required or permitted under Title I of ERISA and the Code, including the 60-day initial election period for COBRA continuation coverage and the date for making COBRA premium payments. The Department of Labor's Employee Benefits Security Administration (EBSA) provided further guidance on this relief in EBSA Disaster Relief Notice 2021–01, which is available at *https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf.* These extended deadlines do not apply, however, to notices and elections, including the 60-day ARP election period, related to COBRA continuation coverage with premium assistance available to Assistance Eligible Individuals as provided under the ARP.

benefits, a QSEHRA, or a health FSA), or if the individual has become eligible for Medicare. This notice is not required to, but may note that the individual and any covered dependents may be eligible for a special enrollment period to enroll in individual market health insurance coverage offered through a Health Insurance Marketplace®. This notice must be provided 15–45 days before the date of expiration of premium assistance.

e. Alternative Notice

While COBRA provides continuation coverage requirements for group health plans under federal law, these requirements do not apply to every plan. For example, group health plans maintained by an employer that employed fewer than 20 employees in the previous calendar year are not subject to federal COBRA.[6] However, many states have laws similar to COBRA, including those that apply to health insurers of employers with less than 20 employees (mini-COBRA). The Alternative Notice is required to be sent by issuers that offer group health insurance coverage subject to such continuation coverage requirements imposed by state law. The Alternative Notice must include the information described above and be provided to all qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from April 1, 2021 through September 30, 2021, regardless of the type of qualifying event. The Department of Labor, in consultation with the Departments of the Treasury and Health and Human Services, is required to consult with administrators of the group health plan and other stakeholders, to provide rules requiring the provision of such notice and a model notice. The Department has engaged in such consultations through meetings with administrators of group health plans and other stakeholders prior to the issuance of this notice and the model notices.

Continuation coverage requirements vary among states. Thus, the Department crafted a single version of this notice that should be modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement may also use the model Alternative Notice.

III. For Additional Information

For additional information about ARP's COBRA premium assistance provisions, contact the Department's Employee Benefits Security Administration's Benefits Advisors at *askebsa.dol.gov* or 1–866–444–3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA web page *https://www.dol.gov/cobra-subsidy* that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Regulations and Interpretations, Attention: PRA Clearance Officer, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210 or email *ebsa.opr@dol.gov* and reference the OMB Control Number 1210–XXXX.

The public reporting burden for this collection of information is shown in the following table.

V. Models

Model notices are available in modifiable, electronic form on its website: *https://www.dol.gov/cobra-subsidy.*

VI. Statutory Authority

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1169, 1191c; Pub. L. 117–2 (2021) sec. 9501; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003).

Notice type	Estimated average time
General Notice	Minimal additional burden as already covered under OMB Control Number 1210–0123.
Notice in Connection with Extended Election Periods	1 minute per response.
Alternative Notice	2 minutes per response.
Notice of Expiration of Premium Assistance	1 minute per response.

Signed at Washington, DC, this 7th day of April, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2021–07467 Filed 4–9–21; 8:45 am]

BILLING CODE P

[6] 26 CFR 54.4980B–2.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0030]

IAPMO Ventures, LLC dba IAPMO EGS: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision on the application of IAPMO Ventures, LLC dba IAPMO EGS for expansion of its scope of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on April 12, 2021.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, OSHA Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of IAPMO Ventures, LLC dba IAPMO EGS (IAPMO) as a NRTL. IAPMO's expansion covers the addition of six test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including IAPMO, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

IAPMO submitted two applications to OSHA to expand their NRTL recognition. The first application to add one standard to the NRTL scope of recognition was received on September 29, 2019 (OSHA–2010–0030–0014), and this application was amended on November 25, 2020 (OSHA–2010–0030–0015), to add five additional standards. The applications would add six additional test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing IAPMO's expansion applications in the **Federal Register** on February 23, 2021 (86 FR 11002). The agency requested comments by March 10, 2021, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant expansion of IAPMO's NRTL scope of recognition.

To obtain or review copies of all public documents pertaining to IAPMO's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2013–0030 contains all materials in the record concerning IAPMO's recognition. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVD–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service.

II. Final Decision and Order

OSHA staff examined IAPMO's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that IAPMO meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant IAPMO's scope of recognition. OSHA limits the expansion of IAPMO's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN IAPMO'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 197	Standard for Commercial Electric Cooking Appliances.
UL 962	Standard for Household and Commercial Furnishings.
UL 676	Standard for Underwater Luminaires and Submersible Junction Boxes.
UL 73	Standard for Safety Motor-Operated Appliances.
UL 763	Standard for Commercial Safety for Motor-Operated Commercial Food Preparing Machines.
UL 399	Drinking Water Coolers.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, IAPMO must abide by the following conditions of the recognition:

1. IAPMO must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. IAPMO must meet all the terms of its recognition and comply with all

OSHA policies pertaining to this recognition; and

3. IAPMO must continue to meet the requirements for recognition, including all previously published conditions on IAPMO's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of IAPMO, subject to the limitation and conditions specified above.

III. Authority and Signature

James S. Frederick, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC, on April 5, 2021.

James S. Frederick,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–07406 Filed 4–9–21; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. to 2:00 p.m. (PDT), Wednesday, April 28, 2021.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public. Due to COVID–19, visitors are currently prohibited from entering the Udall Foundation offices. Members of the public who would like to attend this meeting should contact Elizabeth Monroe at *monroe@udall.gov* prior to April 28 to request the teleconference connection information.

MATTERS TO BE CONSIDERED: (1) Call to Order and Chair's Remarks; (2) Executive Director's Remarks; (3) Board Officers & Executive Committee Elections; (4) New Board Chair Vision, Outlook, and Priorities; (5) Consent Agenda Approval (Minutes of the November 20, 2020, Board of Trustees Meeting; Board Reports submitted for Education Programs; Finance and Internal Controls; John S. McCain III National Center for Environmental Conflict Resolution; Native Nations Institute for Leadership, Management, and Policy; Special Collections-Udall Archives; and Udall Center for Studies in Public Policy; Approve Trustees Awards for Outstanding Accomplishment to Bret Muter and Jason Curley; and Board takes notice of any new and updated personnel policies and internal control methodologies); (6) Trustees Award Recognition; (7) Finance and Internal Controls Update; (8) University of Arizona Partnerships Discussion; (9) Discuss and Act on Amendments to the Operating Procedures of the Board of Trustees of the Morris K. Udall and Stewart L. Udall Foundation and a resolution to adopt the amendments; (10) Grants, Gifts, and Donations Discussion; and (11) Trustee Ethics Training.

CONTACT PERSON FOR MORE INFORMATION: David P. Brown, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: April 8, 2021.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2021–07565 Filed 4–8–21; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On February 2, 2021, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on April 7, 2021 to:

1. Lynne Talley—Permit No. 2021–007

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–07459 Filed 4–9–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval for the collection of research and development data through the Directorate of Computer and Information Science and Engineering (CISE) Research Experience for Undergraduates (REU) Past Participant Survey. In accordance with the requirement of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by June 11, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: CISE REU Past Participant Survey—2021 Impact of REU Participation on Career Pathways.

OMB Approval Number: 3145–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to establish an information collection.

Abstract: Every year the National Science Foundation (NSF) funds hundreds of Research Experience for Undergraduates (REU) activities through it REU program. The Directorate of Computer and Information Science and Engineering (CISE) is seeking to evaluate the effectiveness of the CISE REU program.

REUs provide undergraduate students at US higher education institutions to work with a faculty on a research project. They can take the form of REU Sites or REU Supplements. REU Sites are based on independent proposals to initiate and conduct projects that engage a number of students in research, and

REU Supplements are included as a component of proposals for new or renewal NSF grants or cooperative agreements or may be requested for ongoing NSF-funded research projects. By offering this opportunity to undergraduate students the REU program seeks to expand student participation in all kinds of research—both disciplinary and interdisciplinary—encompassing efforts by individual investigators, groups, centers, national facilities, and others. It draws on the integration of research and education to attract a diverse pool of talented students into careers in science and engineering, including teaching and education research related to science and engineering, and to help ensure that these students receive the best education possible.

The data collection intends to assess the impact of REU participation on career pathways and will be done through an online survey. The researchers will collect data from past participants including the students and the mentors with a separate survey customized for each group. The specific evaluation objectives are:

1. Identify the career trajectory of the REU participants since their participation in the REU program including degrees they received, institutions they attended, and their current status (*e.g.,* employed, graduate students).

2. Document the structure of the REU experience that the respondents participated in. These may include the type of REU (*e.g.,* Site, Supplement), location of REU, and timing of REU.

3. Describe the REU mentors' perceptions of the REU program on the student participants and the mentors' career development.

4. Examine the skills the participants gained and experiences they had during their REU participation. These may include technical skills, information on graduate school application process, and research training.

5. Analyze the relationships between REU participation and career pathways specifically focusing on whether these experiences are associated with the participants' interest in and ultimate selection of research careers in computing.

Ultimately, the findings from the analysis of this data collection will be used to improve the impact of CISE REU Program in order to better reach its goals of providing meaningful research opportunities to undergraduate students and, in doing so, attracting a broad range of students to computing/STEM careers.

Use of information: The information collected through this survey will be used to evaluate the NSF CISE REU Program.

Expected Respondents: The survey will be sent to students and mentors who participated in the NSF CISE REU Program through an REU Site or a Supplement. Further, in order to obtain data from an appropriate comparison group, the researchers will also include participants of other REUs and similar activities. The CISE REU Program participant list will be obtained from NSF and comparison group participants will be culled from a list of individuals previously surveyed by the researchers. The estimated number of individuals who will be receiving this survey is 25,000. Based on an approximate response rate of 30%, there will be an estimated 7,500 respondents when the data collection is completed.

Average time per respondent: The online survey is designed to be completed in 20 minutes or less.

Frequency: Each respondent will be asked to complete this survey once during late summer/early fall 2021.

Estimated burden on public: Based on 7,500 estimated responses and 20 minutes per respondent, the estimate for this data collection is 2,500 burden hours.

Comments: Comments are invited on:

1. Whether the proposed collection of information is necessary for the evaluation of the CISE REU Program.

2. The accuracy of the NSF's estimate of the burden of the proposed collection of information.

3. Ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

4. Ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Dated: April 6, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–07381 Filed 4–9–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Networking and Information Technology Research and Development Program's Advanced Wireless Test Platform (AWTP) Team and the Federal Mobility Group (FMG) Virtual Joint 5G Workshop

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of virtual workshop.

SUMMARY: The NITRD Advanced Wireless Test Platform (AWTP) Team and Federal Mobility Group (FMG) Joint 5G Workshop will consist of two half-day sessions with a focus on advancing the FMG work product—*Framework to Conduct 5G Testing*—by exploring its applicability to specific 5G inspired use cases. It will provide moderated exercises where participants will walk through the process identified in the framework document, with two selected Federal 5G use cases. The goal is to provide an overview of the process and the testing framework elements needed to conduct 5G testing for different use cases. It will also allow participants to learn about Federal 5G use cases and requirements from key stakeholders. The intended outcomes of this workshop are to build awareness of the critical need for evolving 5G best-in-class test practices, and to connect 5G labs or testbeds with Federal agencies and 5G component vendors.

DATES: April 27–28, 2021.

ADDRESSES: The AWTP and FMG Joint 5G Workshop will be held virtually through Zoom for Government.

Instructions: Registration is required; registration link will be available a week before the workshop. For more information on the workshop, agenda, and registration, please see the workshop website: *https://www.nitrd.gov/nitrdgroups/index.php?title=AWTP-FMG-Joint-5G-Workshop.*

FOR FURTHER INFORMATION CONTACT: Mallory Hinks at *AWTP-FMG-5G-Workshop@nitrd.gov,* or via phone at 202–459–9674. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background/Objectives/Overview/etc.: This notice is issued on behalf of the NITRD AWTP Team and the FMG. This virtual 5G workshop will focus on the Framework to Conduct 5G Testing. It

will provide moderated exercises where participants will walk through the process identified in the framework document, with two selected Federal 5G use cases. The workshop will be held virtually on April 27–28, 2021 from 10 a.m. (ET) to 1:30 p.m. (ET) each day.

Objectives

- Provide an overview of the process (''How to use the framework to build a test capability'') as well as the testing framework modules or elements in the 5G testing framework whitepaper, needed to conduct 5G testing for different use cases.
- Learn about federal 5G use cases and requirements from key stakeholders.
- Hear from the testbed vendor and research community about the requirements, resources, approaches of building or operating a 5G infrastructure testbed (with discussion of the capabilities and main modules in Radio Access Networks (RAN) and core), specifically for two innovative 5G use cases: Smart Warehouse and Unmanned Aerial Vehicle (UAV)/Drone.
- Learn more about the real-world methodologies of developing 5G testing cases with key performance indicators or testing metrics as well as of conducting 5G testing and experimentation with the 5G infrastructure testbed from the testbed vendors' and researchers' viewpoint. What are the challenges encountered?
- Collaborate with 5G testbed vendor and researcher community to understand how the 5G testbed framework whitepaper would add value. What aspects of the whitepaper do the testbed vendors and researchers find most useful in helping to build a 5G testbed, develop 5G testing cases, and conduct 5G testing? What are the lessons learned or gaps when applying the 5G testbed framework to real-world 5G testing and experimentation?

Intended Outcome

The intended outcomes of this workshop are to build awareness of the critical need for evolving 5G best-in-class test practices, and to connect 5G labs or testbeds with Federal agencies and 5G component vendors.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on April 7, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–07471 Filed 4–9–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0236]

Information Collection: Licenses and Radiation Safety Requirements for Irradiators

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Licenses and Radiation Safety Requirements for Irradiators.''

DATES: Submit comments by May 12, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0236 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0236. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0236 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML21054A043.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0236, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment

submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 10, 2020, 85 FR 79531.

1. *The title of the information collection:* 10 CFR part 36, ''Licenses and Radiation Safety Requirements for Irradiators.''

2. *OMB approval number:* 3150–0158.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* Applications for new licenses and amendment may be submitted at any time (on occasion). Applications for renewal are submitted every 15 years. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Applicants for and holders of specific licenses authorizing the use of licensed material for irradiators.

7. *The estimated number of annual responses:* 2,396.

8. *The estimated number of annual respondents:* 70.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 39,836.

10. *Abstract:* Part 36 of title 10 of the *Code of Federal Regulations,* establishes radiation safety requirements for the use of radioactive material for irradiators. The information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that the licensee possession and use of source or byproduct material is in compliance with license and regulatory requirements.

Dated: April 7, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–07409 Filed 4–9–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0073]

Environmental Assessments and Findings of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of the initial decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on April 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0073 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0073. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1018, email: *Yen-Ju.Chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial DFP submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial ISFSI DFPs in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The following table includes the plant name, docket number, licensee, and ADAMS Accession Number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS Accession Numbers for other relevant documents, including the initial and updated DFP submittals. For further details with

respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0073. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Crystal River Unit 3 nuclear generating plant
Docket No	72–1035.
Licensee	Duke Energy Florida, LLC (DEF).
Proposed Action	The NRC's review and approval of DEF's initial DFP submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of DEF's initial DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFP will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact.	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of DEF's initial DFP. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Crystal River Unit 3 Nuclear Generating Plant. Therefore, the NRC staff determined that approval of the initial DFP for the Crystal River ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Duke Energy, 2017. Crystal River Unit 3 DFP for ISFSIs, dated May 15, 2017. ADAMS Accession No. ML17135A230. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Order Approving Transfer of Licensed Authority and Draft Conforming Administrative License Amendment (EA–20–045), dated April 1, 2020. ADAMS Accession No. ML20069A024. U.S. Nuclear Regulatory Commission. Crystal River Unit 3 Nuclear Generating Plant—Order Approving Transfer of Licensed Authority from Duke Energy Florida, LLC to ADP CR3, LLC and Draft Conforming Administrative License Amendment (EPID L–2019–LLA–0135), dated October 1, 2020. ADAMS Accession No. ML20253A343. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) for Crystal River Unit 3 Nuclear Plant ISFSI, dated March 31, 2021. ADAMS Accession Package No. ML21060B019.

Facility	Watts Bar nuclear plant, Units 1 and 2
Docket No	72–1048.
Licensee	Tennessee Valley Authority (TVA).
Proposed Action	The NRC's review and approval of TVA's initial DFP submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of TVA's initial DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFP will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact.	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of TVA's initial DFP. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Watts Bar Nuclear Plant, Units 1 and 2. Therefore, the NRC staff determined that approval of the initial DFP for the Watts Bar ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	TVA, 2016. Initial DFP for Watts Bar Nuclear Plant ISFSI, dated September 28, 2016. ADAMS Accession No. ML16274A244. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) for Watts Bar Nuclear Plant, Units 1 and 2, ISFSI, dated March 17, 2021. ADAMS Accession Package No. ML21060A911.

Dated: April 7, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–07405 Filed 4–9–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–82 and CP2021–85]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 14, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s).: MC2021–82 and CP2021–85; Filing Title: USPS Request to Add Priority Mail Contract 692 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: April 6, 2021; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Matthew Ashford; Comments Due: April 14, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–07431 Filed 4–9–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–80 and CP2021–83; MC2021–81 and CP2021–84]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 13, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s),

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s).: MC2021–80 and CP2021–83; Filing Title: USPS Request to Add Priority Mail Express Contract 88 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: April 5, 2021; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: April 13, 2021.

2. Docket No(s).: MC2021–81 and CP2021–84; Filing Title: USPS Request to Add Priority Mail Contract 691 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: April 5, 2021; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: April 13, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–07380 Filed 4–9–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91488; File No. SR–Phlx–2021–14]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Phlx Options Rules at Options 4 Under the Options 4 Title in the Exchanges Rulebooks Shell Structure

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Phlx Options Rules (''Phlx Options'') at Options 4 (Options Listing Rules) under the Options 4 title in the Exchange's rulebook's (''Rulebook'') shell structure.[3] This proposal also creates a new Options 4C entitled ''U.S. Dollar-Settled Foreign Currency Options.''

The proposal also amends the rules as relocated to conform primarily to the equivalent options rules of Nasdaq ISE, LLC, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') (collectively ''ISE'').[4] The proposal also amends Section1 of Options 1 of the Options Listing Rules to add several definitions and adds Supplementary Material to Options 8, Section 30.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the rule text in Options 4 (Options Listing Rules) under the Options 4 title in the Exchange's Rulebook's shell structure. For ease of reference and the purposes of this filing, the relocated rules are herein described as the ''Options Listing Rules.''

The amending of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,[5] and its goal of harmonizing and uniformizing its rules.[6]

This proposed change is of a non-substantive nature. Moreover, the amending of the Options Listing Rules will facilitate the use of the Rulebook by Members[7] of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. These rules will be amended to reflect the equivalent options rules in the ISE rulebook, but the changes are of a non-substantive nature.

The overarching goal is to align Phlx Options rules with those of ISE. The Exchange is proposing to amend the rules for Phlx Options, most notably the rule text in the Options Listing Rules concerning securities traded on Phlx Options, but also adding several definitions to Section 1 of Options 1. The Exchange desires to align Phlx's Rules to those of ISE and then, separately, in another rule change seek to incorporate ISE's rules by reference to Phlx.

The vast majority of the changes are technical changes and made throughout the Options Listing Rules. These minor changes are designed to conform the Phlx Options rules to the equivalent ISE rules, as well as to increase the clarity of the rules. This includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent.

The proposed changes that do not fit within the description above are listed below, beginning with changes to Options 1 General Provisions and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC (''Nasdaq''); Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (''Affiliated Exchanges''). The shell structure currently contains eight (8) General sections which, once complete, will apply a common set of rules to the Affiliated Exchanges. *See* Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054).

[4] The rules of Nasdaq GEMX, LLC and Nasdaq MRX, LLC are incorporated by reference into the rules of Nasdaq ISE, LLC.

[5] *Supra* note 3.

[6] This proposal is similar to the relocation of options rules at Chapter IV (Securities Traded on NOM) under the Options 4 title in the Nasdaq rulebook. *See* Securities Exchange Act Release No. 86022 (June 4, 2019), 84 FR 26912 (June 10, 2019) (SR–NASDAQ–2019–047).

[7] As defined by Exchange Rule GENERAL 1 GENERAL PROVISIONS Section 1(16).

followed by global changes to the Options Listing Rules. The changes are then broken down by section within the Options Listing Rules.

Unlike ISE, Phlx has listing rules for U.S. Dollar Settled Foreign Currency Options or ''FCOs.'' Phlx proposes to relocate the listing rules related to U.S. Dollar Settled Foreign Currency Options to new Options 4C in order that it may identically align the remaining rules to ISE's Options 4 Rules.

Proposed Changes to Options 1 General Provisions

The Exchange is proposing to add definitions to ''Options 1 Section 1. Applicability, Definitions and References''. Specifically, the terms ''class'' ''series'' and ''underlying security'' will be added to Section 1(b) as (9), (51), and (60), respectively.[8] The Exchange is deleting the definitions for ''class of options'' and ''series of options and replacing them with the new definition of ''class and ''series''. The Exchange believes that using the definitions for these terms as defined in the By-Laws of The Options Clearing Corporation (''OCC'') uniformly across Nasdaq, Inc.'s exchanges will help to align them. Providing uniform, clear and precise definitions for these terms will provide consistency, lessen potential confusion and add clarity for market participants.

Proposed Changes to the Options Listing Rules

Proposed Changes to Section 1 of Options 1. Applicability, Definitions and References

This section will be amended to clarify that the Exchange trades options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month or expiration date, exercise price and type (put or call) and to conform the Phlx Options rules to the equivalent ISE rules.[9] The second sentence of this rule related to foreign currency option contracts is being relocated to new Options 4C, Section 2(a) without amendment.

Proposed Changes to Section 2. Rights and Obligations of Holders and Writers

This section will be amended with a number of minor changes to update the numbering and to increase the clarity of the language and to conform the Phlx Options rules to the equivalent ISE rules.[10]

Proposed Changes to Section 3. Criteria for Underlying Securities

Options 4, Section 3 of the Options Listing Rules is being updated by modifying the existing Rulebook language to reflect the language of the ISE version of the rule.[11] Most of the changes in Section 3 simply result from minor changes and reorganization within the section done to mirror the ISE rule and for greater clarity.

Options 4, Section 3(b) of the Options Listing Rules will also change ''Board of Directors'' to ''the Exchange'' as to who may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions.

Current Section 3(c) is being relocated to new Options 4C, Section 3(a) without amendment.

New Options 4, Section 3(c), which address securities of restructured companies, reflects the language of the ISE version of the rule.[12] This section will now define ''Restructuring Transaction'' as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction, ''Restructure Security'' as an equity security that a company issues, or anticipates issuing, as the result of a Restructuring Transaction of the company, ''Original Equity Security'' as a company's equity security that is issued and outstanding prior to the effective date of a Restructuring Transaction of the company. ''Relevant Percentage'' will be defined as either: (i) Twenty-five percent (25%), when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; or (ii) thirty-three and one-third percent (33–1/3%), when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security. Additionally, proposed Section 3(c) will include the ''Share'' and ''Number of Shareholder'' guidelines to mirror the equivalent ISE Options Listing Rule. Also, the current rules related to ''Restructure Security'' in Supplementary Material .05 to Options 4, Section 3 are being deleted.

Proposed Options 4, Section 3(c)(2) will address determining whether a Restructure Security satisfies the share guideline set forth in this Rule. Proposed Options 4, Section 3(c)(3) adds a ''Trading Volume'' guideline, proposed Options 4, Section 3(c)(4) adds a ''Market Price'' guideline, and proposed Options 4, Section 3(c)(5) adds a ''Substantiality Test'' for a ''Restructure Security''. Proposed Options 4, Section 3(c)(6) says that a Restructure Security's aggregate market value may be determined from ''when issued'' prices, if available, while proposed Options 4, Section 3(c)(7) says that in calculating comparative aggregate market values for the purpose of assessing whether a Restructure Security qualifies to underlie an option, the Exchange will use the Restructure Security's closing price on its primary market on the last business day prior to the selection date or the Restructure Security's opening price on its primary market on the selection date and shall use the corresponding closing or opening price of the related Original Equity Security.

Proposed Options 4, Section 3(c)(8) addresses calculating comparative asset values and revenues while proposed Options 4, Section 3(c)(9) says that except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, the Exchange may not rely upon the trading volume or market price history of an Original Equity Security, unless it relies upon both of those measures for that trading day. Proposed Options 4, Section 3(c)(10) says that once the Exchange commences to rely upon a Restructure Security's trading volume and market price history for any trading day, the Exchange may not rely upon the trading volume and market price history of the security's related Original Equity Security for any trading day thereafter. Proposed Options 4, Section 3(c)(11) addresses ''When Issued'' trading is prohibited.

Options 4, Section 3(e) will be amended to say that ''security'' will be broadly interpreted to mean any equity security, as defined in Rule 3a11–1 under the Exchange Act, which is appropriate for options trading, and the word ''shares'' will mean the unit of trading of such security. This will replace Supplementary Material .03 to Options 4, Section 3, which is being deleted. The remainder of Supplementary Material .03 to Options 4, Section 3 is being relocated to paragraph (a) (''the word ''shares'' shall mean the unit of trading such security'') and paragraph (f) (ADRs). The remainder of Section 3(e) will be deleted because these provisions relating to determining whether to list an option that otherwise meets objective listing criteria are unnecessary and will

[8] *See* OCC By-Laws Article I—Definitions C.(11); S.(12); and U.(3), respectively.

[9] *See* ISE Options Listing Rule Section 1.

[10] *See* ISE Options Listing Rule Section 2.

[11] *See* ISE Options Listing Rule Section 3.

[12] *Id.*

now be in line with ISE rules [13] and those of other affiliated markets. The Exchange needs to be competitive with other markets and their ability to list options and these other markets do not have these requirements. Simply put, the Exchange is harmonizing and uniformizing Phlx's Options Listing Rules with those of ISE and other affiliated markets so that it can list securities on its markets in the same fashion as these other markets.

Proposed Options 4, Section 3(f) will add introductory language for clarity and say that securities deemed appropriate for options trading shall include nonconvertible preferred stock issues and American Depositary Receipts (''ADRs'') if they meet the criteria and guidelines set forth in the Rule. This rule text is currently in Supplementary Material .03 to Options 4, Section 3.

Proposed Options 4, Sections 3(g) and (h) both deal with securities deemed appropriate for options trading, contain changes reflecting reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and copy the language of the ISE version of the rule.[14] Proposed Options 4, Section 3(h)(1) adds language stating that subparagraph (2) applies to the extent the Exchange-Traded Fund Share is based on international or global indexes. This language is intended to clarify that subparagraph (2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index. The phrase ''if not available or applicable'' added to Proposed Options 4, Section 3(h)(2)(B), (C), and (D) is intended to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

Proposed Section 3(i) will define ''market information sharing agreement'' by referring back to subparagraph (g)(2), which defines it as an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the Member of the foreign exchange executing a trade.

Proposed Section 3(j) will contain changes reflecting reorganization and clarifications, including the deletion of the definition of ''Partnership Unit'' as set forth in current Supplementary Material .08 to Options 4, Section 3, since it is a remnant from the legacy Exchange exchange-traded fund (''ETF'') listing rule and is unnecessary since it has never been listed or traded on the Exchange. It also is not reflected in the ISE rule version being adopted for this section.[15]

Proposed Section 3(k) will include non-substantive changes and is intended to reflect the ISE rule version being adopted for this section.[16]

Proposed Changes to Section 4. Withdrawal of Approval of Underlying Securities

Options 4, Section 4 of the Options Listing Rules is being updated by modifying the existing Rulebook language to reflect the language of the ISE version of the rule.[17] Overall, the changes in Section 4 are minor and reorganization within the section is done to mirror the ISE rule and for greater clarity.

Current Supplementary Material .04 to Options 4, Section 4 is being relocated to Options 4C, Section 4(a) without amendment as this rule text relates to foreign currency options. Subparagraph (ii) is being relocated to new Supplementary Material to Options 8, Section 30. The phrase ''of publicly held principal amount'' is being deleted because it is extraneous and also not included in the ISE version of the rule.

Options 4, Section 4(e) is being added, but is not a substantive change. Aside from the change being consistent with the ISE version of the rule, Options 4, Section 4(e) memorializes the current practice regarding notice to customers of withdrawals that is consistent across all Nasdaq affiliated exchanges. Options 4, Section 4(f) is being revised to match the corresponding ISE rule and the change is not substantive and reflects language already included in Options 4, Section 3(f)(2) and (3).

In Options 4, Section 4(g) the deletion of ''cease to be an ''NMS stock'' and the addition of ''are halted or suspended from trading on their primary market'' does not reflect a substantive change and matches the corresponding ISE rule. Additionally, it is more descriptive since it takes into account that this may be temporary and not permanent.

Current Supplementary Material .09 to Options 4, Section 3.09 describes inadequate volume delisting, is being deleted. The provision currently provides,

.09 Inadequate volume delisting.

(1) Absent exceptional circumstances, a security initially approved for options trading may be deemed by the Exchange not to meet the requirements for continued approval, in which case the Exchange will not open for trading any additional series of equity option contracts of the class of options and may determine to delist the class of options if it meets the following criteria:

(a) The option has been trading on the Exchange not less than six (6) months; and

(b) The Exchange average daily volume (''ADV'') of the entire class of options over the last six (6) month period was less than twenty (20) contracts.

If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest;

(2) Should the Exchange determine to delist an equity option pursuant to this Supplementary Material .09, it will notify the Lead Market Maker to whom the affected option is allocated of the determination to delist such option not less than ten (10) days prior to the scheduled delisting date (the ''options delisting letter'').

(a) Within two (2) days of receiving an options delisting letter the affected Lead Market Maker may in writing submit to the person designated by the Exchange in the options delisting letter the Lead Market Maker's justification for and/or explanation of the low ADV in such option and reasons why the Exchange should continue to list the option (the ''justification letter'');

(b) The Exchange may, but is not required to, take into account the information provided in the justification letter in its determination to delist the option, and will indicate its determination to delist in writing to the affected Lead Market Maker that provided the justification letter to the Exchange. The Exchange's decision to delist the option is exclusively its own and is not appealable.

In order to remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe Exchange, Inc. (''Cboe'').[18] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that Phlx's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE, GEMX, MRX and Cboe in order to remain competitive and list similar options as the other markets.

While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* ISE Options Listing Rule Section 4.

[18] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

remaining open interest.'' This rule text does not exist on ISE, GEMX, MRX and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

Proposed Changes to Section 5. Series of Options Contracts Open for Trading

Options 4, Section 5 of the Options Listing Rules is being updated by modifying the existing Rulebook language to reflect the language of the ISE version of the rule.[19] Most of the changes in Options 4, Section 5 simply result from minor changes and reorganization within the section done to mirror the ISE rule and for greater clarity.

Options 4, Section 5(a) of the Options Listing Rules will be amended to add to note that exercise-price setting parameters adopted as part of the Options Listing Procedures Plan. In order to mirror the equivalent ISE rules,[20] Options 4, Section 5 will be amended to relocate current rule text to be identical to ISE, Nasdaq Phlx LLC (''Phlx'') and Nasdaq BX, Inc. (''BX'') rule text. The Exchange proposes to harmonize its rules to the identical rules of the five Nasdaq affiliated markets.

The Exchange proposes to amend the rule text currently within Phlx Options 4, Section 5(a)(i) to mirror ISE. The Exchange proposes to amend the existing sentence which provides, ''At the commencement of trading on the Exchange of a particular class of stock or Exchange-Traded Fund Share options, the Exchange shall open a minimum of one expiration month and series for each class of options open for trading on the Exchange.'' The Exchange proposes to instead provide, ''At the commencement of trading on the Exchange of a particular class of options, the Exchange shall open a minimum of one (1) series of options in that class.'' The proposed amendments are non-substantive and seek to align Phlx's text with ISE's text. The Exchange also proposes to add a sentence that currently exists within ISE Options 4, Section 5(a)(i) which provides, ''The exercise price of that series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange.'' Similar language exists within current Options 4, Section 5(a)(i)(C). The text of Options 4, Section 5(a)(i)(C) is being relocated and modified added to remove the phrase ''of stock or Exchange-Traded Fund Share options opened for trading on the Exchange'' and otherwise modified to mirror ISE rule text. The Exchange notes that today, BX and The Nasdaq Options Market LLC (''NOM'') rules do not contain references to Exchange-Traded Fund shares. The language as amended is broadly read to include all options listed on the Exchange.

The Exchange proposes to amend current Options 4, Section 5(a)(i)(B), which is proposed to be re-lettered as Options 4, Section 5(c), to remove the phrase ''stock or Exchange-Traded Fund Share'' similar to other proposed changes herein. Finally, the rule text within current Options 4, Section 5(a)(i)(D) is being relocated to new Options 4, Section 8(a) with some amendments discussed in that section.

Current Options 4, Section 5(a)(ii), which is reserved, is being deleted.

Current Options 4, Section 5(a)(iii) and subparagraphs (A)–(E) are being relocated to proposed new Options 4C, Section 5 without amendment.[21]

The Exchange proposes to relocate current Options 4, Section 5(a)(iv) to proposed Options 4, Section 5(k) and update the rule citation to Supplementary Material .10 to proposed Options 4, Section 6(b) as that rule text is proposed to be relocated as well.

The Exchange proposes to relocate and amend rule text within current Supplementary Material .05 (a)(iii) of Options 4, Section 5 to proposed Options 4, Section 5(d) to mirror ISE. The Exchange proposes to instead provide,

> (d) Except as otherwise provided in the Supplementary Material hereto, the interval between strike prices of series of options on individual stocks will be:
>
> (1) $2.50 or greater where the strike price is $25.00 or less;
>
> (2) $5.00 or greater where the strike price is greater than $25.00; and
>
> (3) $10.00 or greater where the strike price is greater than $200.00.
>
> The interval between strike prices of series of options on Exchange-Traded Fund Shares approved for options trading pursuant to Section 3(h) of this Options 4 shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange.

The Exchange notes that the examples are unnecessary. The exception for $2.50 below $50 will be covered within the $2.50 Strike Program rules, which are being relocated into proposed Supplementary Material .02 to Options 4, Section 5. The Exchange also proposes to note, similar to ISE the intervals between strike prices for Exchange-Traded Fund shares are noted within proposed new Section 3(h) of Options 4. This cross citation will provide greater information as to the criteria for Exchange-Traded Fund shares.

The Exchange proposes to relocate the rule text within current Supplementary Material .05 (a)(iv)(C) of Options 4, Section 5 to proposed Options 4, Section 5(e) without change.

The Exchange proposes to relocate the rule text within current Supplementary Material .12 of Options 4, Section 5 to proposed Options 4, Section 5(f) and proposes to add references to Supplementary .01, .05 and subparagraph (e).

The Exchange proposes to add rule text within proposed Options 4, Section 5(g) identical to ISE, which provides, ''The Exchange will open at least one expiration month for each class of options open for trading on the Exchange.'' This proposed new sentence will add more clarity to current listing rules. Today, the Exchange opens at least one expiration month for each class of options open for trading on the Exchange.

The Exchange proposes to relocate the rule text within current Supplementary Material .05 (a)(v) and (vi) of Options 4, Section 5 to proposed Options 4, Sections 5(h) and (i), respectively. The rule text is being moved without change except that within Options 4, Sections 5(h) a citation is being added to Options 4, Section 3(k) for reference.

The rule text proposed within Options 4, Section 5(j) is identical to ISE Options 4, Section 5(j) and provides, ''The interval of strike prices may be $2.50 in any multiply-traded option class to the extent permitted on the Exchange by the Commission or once another exchange trading that option lists strike prices of $2.50 on such options class.'' The Exchange proposes to adopt similar language to ISE. The $2.50 Strike Program was adopted in 1995 as a joint pilot program of the

[19] *See* ISE Options Listing Rule Section 5.

[20] *Id.*

[21] The Exchange notes that Supplementary .06 of Options 4, Section 5 is also being relocated into proposed new Options 4C, Section 5 without amendment.

options exchanges [22] and expanded and permanently approved in 1998.[23] As part of that program, each options exchange, however, is permitted to list options with $2.50 strike price intervals on any option class that another exchange selects as part of the Program. This rule text is non-substantive as Phlx may today list options with $2.50 strike price intervals on any option class that another exchange. This rule text will bring greater clarity to Phlx's listing rules.

The Exchange described above the relocation of Options 4, Section 5(a)(iv) to proposed Options 4, Section 5(k).

The Exchange proposes to delete the following current rule text from Options 4, Section 5, which does not appear in ISE or BX Options 4, Section 5.

(b) Rotation. On the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day prior to the expiration date of a particular series of options, a closing rotation (as defined in Supplementary Material .01 to Options 3, Section 9) for such series shall commence at 4:00 p.m. in the case of options on stocks or 4:15 p.m. in the case of options on designated Exchange-Traded Fund Shares.

(c) Adjustments. The unit of trading and the exercise price initially established for option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment or adjustments have been determined, announcement thereof shall be made by the Exchange and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series of options.

(d) Option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.

The Exchange notes within Options 4, Section 2 that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the rules of The Options Clearing Corporation, which contemplates an option contract expiring on a day that is not a business day and adjustments.

The Exchange proposes to delete current Supplementary Material .01 to Options 4, Section 5 as each program details the manner in which series of options may be open. Also, the relocated foreign currency rules detail how foreign currency may open. This language within current Supplementary Material .01 to Options 4, Section 5 is unnecessary.

The Exchange proposes to relocate Supplementary Material .02 to Options 4, Section 5 to new Options 4C, Section 5(c) without change.

Supplementary Material .03 and .04 of Options 4, Section 5, which are reserved, are being deleted.

The Exchange proposes to renumber Supplementary Material .05 of Options 4, Section 5 as .01. The Exchange proposes to re-letter and renumber this section to conform to ISE's Options 4, Section 5 at Supplementary Material .01.

The following changes are being proposed to the $1 Strike Price Interval Program so that the language mirrors ISE's Options 4, Section 5 at Supplementary Material .01. At new (a) of Options 4, Section 5 at Supplementary Material .01, the Exchange proposes to add ''Program Description. The interval between strike prices of series of options on individual stocks may be $1.00'' to introduce the material which follows. In a few places ''Strike Program'' is proposed to be changed to ''Strike Price Interval Program,'' or ''Strike Price Program'' to mirror ISE rule text. Also, the term ''national'' is added before ''securities exchange'' and the remainder of the proposed amendments are technical in nature.

Similar changes are proposed at new (b) of Options 4, Section 5 at Supplementary Material .01 including the word ''stock'' being changed to ''security.'' A citation to relocated rule text was made within new (b)(iii) of Options 4, Section 5 at Supplementary Material .01.

The Exchange proposes to add ''Long-Term Options Series'' or ''LEAPs'' before new (b)(v) of Options 4, Section 5 at Supplementary Material .01. Finally, the Exchange proposes to remove ''the Exchange may grant'' and add the phrase ''may be granted'' to the end of new (d) of Options 4, Section 5 at Supplementary Material .01 to mirror ISE rule text in the same location. This change is non-substantive.

The Exchange proposes to relocate current Supplementary Material .05(a)(ii) to Options 4, Section 5 to new Supplementary Material .05 to Options 4, Section 5. The relocation will be explained below.

The Exchange proposes to delete the phrase ''. . . , except that strike prices of $2 and $3 shall be permitted within $0.50 of a $2.50 strike price for classes also selected to participate in the $0.50 Strike Program.'' The Exchange separately describes the $0.50 and $2.50 Programs within .05 and .02 of the proposed Supplementary Material to Options 4, Section 5, respectively. The clause is not necessary within the $1 Strike Program and currently not contained within the ISE rules wherein the $1 Strike Program operates in the same manner.

The Exchange explained above that current Supplementary Material .05(a)(iii) to Options 4, Section 5 was relocated to Options 4, Section 5(d).

The Exchange proposes to delete Supplementary Material .05(a)(iv)(A) to Options 4, Section 5 as proposed Options 4, Section 5(h) will detail the interval between strike prices of series of options on Index-Linked Securities, as defined in Options 4, Section 3(k)(1), that will be $1 or greater when the strike price is $200 or less and $5 or greater when the strike price is greater than $200 and will be consistent with the equivalent ISE rule.

The Exchange proposes to delete Supplementary Material .05(a)(iv)(B) to Options 4, Section 5 related to the listing of ''SLV'' [24] and ''USO'' [25] Exchange-Traded Fund Shares which currently provides, ''The interval of strike prices of series of options on SLV and USO Exchange-Traded Fund Shares will be $.50 or greater where the strike price is less than $75.'' The Exchange is removing this rule text as SLV and USO are currently listed pursuant to current Supplementary Material .12 to Options 4, Section 5, which is being relocated to new Options 4, Section 5(f). SLV and USO both are used to calculate volatility indexes (''OVX'' [26] and ''VXSLV,'' [27] respectively) and therefore subject to the listing provisions of new Options 4, Section 5(f). Supplementary Material .05(a)(iv)(B) to Options 4, Section 5 is therefore unnecessary as SLV and USO would trade according to these rules.

The Exchange noted above that Supplementary Material .05(a)(iv)(C) to Options 4, Section 5 was relocated to proposed Options 4, Section 5(e). The Exchange also noted that Supplementary Material .05(a)(v) and (vi) were relocated to Options 4, Section 5(h) and (i), respectively.

The Exchange proposes to relocate rule text from current Supplementary Material .05(b) and (b)(i) of Options 5, Section 4 to new Supplementary

[22] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[23] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[24] The symbol ''SLV'' refers to iShares Silver Trust.

[25] The symbol ''USO'' refers to the United States Oil Fund LP.

[26] The symbol ''OVX'' refers to the Cboe Crude Oil Volatility Index.

[27] The symbol ''VXSLV'' refers to the CBOE Silver ETF Volatility Index.

Material .02 to Options 4, Section 5 with the title ''$2.50 Strike Price Interval Program''. The Exchange proposes to delete Supplementary Material .05(b)(ii) of Options 4, Section 5 as that language is not necessary and provided for within The Options Clearing Corporation Rules.

The Exchange proposes to relocate rule text from current Supplementary Material .11 of Options 5, Section 4 to new Supplementary Material .03 to Options 4, Section 5 with the title ''Short Term Options Series Program''. The Exchange proposes to add the following titles, ''Classes,'' ''Expiration,'' ''Initial Series,'' ''Additional Series,'' and ''Strike Interval,'' before Supplementary Material .03(a)-(e) of Options 5, Section 4. The Exchange proposes to amend the rule text to mirror ISE rule text. Within proposed .03(a) the Exchange proposes to replace the word ''fifty'' with the number ''50'' and the word ''thirty'' with the number ''30''. The Exchange also proposes to relocate the word ''may'' in the second sentence. Within proposed .03(b) the Exchange proposes to remove the words ''on the same class'' at the end of the paragraph. Within proposed .03(c) the Exchange proposes to add a sentence at the beginning which provides, ''The Exchange may open up to 30 initial series for each options class that participates in the Short Term Options Series Program.'' The Exchange also proposes to replace the number ''7'' with the word ''seven'' and the number ''3'' in two places with the word ''three''. Within proposed .03(d) the Exchange proposes to add a new sentence to the end of Supplementary Material .11(d) of Options 4, Section 5 that provides, ''Notwithstanding any other provisions in this Rule, Short Term Option Series may be added up to and including on the Short Term Option Expiration Date for that options series.'' This sentence appears in ISE's rule in the same location. Finally, rule text from current Supplementary Material .05(a)(vii) to Options 4, Section 5 is being relocated to the beginning of proposed .03(e) to provide, ''During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule (''Short Term Option''), the strike price intervals for the related non-Short Term Option (''Related non-Short Term Option'') shall be the same as the strike price intervals for the Short Term Option.'' [28] The Exchange also removes the last sentence of current Supplementary Material .11(e) of Options 5, Section 4 as that language is repetitive of the first new sentence.

The Exchange proposes to relocate rule text from Supplementary Material .08 to Options 4, Section 5 to proposed Supplementary Material .04 to Options 4, Section 5. The Exchange proposes to add the title ''Expiration'' before current Supplementary Material .08(a) to Options 4, Section 5. The Exchange proposes new language within Supplementary Material .08(b) to Options 4, Section 5, which is reserved, that provides, ''The Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.'' This rule text is identical to ISE rule text in the same location. The Exchange proposes to add the title ''Strike Interval'' before Supplementary Material .04(e) to Options 4, Section 5 which is being related from Supplementary Material .11(e) of Options 4, Section 5. The Exchange proposes to delete the word ''Reserved'' after (f) and instead relocate the Delisting Policy within current Supplementary Material .04(g) to Options 4, Section 5 to ''f.'' The remainder of the changes to this new Supplementary Material .04 are technical renumbering changes and Supplementary Material .04(h) to Options 4, Section 5, which is reserved, is being deleted.

As noted above, current Supplementary Material .05(a)(ii) to Options 4, Section 5 is being relocated to new Supplementary Material .05 to Options 4, Section 5 with the title ''$0.50 Strike Program.'' The Exchange proposes to add rule text to the beginning of the rule, which provides, ''The interval of strike prices of series of options on individual stocks may be'' to introduce the text that follows, otherwise there are no changes proposed to the current rule text. This rule text is identical to ISE's rule text in the same location.

The Exchange proposes to amend current Supplementary Material .05(c) to Options 4, Section 5 to new Supplementary Material .06 with the title ''$5 Strike Program.'' The Exchange proposes to begin this section with new text, which provide, ''The interval of strike prices may be'' which introduces the rule text. This rule text is identical to ISE's rule text in the same location.

The Exchange proposes to relocate current Supplementary Material .06 to Options 4C, Section 5(a)(1) without change. The Exchange proposes to relocate current Supplementary Material .07 to Options 4, Section 5 to the beginning of new Options 4C, Section 5(b) without change.

The Exchange noted above that current Supplementary Material .08 to Options 4, Section 5 was relocated to Supplementary Material .04 to Options 4, Section 5.

The Exchange proposes to delete current Supplementary Material .09 to Options 4, Section 5 as the intervals for indexes are noted within Options 4A and do not need to be discussed in Options 4 which concerns multiply-listed options.

The Exchange discusses the relocation of current Supplementary Material 10 to Options 4, Section 5 within the next section.

The Exchange relocated current Supplementary Material 11 to Options 4, Section 5 to new Supplementary Material .03 to Options 4, Section 5.

The Exchange relocated current Supplementary Material 12 to Options 4, Section 5 to new Options 4, Section 5(f).

Proposed Section 6. Select Provisions of Options Listing Procedures Plan

Proposed Section 6 of the Options Listing Rules is adopting the language of the ISE version of the rule [29] with the revised rule text not being new, but largely relocated from Supplementary Material .10 of Options 4, Section 5. This aligns with the goal of harmonizing and uniformizing Phlx's Options Listing Rules with those of ISE and providing greater information to market participants.

Proposed Section 6 of the Options Listing Rules will include Select Provisions of Options Listing Procedures Plan (''OLPP'') that will mirror the language in the ISE rules.[30] Proposed Section 6(a) of the Options Listing Rules references the quote mitigation strategy that is codified in the OLPP at *http://www.optionsclearing.com/products/options_listing_proceduresplan.pdf.*

Specifically, proposed Section 6(b) states that the exercise price of each options series listed by the Exchange is fixed at a price per share that is reasonably close to the price of the

[28] This change is non-substantive as the current rule text within Supplementary Material .11 indicates that Related non-Short Term Options series shall be opened during the month prior to expiration of such Related non-Short Term Options series in the same manner as permitted in Supplementary Material .11 to this Options 4, Section which is the Short Term Options Series rule text. The Exchange's amendments are not modifying the Short Term Options Series rules in any substantive way and Related non-Short Term Options series will continue to be subject to the same rules.

[29] *See* ISE Options Listing Rule Section 6.

[30] *Id.*

underlying equity security, ETF or Trust Issued Receipt at or about the time the Exchange determines to list such series. Proposed subsection (b)(i) says that except as provide in subparagraphs (ii)–(iv), if the price of the underlying security is less than or equal to $20, the Exchange will not list new options series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction will not prohibit the listing of at least three exercise prices per expiration month in an options class. Except as provided in Supplementary Material .02(d) to Options 3, Section 5, if the price of the underlying security is greater than $20, the Exchange will not list new options series with an exercise price more than 50% above or below the price of the underlying security. Subsection (b)(i) also details how to measure the price of the underlying security.

Proposed subsection (b)(ii) of Options 4, Section 6 explains that the series exercise price range limitations contained in subparagraph (i) above do not apply with regard to the listing of $1 strike prices in options classes participating in the $1 Strike Program, as well as the listing of series of Flexible Exchange Options. The Exchange proposes to add additional rule text to proposed (b)(ii)(1) which provides, ''Instead, the Exchange shall be permitted to list $1 strike prices to the fullest extent as permitted under its Rules for the $1 Strike Program. . .'' [31] This additional rule text is identical to ISE Options 4, Section 6(b)(ii)(1) and serves to make clear that Phlx may list $1 strikes pursuant to its rules.

Proposed subsection (b)(iii) says that the Exchange may designate up to five options classes to which the series exercise price range may be up to 100% above and below the price of the underlying security and that such designations will be made on an annual basis and will not be removed during the calendar year unless the options class is delisted by the Exchange, in which case it may designate another options class to replace the delisted class. If a designated options class is delisted by the Exchange but continues to trade on at least one options exchange, the options class shall be subject to the limitations on listing new series set forth in subparagraph (i) above unless designated by another exchange.

Proposed subsection (b)(iv) says that if the Exchange that has designated five options classes pursuant to subparagraph (iii) above requests that one or more additional options classes be excepted from the limitations on listing new series set forth in subparagraph (i) above, the additional options class(es) will be designated upon the unanimous consent of all exchanges that trade the options class(es). In addition, at the Exchange's request, the percentage range for the listing of new series may be increased to more than 100% above and below the price of the underlying security for an options class, by the unanimous consent of all exchanges that trade the designated options class. Exceptions for an additional class or for an increase of the exercise price range will apply to all standard expiration months existing at the time of the vote, plus the next standard expiration month to be added, and also to any non-standard expirations that occur prior to the next standard monthly expiration.

Proposed subsection (b)(v) is not being relocated, rather this provision is new to Phlx.[32] The provisions of this subparagraph (b) will not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern.

Proposed subsection (b)(vi) says that the Exchange may list an options series that is listed by another options exchange, provided that at the time such series was listed it was not prohibited under the provisions of the OLPP or the rules of the exchange that initially listed the series.

Proposed Section 7. Adjustments

Proposed Options 4, Section 7 of the Options Listing Rules is adopting the language of the ISE version of the rule.[33] Phlx currently does not have a similar rule, however Phlx members and member organizations are subject to the rules of The Options Clearing Corporation (''OCC'') today as all options are cleared at OCC. Proposed Section 7 will be amended to say that options contracts will be subject to adjustments in accordance with the Rules of the Clearing Corporation that such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

Proposed Changes to Section 8. Long-Term Options Contracts

Proposed Options 4, Section 8 of the Options Listing Rules is adopting the language of the ISE version of the rule.[34] Current Options 4, Section 5(a)(i)(D) [35] is being relocated to new Options 4, Section 8(a) with some amendments.

Proposed Options 4, Section 8(a) of the Options Listing Rules says that notwithstanding conflicting language in Options 3, Section 5, the Exchange may list long-term options contracts that expire from twelve to thirty-nine months from the time they are listed, this is consistent with current rule text within Options 4, Section 5(a)(i)(D) but accounts for Options 3, Section 5 which describes entry of orders. It also specifies that there may be up to ten expiration months for options on the SPDR® S&P 500® ETF and up to six expiration months for options on all other securities. The new language utilizes the term ''securities'' instead of stocks or Exchange Traded Fund Shares. The remainder of proposed Section 8(a) remains the same.

Proposed Options 4, Section 8(b) is new. The proposed provision states that after a new long-term options contract series is listed, that series will be opened for trading either when there is buying or selling interest, or forty minutes prior to the close, whichever occurs first and that no quotations will be posted for such options series until they are opened for trading. This is the case today, however this specificity is not currently noted in the rules. The addition of this provision will bring greater specificity to Phlx's Rule and align the rule text with ISE rule text.

[31] Current Phlx Supplementary Material .10(b) of Options 4, Section 5 provides, ''The series exercise price range limitations contained in subparagraph (a) above do not apply with regard to: (i) The listing of $1 strike prices in option classes participating in the $1 Strike Program or (ii) the listing of series of FLEX options.''

[32] Proposed Options 4, Section 6(b)(v) provides, ''(v) The provisions of this subparagraph (b) shall not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP shall govern.''

[33] *See* ISE Options Listing Rule Section 7. Proposed Options 4, Section 7 provides, ''Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.''

[34] *See* ISE Options Listing Rule Section 8.

[35] Current Options 4, Section 5(a)(i)(D) provides, ''Long Term Options. The Exchange may list, with respect to any class of stock or Exchange-Traded Fund Share options series, options having from twelve up to thirty-nine months from the time they are listed until expiration. There may be up to ten expiration months for options on the SPDR® S&P 500® exchange-traded fund (the ''SPY ETF'') and up to six expiration months for options on all other stocks or Exchange Traded Fund Shares. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.''

Section 9. Limitation on the Liability of Index Licensors for Options on Fund Shares

Proposed Options 4, Section 9 of the Options Listing Rules is adopting the language of the ISE version of the rule [36] since it is not in the current Exchange Rulebook and it will now be consistent with the ISE rulebook. Proposed Section 9(a) defines the term ''index licensor'' as any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

Proposed Options 4, Section 9(b) says that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor will obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor will have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

[36] *See* ISE Options Listing Rule Section 9.

Proposed Changes to Section 10. Back-up Trading Arrangements

Except as noted otherwise, the proposed changes to Options 4, Section 10 are minor changes that are designed to conform the Phlx Options rules to the equivalent ISE rules,[37] as well as to increase the clarity of the rules, which includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent. It is in the interest of the Exchange to have similar back-up trading arrangements that are harmonized with ISE and the other affiliated markets in the event that Phlx needs to be hosted, which are fair and representative of a common understanding.

For Exchange Exclusively Listed Options, in subsection (a)(iii) a clarification is made that Phlx members that are trading on Phlx's facility at the Back-up Exchange (not including members of the Back-up Exchange who become temporary Members of Phlx pursuant to paragraph (a)(1)(vi)) will be subject to Phlx rules governing or applying to the maintenance of a person's or a firm's status as a Member of Phlx.

Additionally, subsection (a)(v) will be amended to clarify that Phlx will have the right to designate its Members that will be authorized to trade Phlx exclusively listed options on Phlx's facility at the Back-up Exchange and, if applicable, its Member(s) that will be a lead market maker in those options.

For Singly Listed Options, proposed Options 4, Section 10(a)(2) is being amended to make clarifying changes.

For Multiply Listed Options, proposed Options 4, Section 10(a)(3) has been added to clarify that the Exchange may enter into arrangements with a Back-up Exchange to permit Phlx members to conduct trading on a Back-up Exchange of some or all of the Exchange's multiply listed options in the event of a Disabling Event. The revised language is consistent with current Exchange procedures. Such options will trade as a listing of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Such options shall be traded by members of the Back-up Exchange and by Phlx members selected by Phlx to the extent the Back-up Exchange can accommodate Exchange members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all Phlx members that desire to trade multiply listed options at the Back-up Exchange, Phlx may determine which members will be eligible to trade such options at the Back-up Exchange. Proposed Section 10(a)(3) also covers the factors to be considered in making such determinations.

[37] *See* ISE Options Listing Rule Section 10.

For Disabled Exchange Exclusively Listed Options, proposed Options 4, Section 10(b)(1) is being amended to make clarifying changes.

For Disabled Exchange Singly Listed Options, proposed Options 4, Section 10(b)(2) is being amended to make clarifying changes and to delete language pertaining to granting temporary access to any member of a Disabled Exchange under certain conditions because the Exchange now addresses this in proposed Options 4, Section 10(b)(3). For Multiply Listed Options, proposed Options 4, Section 10(b)(3) is new and is consistent with current Phlx procedures and will clarify that Phlx may enter into arrangements with a Disabled Exchange to permit the Disabled Exchange's members to conduct trading on Phlx of some or all of the Disabled Exchange's multiply listed options in the event of a Disabling Event.[38] Such options will trade as a listing of Phlx and in accordance with Phlx Rules and will be traded by Phlx members and by members of the Disabled Exchange to the extent Phlx can accommodate members of the Disabled Exchange in the capacity of temporary members of Phlx. Options 4, Section 10(b)(2) and (3) will govern in the case of an unanticipated event and addresses both singly and multiply listed options. The Exchange believes it is important that the governing rules are identical across all exchanges for business continuity planning purposes and it is also intended to discourage the potential for ''shopping'' across the exchanges by a Disabled Exchange's members.

Proposed Options 4, Sections 10(c)–(e) are being amended to conform to ISE and to provide clarity.

Finally, .01 of the Supplementary Material to Options 4, Section 10 is new and is consistent with Phlx procedures and says that this Rule reflects back-up trading arrangements that Phlx has entered into or may enter into with one or more other exchanges and that to the extent that this Rule provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with Phlx, but the Rule itself is not binding upon the other exchange.

[38] All options exchanges may list options once they are made available by the OCC.

Proposed Changes to Section 11. U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value

The Exchange is relocating Section 11 of Options 4 to new Options 4C, Section 6 without change.

Proposed Section Options 4C U.S. Dollar-Settled Foreign Currency Options

Proposed Section Options 4C of the Options Listing Rules covers U.S. Dollar-Settled Foreign Currency Options and is comprised of language relocated from Options 4, along with some added introductory language added in Section 1 of Options 4C.

Proposed Supplementary Material to Options 8, Section 30

Proposed .04 to Supplementary Material to Options 8, Section 30 is new, but is simply text relocated from current Options 4, Section 4(a) and is not a substantive change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[39] in general, and furthers the objectives of Section 6(b)(5) of the Act,[40] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the relocation of its Options Listing Rules is a non-substantive change and is consistent with similar filings by the Exchange for the relocation of its rules.[41] As noted above, the relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the structural conformity of its processes with those of the Affiliated Exchanges,[42] and its goal of harmonizing and uniformizing its rules.[43] Additionally, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general.

The majority of the changes are also consistent with the ISE rulebook and the overarching goal is to align the Phlx Options rules with those of the ISE.

The Exchange believe that adding definitions for the terms ''class'', ''series'', and ''underlying security'' to Options 1, Section 1 of the Phlx rulebook from the OCC By-Laws will help 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 through providing uniform, clear and precise definitions for these terms and increase consistency, lessen potential confusion and add clarity for market participants.[44]

The Exchange believes that amending Options 4, Section 1 to clarify that the Exchange trades options contracts and to relocate a sentence dealing with foreign currency option contracts to Options 4C, Section 2(a) will help 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 through providing clear and precise language and through relocating certain language will increase consistency, lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to Options 4, Section 2, Section 3(a), and Section 3(b) are non-substantive in nature and removes 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 since the changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

New Options 4, Section 3(c), which address securities of restructured companies, reflects the language of the ISE version of the rule.[45] The section adds guidelines and definitions, including ''Restructuring Transaction'', ''Restructure Security'', ''Original Equity Security'', ''Relevant Percentage'', ''market information sharing agreement'', and deletes the definition of ''Partnership Unit'' since it is a remnant from the legacy Exchange ETF listing rule since it is unnecessary because it has never been used and also is not reflected in the ISE rule version being adopted for this section.[46] The definitional additions coupled with changes reflecting reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and to reflect the language of the ISE version of the rule, the Exchange believes removes 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 since the changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the clarification to the term ''security'' in Options 4, Section 3(e) and the deletion of the remainder of Section 3(e) removes 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 because these changes add clarity for market participants and removes unnecessary language that will make this section consistent with the rules of ISE rules and of other affiliated markets.

The Exchange believes that the changes to proposed Options 4, Section 3(f)–(k) (excluding Options 4 Sections (g) and (h) that is a new and reflects the language of the ISE version of the rule and is discussed below), which include changes are of a non-substantive nature that reflect reorganization, definitions and clarifications, removes 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 because these changes are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

Proposed Options 4, Sections 3(g) and (h) both deal with securities deemed appropriate for options trading, contain changes reflecting reorganization and clarifications, including the deletion of language included elsewhere and language no longer necessary, and copy the language of the ISE version of the rule. Proposed Options 4, Section 3(h)(1) is consistent with the Act because it adds language stating that subparagraph (2) applies to the extent the Exchange-Traded Fund Share is based on international or global indexes. This language is intended to clarify that subparagraph (2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index. The phrase ''if not available or applicable'' added to Proposed Options 4, Section 3(h)(2)(B), (C), and (D) is intended to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange believes the update to Options 4, Sections 4 and 5 removes impediments to and perfects the

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See supra* footnote 3.

[42] *Id.*

[43] *See supra* footnote 6.

[44] *See* supra footnote 8.

[45] *See* ISE Options Listing Rule Section 3.

[46] *Id.*

mechanism of a free and open market and a national market system, and, in general protects investors and the public interest. Overall, these changes are of a non-substantive nature and either modify, clarify or relocate the existing Rulebook language to reflect the language of the ISE version of the rule and are intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

With respect to the removal of current Supplementary Material .09 to Options 4, Section 3, which describes inadequate volume delisting, the Exchange believes these amendments are consistent with the Act. In order to remain competitive with other options markets the Exchange proposes to adopt the same obligations for continuance of trading. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.[47] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that Phlx's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE, GEMX, MRX and Cboe in order to remain competitive and list similar options as the other markets. While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest.'' This rule text does not exist on ISE, GEMX, MRX and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange. The Exchange believes that the requirements noted within Options 4, Section 4(b) review various requirements when determining whether an options should continue to be listed. Among the criteria are: Number of shares, number of holders, trading volume, and whether the underlying security is an NMS stock, among others. The Exchange believes that this criteria, which is the same as the criteria on ISE, GEMX and MRX, will ensure that the Exchange continues to list options which are in demand and have adequate liquidity.

Specifically, the Exchange's proposal within proposed .03(c) of Options 4, Section 5 to add a sentence at the beginning which provides, ''The Exchange may open up to 30 initial series for each options class that participates in the Short Term Options Series Program'' is consistent with the Act as this is not a change to Phlx's current rules. This provision exists today with Phlx's rule within Supplementary Material .11(a) of Options 4, Section 5.[48] Also, ISE has this provision in its rules today. This provision permits Phlx to remain competitive with listings of other options exchanges with respect to Short Term Options Series listings.

The Exchange believes the update to Options 4, Section 6 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from Supplementary Material .10 of Options 4, Section 5, including Select Provisions of OLPP that will mirror the language in the ISE rules, and is intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants. The Exchange's proposal to add additional rule text to proposed (b)(ii)(1) which provides, ''Instead, the Exchange shall be permitted to list $1 strike prices to the fullest extent as permitted under its Rules for the $1 Strike Program. . .'' will bring greater clarity to Phlx's rule. This additional rule text is identical to ISE Options 4, Section 6(b)(ii)(1) and serves to make clear that Phlx may list $1 strikes pursuant to its rules, which amendment is non-substantive as that is the case today. Proposed subsection (b)(v) is new to Phlx. The provisions of this subparagraph (b) will not permit the listing of series that are otherwise prohibited by the Rules of the Exchange or the OLPP. To the extent the Rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern. While new, this amendment is non-substantive as this is the case today as Phlx is subject to OLPP.

The Exchange believes that the changes to proposed Options 4, Section 7 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are of a non-substantive nature and intended to reflect the language of the ISE version of the rule and provide greater information to market participants about adjustments and is intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to proposed Options 4, Section 8 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments and is intended to ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

Specifically with respect to OLPP, proposed Section 8(a) of the Options Listing Rules states that notwithstanding conflicting language in Options 3, Section 5, the Exchange may list long-term options contracts that expire from twelve to thirty-nine months from the time they are listed, this is consistent with current rule text within Options 4, Section 5(a)(i)(D) but accounts for Options 3, Section 5 which describes entry of orders. It also specifies that there may be up to ten expiration months for options on the SPDR® S&P 500® ETF and up to six expiration months for options on all

[47] *See* ISE Options 4, Section 3 and Cboe Rule 4.4.

[48] Supplementary Material .11(a) of Options 4, Section 5 provides, with emphasis added, ''The Exchange may select up to fifty (50) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the fifty-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to thirty (30) Short Term Option Series for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.''

other securities. The new language utilizes the term ''securities'' instead of stocks or Exchange Traded Fund Shares. The remainder of proposed Section 8(a) remains the same. Proposed Section 8(b) is new. The proposed provision states that after a new long-term options contract series is listed, that series will be opened for trading either when there is buying or selling interest, or forty minutes prior to the close, whichever occurs first and that no quotations will be posted for such options series until they are opened for trading. This is the case today, however this specificity is not currently noted in the rules. The addition of this provision is consistent with the Act as it will bring greater specificity to BX's Rule and align the rule text with ISE rule text.

The Exchange believes that the changes to proposed Options 4, Section 9 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the Exchange is adopting the language of the ISE version of the rule so it will now be consistent with the ISE rulebook and, as with ISE, the Exchange does not itself do the calculation. Proposed Section 9 of the Options Listing Rules is adopting the language of the ISE version of the rule [49] since it is not in the current Exchange Rulebook and it will now be consistent with the ISE rulebook. Proposed Section 9(a) defines the term ''index licensor.'' Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The disclaimers within proposed Section 9 are consistent with the Act in that these disclaimers provide market participants with relevant information as to the liabilities on option contracts on Exchange-Traded Fund Shares. ISE has the identical language within Options 4, Section 9.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [50] in that it is designed 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the changes to proposed Options 4, Section 10 are mainly of a non-substantive nature that are designed to modernize and conform the Phlx Options rules to the equivalent ISE rules and remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because it is in the interest of the Exchange to have similar back-up trading arrangements that are harmonized with the ISE and the other affiliated markets, which are fair and representative of a common understanding. The Exchange believes it is critical that the governing rules are identical across all exchanges for business continuity planning purposes and to discourage the potential for ''shopping'' across the exchanges by a Disabled Exchange's members.

The Exchange believes that the relocation of Options 4, Section 11 to new Options 4C, Section 6 without change, as well as the addition of Options 4C (U.S. Dollar-Settled Foreign Currency Options) in its entirety which is comprised of language relocated from Options 4 with some added introductory language, will help 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 through non-substantive changes and reorganization to mirror the ISE rule and for greater clarity.

The Exchange believes that the relocation of a portion of Options 4, Section 4(a) to proposed .04 to Supplementary Material to Options 8, Section 30 will help 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 through non-substantive changes and reorganization to mirror the ISE rule and for greater clarity.

As a result, the Exchange believes that the changes included in this filing serve 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 since the changes are intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations and defunct rule text.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change does not impose a burden on competition because, as previously stated, it (i) is of a non-substantive nature, (ii) is intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) is intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [51] and subparagraph (f)(6) of Rule 19b–4 thereunder.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[49] *See* ISE Options Listing Rule Section 9.

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78s(b)(3)(A)(iii).

[52] 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.

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–Phlx–2021–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–14. 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–Phlx–2021–14 and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07391 Filed 4–9–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91486; File No. SR–ISE–2021–06]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Nonstandard Expirations Pilot Program

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 4, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE filed a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates[3] (''Program''). The Program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was extended various times with the last extension through May 4, 2021.[4]

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration

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[53] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[4] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17); and 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR–ISE–2020–34).

month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options4A, Section 12 so that the duration of the Program for these nonstandard expirations will be through November 4, 2021. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Program.

The Exchange will be submitting a rule change to request that the pilot program become permanent. In lieu of submitting any additional annual reports, the Exchange would provide additional information requested by the Commission in connection with the permanency rule change for this Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Program has been successful to date. The Exchange has not encountered any problems with the Program. By extending the Program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2021–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2021–06. 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–ISE–2021–06, and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07389 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–5714]

Notice of Intention To Cancel Registrations of Certain Investment Advisers Pursuant to Section 203(H) of the Investment Advisers Act of 1940

April 6, 2021.

Notice is given that the Securities and Exchange Commission (the ''*Commission*'') intends to issue an order or orders, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''*Act*''), cancelling the registrations of the investment advisers whose names appear in the attached Appendix, hereinafter referred to as the ''*registrants.*''

Section 203(h) of the Act provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall, by order, cancel the registration of such person.

Each registrant listed in the attached Appendix has not filed a Form ADV amendment with the Commission as required by rule 204–1 under the Act [1] and appears to be no longer engaged in business as an investment adviser. Accordingly, the Commission believes that reasonable grounds exist for a finding that these registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A, and that their registrations should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by May 3, 2021, at 5:30 p.m. EST, submit to the Commission in writing a request for a hearing on the cancellation of the registration of any registrant listed in the attached Appendix, accompanied by a statement as to the nature of such person's interest, the reason for such person's request, and the issues, if any, of fact or law proposed to be controverted, and the writer may request to be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after May 3, 2021, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the attached Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Schleppegrell, Senior Counsel, at 202–551–6999; SEC, Division of Investment Management, Investment Adviser Regulation Office, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

J. Matthew DeLesDernier,

Assistant Secretary.

Appendix

SEC number	Full legal name
801–108515 ...	BAOMAP ADVISORS LIMITED.
801–108574 ...	HAITOU HUIJIN (BEIJING) CONSULTING SERVICE CO., LTD.
801–110184 ...	NEW ENGINE ADVISORS LLC.
801–110822 ...	QUANTSGEEK TECHNOLOGY LIMITED.
801–108384 ...	SUNRATE ADVISORS LIMITED.
801–112060 ...	UOOLU REALTY 1701 LLC.
801–110416 ...	VIVA COMPANIONS ASSET MANAGEMENT LLC.

[FR Doc. 2021–07358 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 204–1 under the Act requires any adviser that is required to complete Form ADV to amend the form at least annually and to submit the amendments electronically through the Investment Adviser Registration Depository.

[2] 17 CFR 200.30–5(e)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91484; File No. SR–Phlx–2021–21]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Nonstandard Expirations Pilot Program

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 4, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 15, 2017, the Commission approved a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates (''Program'').[3] The Program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was extended various times and is currently extended through May 4, 2021.[4]

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Program for these nonstandard expirations will be through November 4, 2021. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Program.

The Exchange will be submitting a rule change to request that the pilot program become permanent. In lieu of submitting any additional annual reports, the Exchange would provide additional information requested by the Commission in connection with the permanency rule change for this Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Program has been successful to date. The Exchange has not encountered any problems with the Program. By extending the Program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–21 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.

[3] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[4] *See* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); 87381 (October 22, 2019), 84 FR 57788 (October 28,2 019) (SR–Phlx–2019–43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR–Phlx–2020–24); and 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR–Phlx–2020–48).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–Phlx–2021–21. 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–Phlx–2021–21, and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07387 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 17649, April 5, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, April 8, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, April 8, 2021 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 8, 2021.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–07557 Filed 4–8–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91485; File No. SR–ISE–2021–05]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot To Permit the Listing and Trading of Options Based on ⅕ the Value of the Nasdaq–100 Index

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq–100 Index (''Nasdaq–100'') currently set to expire on May 4, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE filed a proposed rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis[3] (''Program'').

NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq–100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq–100, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6) to extend the current NQX pilot period to November 4, 2021. This pilot was previously extended with the last extension through May 4, 2021.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the proposed listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the pilot.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] *See* Securities Exchange Act Release Nos.86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR–ISE–2020–18); and 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR–ISE–2020–33).

Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the Program and will continue to make public any data or analysis it submits under the Program in the future. The Exchange will be submitting a rule change to request that the Program become permanent. In lieu of submitting any additional annual reports, the Exchange would provide additional information requested by the Commission in connection with the permanency rule change for this Program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes that the Program has been successful to date. The Exchange has not encountered any problems with the Program. By extending the pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

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. NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition.

The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of a new option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The continued listing of NQX will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq–100. Furthermore, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with the Nasdaq–100 and seek Commission approval to list and trade options on such an index.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2021–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2021–05. 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–ISE–2021–05, and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07388 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91487; File No. 4–698]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail

April 6, 2021.

I. Introduction

On December 18, 2020, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''): [1] BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment (''Proposed Amendment'') to the CAT NMS Plan that would authorize CAT LLC to revise the Consolidated Audit Trail Reporter Agreement (the ''Reporter Agreement'') and the Consolidated Audit Trail Reporting Agent Agreement (the ''Reporting Agent Agreement'') to insert limitation of liability provisions (the ''Limitation of Liability Provisions''). The proposed plan amendment was published for comment in the **Federal Register** on January 6, 2021.[4]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[5] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the SROs to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail (the ''CAT'' or ''CAT System'') that would capture customer and order event information for orders in NMS securities.[6] The Commission approved the CAT NMS Plan in 2016.[7] On August 29, 2019, the Operating Committee for CAT LLC approved a Reporter Agreement that included a provision that would limit the total liability of CAT LLC or any of its representatives to a CAT Reporter under the Reporter Agreement for any calendar year to the lesser of the total of fees paid by the CAT Reporter to CAT LLC for the calendar year in which the claim arose or five hundred dollars. The Participants also required each Industry Member [8] to execute a CAT Reporter Agreement prior to reporting data to CAT. Prior to the commencement of initial equities reporting for Industry Members on June 22, 2020, the Securities Industry and Financial Markets Association (''SIFMA'') filed pursuant to Sections 19(d) and 19(f) of the Exchange Act an application for review of actions taken by CAT LLC and the Participants (the ''Administrative Proceedings''). SIFMA alleged that by requiring Industry Members to execute the Reporter Agreement as a prerequisite to submitting data to the CAT, the Participants improperly prohibited or limited SIFMA members with respect to access to the CAT System in violation of the Exchange Act. On May 13, 2020, the Participants and SIFMA reached a settlement and terminated the Administrative Proceedings, allowing Industry Members to report data to the CAT pursuant to a Reporter Agreement that does not contain a limitation of liability provision. Since that time, Industry Members have been transmitting data to the CAT.[9]

III. Summary of Proposal

The Participants now propose to amend the CAT NMS Plan to authorize CAT LLC to revise the Reporter Agreement and Reporting Agent Agreement with the proposed Limitation of Liability Provisions. As proposed, the Limitation of Liability Provisions would: (1) Provide that CAT Reporters and CAT Reporting Agents accept sole responsibility for their access to and use of the CAT System, and that CAT LLC makes no representations or warranties regarding the CAT System or any other matter; (2) limit the liability of CAT LLC, the Participants, and their respective representatives to any individual CAT Reporter or CAT Reporting Agent to the lesser of the fees actually paid to CAT for the calendar year or $500; (3) exclude all direct and indirect damages; and (4) provide that CAT LLC, the Participants, and their respective representatives shall not be liable for the loss or corruption of any data submitted by a CAT Reporter or CAT Reporting Agent to the CAT System.[10] The full text of the proposed Limitation of Liability Provisions appears in Appendix A to the Notice.[11]

In support of the proposed amendment, the Participants state, among other things, that: (1) The proposed Limitation of Liability Provisions reflect longstanding principles of allocation of liability between industry members and self-regulatory organizations and the Participants are unaware of any context in which liability that is usually borne by Industry Members is shifted to their regulators; [12] (2) the proposed Limitation of Liability Provisions ''fall squarely within industry norms'' and are consistent with exchange rules that limit liability for losses that members incur through their use of exchange facilities, provisions that FINRA members must agree to in order to comply with Order Audit Trail System (''OATS'') reporting, and other provisions in the context of regulatory and NMS reporting facilities; [13] (3) previously granted exemptive relief that eliminated the requirement that CAT collect certain personally identifiable

[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail, Release No. 90826 (December 30, 2020), 86 FR 591 (January 6, 2021) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698.htm.*

[5] 17 CFR 242.608(b)(2)(i).

[6] 17 CFR 242.613.

[7] *See supra* note 1.

[8] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan at Section 1.1.

[9] For a more detailed description of the background for the Proposed Amendment, *see* Notice, *supra* note 4, at 86 FR 591–93.

[10] *See* Notice, *supra* note 4, 86 FR at 593.

[11] *See* Notice, *supra* note 4, 86 FR at 598.

[12] *See* Notice, *supra* note 4, 86 FR at 593–95.

[13] *See* Notice, *supra* note 4, 86 FR at 593–94.

information, including social security numbers, makes the customer data stored in the CAT comparable to the data reported to other regulatory reporting facilities;[14] (4) the proposed Limitation of Liability Provisions are necessary to ensure the financial stability of CAT because even though ''CAT LLC has obtained the maximum extent of cyber-breach insurance coverage available and has implemented a full cybersecurity program to safeguard data stored in the CAT,'' there is ''the potential for substantial losses that may result from certain categories of low probability cyberbreaches.''[15]

In addition, CAT LLC retained Charles River Associates (''Charles Rivers'') to conduct an economic analysis of the liability issues presented by a potential CAT breach and attached the analysis to the Proposed Amendment as *Appendix B* to the Notice (the ''CRA Paper'').[16] The Participants state that the analyses presented in the CRA Paper support the Participants' proposal to adopt a limitation of liability provision in the CAT Reporter Agreement and shows the importance of limiting CAT LLC's and each Participant's liability.[17] The CRA Paper asserts, among other things, that, based on an examination of potential breach scenarios and a consideration of the economic and public policy elements of various regulatory and litigation approaches to mitigate cyber risk for the CAT, a limitation of liability provision would serve the public interest by facilitating the regulation of the U.S. equity and option markets at lower overall costs and higher economic efficacy than other approaches, and that the proposed limitation on liability would not undermine CAT LLC's existing and significant incentives to protect the data stored in the CAT System. The CRA Paper asserts that regulation by the SEC already properly incentivizes the Participants to recognize and address the risks that a CAT cyber breach poses to third parties such as Industry Members and that permitting litigation by Industry Members will not meaningfully increase CAT's incentives to manage its exposure to cyber risk but will significantly increase costs, which will ultimately be passed on to retail investors. Because of this, the CRA Paper asserts that solely an ''*ex-ante* regulation'' approach leads to the socially optimal outcome, in comparison to an ''*ex post* litigation'' approach in which litigation influences behaviors before a loss-producing event occurs by assigning liability afterwards, or combination of both approaches.

IV. Summary of Comments

The Commission has received twelve comment letters, including a letter attaching an economic analysis of the Proposed Amendment.[18] The Commission has received one response letter from the Participants.[19]

A. Comments Critical of Proposed Amendment

Nine commenters believe that the parties responsible for controlling and securing CAT Data should be liable for any failure to implement adequate security, generally arguing that it is unfair to shift liability to Industry Members for potential harm caused by the compromise of CAT Data over which they have no control or responsibility for security.[20] Among other things, these commenters state that the SROs are exclusively responsible for maintaining the CAT System and for implementing measures to prevent breach or misuse.[21] Four commenters believe that ''[a]ligning control and liability is not only fair and equitable; it is also good policy, because it maximizes efficiencies in managing data risks inherent in the CAT System.''[22] However, one commenter argues that the proposal shows that the SROs understand that it will be impossible for them to protect CAT Data and that a hack of CAT is inevitable.[23]

Nine commenters also express concern that shifting liability from CAT LLC to CAT Reporters would reduce the incentive of Participants to develop robust data security and risk mitigation mechanisms, and may even incentivize the Participants to de-prioritize data security.[24] Two of these commenters characterized the economic structure of the Proposed Amendment as creating a ''moral hazard,'' where incentives to invest in data security are diminished because Industry Members bear the potential litigation costs of a breach or misuse of CAT Data.[25] Another commenter argues that aligning control and liability incentivizes the optimal amount of data security and would ultimately benefit all investors.[26]

Four commenters criticized the Proposed Amendment for proposed limitation of liability provisions that would effectively prohibit Industry Members from pursuing claims against CAT LLC and the SROs, even if there is ''willful misconduct, gross negligence, bad faith or criminal acts of CAT LLC, the SROs or their representatives or employees.''[27] These commenters

[14] *See* Notice, *supra* note 4, 86 FR at 595.

[15] *See* Notice, *supra* note 4, 86 FR at 595.

[16] *See* Notice, *supra* note 4, 86 FR at 599–624. The CRA Paper, dated December 18, 2020, is titled ''White Paper: Analysis of Economic Issues Attending the Cyber Security of the Consolidated Audit Trail.''

[17] *See* Notice, *supra* note 4, at 595–597.

[18] *See* Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, dated February 19, 2021, *available at https://www.sec.gov/comments/4-698/4698-8394069-229410.pdf,* attaching Economic Analysis of Proposed Amendment to National Market System Plan Governing the Consolidated Audit Trail, Craig M. Lewis, Ph.D., February 2021 (''Lewis Paper'').

[19] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, dated April 1, 2021 (''Response Letter'').

[20] *See* Lewis Paper at 3, 6; Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, dated January 27, 2021, *available at https://www.sec.gov/comments/4-698/4698-8298026-228278.pdf* (''SIFMA Letter''), at 4; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, dated February 8, 2021, *available at https://www.sec.gov/comments/4-698/4698-8345389-228979.pdf* (''FIA PTG Letter''), at 1 (stating it ''supports the comments previously filed by SIFMA''); Letter from Thomas R. Tremaine, Executive Vice President, Chief Operations Officer, Raymond James & Associates, Inc., to Vanessa Countryman, Secretary, dated February 8, 2021, *available at https://www.sec.gov/comments/4-698/4698-8347733-229000.pdf* (''Raymond James Letter''), at 2 (stating that it ''strongly supports the points raised by SIFMA in their letter.''); Letter from Peggy L. Ho, Executive Vice President, Government Relations, LPL Financial LLC, to Vanessa Countryman, Secretary, dated January 27, 2021, *available at https://www.sec.gov/comments/4-698/4698-8298412-228298.pdf* (''LPL Financial Letter''), at 1 (stating ''[its] support for SIFMA's comments submitted on January 27, 2021 in response to the proposed amendments to the CAT NMS Plan''); Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association, to Vanessa Countryman, Secretary, dated January 29, 2021, *available at https://www.sec.gov/comments/4-698/4698-8311307-228499.pdf* (''ASA Letter''), at 2; Letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, dated January 27, 2021, *available at https://www.sec.gov/comments/4-698/4698-8298023-228258.pdf* (''Virtu Letter''), at 2; Letter from Matthew Price, Fidelity Investments, to Vanessa Countryman, Secretary, dated February 2, 2021, *available at https://www.sec.gov/comments/4-698/4698-8343750-228940.pdf* (''Fidelity Letter''), at 2; Letter from Daniel Keegan, Managing Director, Head of North America Markets & Securities Services, to Vanessa Countryman, Secretary, dated February 25, 2021, *available at https://www.sec.gov/comments/4-698/4698-8419819-229522.pdf* (''Citi Letter''), at 2.

[21] *See, e.g,* SIFMA Letter at 2; Virtu Letter at 3; Fidelity Letter at 2.

[22] *See* SIFMA Letter at 4. *See also* LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2.

[23] *See* ASA Letter at 3.

[24] *See* Lewis Paper at 5–9, 14; SIFMA Letter at 7, 9; LPL Financial Letter at 1; Raymond James Letter at 2; FIA PTG Letter at 2; Virtu Letter at 3; ASA Letter at 2; Fidelity Letter at 2; Citi Letter at 2.

[25] *See* Citi Letter at 2; Lewis Paper at 9.

[26] *See* Lewis Paper at 5–7.

[27] *See* SIFMA Letter at 5, 7–8. *See also* LPL Financial at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Citadel Letter at 3 (stating that the provisions would protect Participants and their

Continued

further assert that the proposal would shield the SROs from liability, ''not only for a breach of the CAT System by malicious third-party actors but even from the theft or other misuse of CAT Data by SRO employees'' and would ''effectively extinguish the liability of CAT LLC and the SROs even in instances of gross negligence or intentional misconduct.'' [28] Another commenter states that the proposal ''would effectively hold brokers responsible for the malfeasance and incompetence of the SROs and their contractors'' and that this would be ''extremely unreasonable.'' [29] Five commenters assert that the proposed Limitation of Liability Provisions are inconsistent with industry standards, citing among other things SRO limitation of liability rules which exclude protection for willful misconduct, gross negligence, bad faith or criminal acts.[30]

Further, six commenters dismiss comparisons made in the Proposed Amendment to OATS limitation of liability provisions because CAT captures significantly more information than OATS, including personally identifiable information, and data reported to OATS is reported to and only used by FINRA.[31] Commenters further state that OATS does not have the same account-level data that the CAT will collect, which could present the risk of reverse engineering of trading strategies.[32] One commenter stated that the limitation of liability provisions for OATS were signed in 1998, and since then the landscape of cybersecurity has changed, and the frequency and scale of data breaches has increased dramatically.[33]

Five commenters argue that the SROs have failed to explain why limitation of their liability should be imposed by contract because the SROs have immunity from liability when acting in a regulatory capacity.[34] Four of these commenters further assert that the effort to impose liability limitations by contract ''raises significant questions about whether the SROs seek to avoid liability in circumstances in which they misuse CAT Data while acting in a commercial capacity.'' [35] Another commenter frames the issue as not whether the Participants should be liable for conduct undertaken during the course of their regulatory responsibilities, but whether the Participants should be insulated from potential liability for activities not covered by regulatory immunity.[36]

Five commenters state that the Participants contradictorily argue that security measures are robust but that a limitation of liability is necessary due to risk of a catastrophic loss as a result of a breach or misuse of CAT Data.[37] For example, one of these commenters notes that the Participants assert that Industry Members should not be concerned about ''breach or misuse'' of CAT Data due to a ''robust regulatory regime governing CAT data security,'' but also argue that they need limitation of liability provisions because without them the ''risk of a catastrophic loss as a result of a data breach or misuse is so significant that the financial stability of the CAT would be jeopardized in the absence [of the provisions].'' [38] Additionally, eight commenters note that Participants have argued against adopting the security measures in the Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security,[39] on the grounds that CAT security measures already are robust, while at the same time attempting to disclaim liability because of the high risk of a security breach.[40]

B. Comments Regarding the CRA Paper

In addition to comments regarding the Proposed Amendment, commenters provided comments regarding the CRA Paper, which is summarized above in Section II and attached to the Notice as Appendix B.[41]

Two commenters argue that the CRA Paper's conclusion that ex-ante regulation is most appropriate is wrong, and that CAT cybersecurity would benefit from both ex-ante regulation and ex-post litigation.[42] One commenter states that permitting litigation against Participants and their representatives when they are acting outside their regulatory capacity is ''crucial'' and would give the Participants strong financial incentives to invest to prevent or minimize the likelihood of security failures.[43] One commenter asserts that protecting the Participants against liability for litigation shifts liability to Industry Members for potential claims from the Industry Members' customers, and that the retention of liability for potential litigation by CAT LLC would mitigate the moral hazard problem and incent CAT LLC to invest in improvements in data security and more quickly react to changing trends and threats in cybersecurity.[44]

Seven commenters argue that the CRA Paper fails to consider the costs of a data breach on non-SROs, including broker-dealers and their customers.[45] These commenters state that, while disclaiming liability by CAT LLC would reduce its costs, the liability for a potentially catastrophic loss or breach would instead be shifted to Industry Members, and the CRA Paper fails to take these costs into account. In addition, one of these commenters states that if Industry Members could not sue CAT LLC, they would have to purchase additional liability insurance since they have no ability to mitigate the security risk and no recourse to recoup any litigation-related losses from their own customers.[46]

Six commenters state that the CRA Paper only focuses on a breach by

representatives from any and all potential misuse, including intentional misuse, of CAT Data).

[28] *See* SIFMA Letter at 5. *See also* LPL Financial at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Citadel Letter at 3.

[29] *See* ASA Letter at 2.

[30] *See* SIFMA Letter at 7; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Fidelity Letter at 2.

[31] *See* Lewis Paper at 9–10; SIFMA Letter at 8; LPL Financial Letter at 2; Raymond James Letter at 2; FIA PTG Letter at 2; Virtu Letter at 4.

[32] *See* SIFMA Letter at 10; Virtu Letter at 4; LPL Financial Letter at 2; Raymond James Letter at 2; FIA PTG Letter at 2.

[33] *See* Lewis Paper at 10.

[34] *See* Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, dated February 23, 2021, *available at https://www.sec.gov/comments/4-698/4698-8411798-229501.pdf* (''Citadel Letter''), at 1, 3–5; SIFMA Letter at 8; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2.

[35] *See* SIFMA Letter at 8. *See also* LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2.

[36] *See* Citadel Letter at 5.

[37] *See* SIFMA Letter at 4; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Lewis Paper at 4.

[38] *See* SIFMA Letter at 4. *See also* LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2.

[39] *See* Securities Exchange Act Release No. 89632 (August 21, 2020), 85 FR 65990 (October 16, 2020) (proposing to amend the CAT NMS Plan to enhance the security of the CAT and the protections afforded to CAT Data) (''Data Security Proposal'').

[40] *See* Citadel Letter at 2; Lewis Paper at 4; SIFMA Letter at 7; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Virtu Letter at 5; Fidelity Letter at 2.

[41] *See supra* note 16.

[42] *See* Citadel Letter at 1–2, 7; Lewis Paper at 7–9.

[43] *See* Citadel Letter at 2, 7, 9–10. This commenter also asserts that the SEC has only assessed whether the existing cybersecurity framework is adequate for CAT databases (in contrast to Participants' security) and states that regulation is a slow and uncertain process that cannot keep pace with data security issues. *See id.* at 8.

[44] *See* Lewis Paper at 7–9.

[45] *See* Lewis Paper at 1, 8–9; SIFMA Letter at 9–10; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Virtu Letter at 5; ASA Letter at 2. For example, one commenter asserts that the CRA Paper fails to consider the costs of a data breach on non-SROs (broker-dealers and their customers), including ''damage to the brand'' and ''trust that broker-dealers have [built] up with their retail clients for decades.'' *See* ASA Letter at 2.

[46] *See* Lewis Paper at 4, 8.

external actors and fails to address the risk of misuse of CAT data by personnel at CAT LLC and the SROs.[47] In addition, one commenter emphasizes that the CRA Paper focuses on databases maintained by CAT LLC, not the ''larger concern,'' which is the potential for hackers to access CAT Data from Participant databases that have extracted data from the CAT.[48]

Four commenters state that the CRA Paper suggests that certain mechanisms, such as a third-party compensation program, cyber-related industry loss warranties or cyber catastrophe bonds could be used in the event of a CAT breach to compensate third parties, but the SROs have not actually proposed the adoption of any of them.[49] These commenters assert that the Participants effectively concede that, without more, the current regulatory regime is insufficient to protect parties that are injured as a result of a CAT breach.[50] Another commenter states that the CRA Paper provides no details regarding the insurance that CAT LLC has obtained and does not analyze whether Participants should seek insurance or the effect such insurance could have on the Participants' incentives to protect data that they extract from the CAT and store outside the CAT.[51] Six commenters believe that it would be more appropriate for CAT LLC to purchase insurance instead of Industry Members each purchasing the same overlapping policies.[52] One of these commenters argues that CAT LLC is able to insure more efficiently than Industry Members because CAT LLC has access to and control over CAT Data and systems and can subject itself to monitoring by an insurer.[53]

Finally, two commenters criticize the breach scenarios discussed in the CRA Paper as insufficient to capture the risks. One of these commenters suggests that a breach of CAT by foreign actors, or CAT being internally compromised could lead to the ''downfall'' of U.S. capital markets and that the breach scenarios in the CRA Paper ''grossly'' underestimate national security threats.[54] Another commenter states that the CRA Paper ''avoids any serious discussion'' of the risk posed by ''nation state actors, like China and Russia.'' [55]

C. Participants' Response Letter

On April 1, 2021, the Participants submitted a letter responding to comments received regarding the Proposed Amendment.[56] In their response, the Participants argue that following a thorough review and consideration of the issues raised by commenters, they continue to believe that the Proposed Amendment is consistent with the Exchange Act.[57] The Participants provide further background on discussions between Participants and Industry Members, and in particular with SIFMA, stating that between August 2019 and April 2020 the Participants and SIFMA participated in numerous meetings and exchanged extensive correspondence.[58] The Participants state that they plan to reach out to SIFMA, as they ''remain willing to work with Industry Members (and any other stakeholders) in good faith to resolve the parties' remaining differing perspectives,'' but stated that from August 2019 through April 2020, SIFMA's ''only proposal'' was to categorically reject any limitation of liability.[59] The Participants emphasize that settlement of the Administrative Proceedings did not resolve the question of whether proposed Limitation of Liability Provisions should be included in the Reporter Agreement and the Reporting Agent Agreement.[60]

The Participants reassert that the proposed Limitation of Liability Provisions are consistent with SRO limitation of liability rules, emphasizing that under those rules the SROs generally have the discretion, but not obligation, to compensate harmed Industry Members, and that this discretion only applies in very limited circumstances—namely, for system failures that impact the execution of individual orders.[61] The Participants state that no SRO limitation of liability rule contemplates SRO liability for ''catastrophic'' damages resulting from the theft of Industry Members' proprietary trading algorithms.[62] The Participants also state that the Participants consider the proposed Limitation of Liability Provisions to fall squarely within industry norms, as demonstrated by a comparison to the allocation of liability between Industry Members and SROs in other regulatory contexts, including NMS plans, regulatory reporting facilities, SRO rules and liability provisions that Industry Members use to protect themselves when they possess sensitive customer and transaction data.[63]

The Participants reject SIFMA's suggestion that any limitation of liability provision should exclude liability for willful misconduct, gross negligence, bad faith or criminal acts of CAT LLC, the SROs or their representatives or employees.[64] The Participants state that existing SRO liability rules approved by the Commission do not recognize such exclusions, stating that in the limited instances in which SRO liability rules permit claims for gross negligence or willful misconduct, Industry Members are often prohibited from suing an SRO

[47] *See* Citadel Letter at 6; SIFMA Letter at 9; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2; Virtu Letter at 5. One commenter states that the CRA Paper does not provide any support for the argument that broker-dealers should be accountable for the wrongdoing or misuse of data by SRO employees or contractors. *See* ASA Letter at 2.

[48] *See* Citadel Letter at 6–7. One commenter argues that the CRA Paper significantly overemphasizes the visibility and input into the workings of CAT provided to the industry, and asserts that there is no visibility into the security aspects of CAT. *See id.* at 9.

[49] *See* SIFMA Letter at 10; LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2.

[50] In addition, these commenters believe the Participants would not be incented to develop any such compensation mechanisms if they are protected against liability. *See supra* note 49.

[51] *See* Citadel Letter at 7–8. *See also* Lewis Paper at 13–14 (arguing that there is no basis for the claim that CAT LLC cannot obtain additional insurance). The Lewis Paper states that if purchasing additional insurance would be cost prohibitive, then the same would apply to Industry Members because the costs of insurance to CAT LLC are likely to be lower than the combined cost of Industry Members purchasing an equivalent amount of coverage. *Id.* at 14.

[52] *See* Lewis Paper at 11; SIFMA Letter at 4–5, 8–9, 10–11; Virtu Letter at 3. *See also* LPL Financial Letter at 1; FIA PTG Letter at 2; Raymond James Letter at 2. One commenter expresses skepticism that Industry Members could even obtain insurance policies under the current CAT System construct, because Industry Members have no control over the data it is by law required to submit, its security or the CAT Systems. *See* Virtu Letter at 3.

[53] *See* Lewis Paper at 12–13. *See also* SIFMA Letter at 4–5 (stating that requiring Industry Members to pay for and implement separate and overlapping insurance policies, if available, is inefficient and would result in substantially higher costs borne by Industry Members and by extension their customers).

[54] *See* Letter from Kelvin To, Founder and President, Data Boiler Technologies, LLC, to Vanessa Countryman, Secretary, dated January 27, 2021, at 1 and 6, *available at https://www.sec.gov/comments/4-698/__4698-8311309-228460.pdf.*

[55] *See* ASA Letter at 2.

[56] *See, supra* note 19.

[57] *See* Response Letter at 2.

[58] *See id.*

[59] *See id.*

[60] *See* Response Letter at 4.

[61] *See id.* at 5–6. The Participants also note that during negotiations, the Participants submitted to SIFMA a term sheet that provided for a discretionary compensation mechanism modeled after SRO rules, which was rejected by SIFMA. *Id.* at 6.

[62] *See id.* The Participants also disagree with characterizations of the Proposed Amendment as an attempt to ''shift'' liability from Participants to Industry Members, and instead argue that the Industry Members themselves are proposing a ''shift'' from the longstanding allocation of liability between Industry Member and Participants. *Id.* at 21.

[63] *See id.* at 5–11. The Participants believe that the proposed Limitation of Liability Provisions are ''substantively identical'' to the liability provisions to which Industry Members regularly agree in connection with OATS reporting. *Id.*

[64] *See id.* at 7 (citing SIFMA Letter at 7–8).

for damages unless the alleged gross negligence or willful misconduct also constituted a securities law violation for which Congress has authorized a private right of action.[65]

The Participants also argue that modifying the proposed Limitation of Liability provisions is not supported by the CRA Paper, because such modifications would likely result in litigation over liability. According to the Participants, although they, CAT LLC, and FINRA CAT may ultimately be found not liable, such litigation would be expensive, time-consuming, distract Participants from their regulatory oversight mandate, and may open the doors of discovery to potentially malicious actors.[66] The Participants state that the Commission's regulatory enforcement regime and the potential for severe reputational harm already sufficiently incentivize the Participants to not engage in bad faith, recklessness, gross negligence, and intentional misconduct, and so adding exclusions to the proposed Limitation of Liability provisions would not result in any meaningful improvement to the CAT's cybersecurity.[67]

The Participants reject the argument that the proposed Limitation of Liability Provisions are inappropriate because the Participants and FINRA CAT control the CAT Data.[68] The Participants believe that securities industry norms do not support the principle that the party in possession of data should bear liability in the event of a data breach, and in particular where the parties in possession of the data are acting in regulatory capacities pursuant to Commission rules.[69] In support, the Participants state that Industry Members ''routinely'' disclaim liability to their underlying customers despite controlling sensitive data that could be compromised during a data breach, including their own retail customers in certain cases.[70]

In response to concerns about the cybersecurity of CAT and concerns about the use of CAT Data, including concerns about bulk downloading and personally identifiable information, the Participants state that they are authorized to bulk download only trading data, and not customer data.[71] The Participants also state that FINRA CAT has adopted and implemented policies, procedures, systems, and controls to address cybersecurity concerning the bulk downloading of CAT Data by the Participants.[72] In addition, as with FINRA CAT, the Participants' cybersecurity protocols are subject to the Commission's regulatory oversight regime, including its examination and enforcement functions.[73] The Participants further state that FINRA CAT and Participants have robust cybersecurity protocols that are designed to prevent and detect both external and internal security threats, and only regulatory users with a ''need-to-know'' have a basis for accessing CAT Data and are subject to comprehensive background checks.[74] The Participants state that Industry Members have had extensive opportunities to provide input regarding the CAT's cybersecurity at every stage of the development and operation of the CAT.[75]

The Participants disagree with commenter suggestions that CAT LLC's and certain Participants' responses to the Data Security Proposal [76] imply that the proposed Limitation Liability provisions are inappropriate or that the Commission's regulatory regime is insufficient to properly incentivize the Participants.[77] The Participants state that under the current regulatory regime all interested parties, including CAT LLC and the Participants, provide feedback to the Commission regarding any proposals to the CAT's cybersecurity, allowing the Commission to use its substantive expertise and an understanding of stakeholder interests to balance all appropriate factors in identifying the CAT's cybersecurity needs.[78] They state that allowing for litigation regarding CAT's cybersecurity would compromise the Commission's comprehensive oversight authority, and the Commission's willingness to propose potential changes highlights the sufficiency and flexibility of the regulatory regime to ensure the optimal security of CAT Data.[79] The Participants also believe the Commission did not contemplate that the Participants could be liable for extensive monetary damages resulting from a data breach or for the costs of protracted litigation with Industry Members.[80]

The Participants also state that regulatory immunity does not preclude the use of contractual limitation of liability provisions and the divergent and shifting positions from Industry Members on the applicability of regulatory immunity underscores the need for a contractual limitation of liability.[81] The Participants state that some comments generally argue that a contractual limitation of liability is unnecessary in light of the doctrine of regulatory immunity, while other comments state the Participants should not receive either regulatory immunity or the protection of a limitation of liability provision.[82] The Participants state that the proposed Limitation of Liability Provisions are necessary despite any regulatory immunity because even litigation which holds that regulatory immunity applies may result in significant disruption and expense (which ultimately will be passed along to Industry Members as part of CAT LLC's joint funding), and there is no guarantee that all courts would agree that the Participants' immunity defense extends to the particular claims at issue.[83] The Participants believe that if

[65] *See* Response Letter at 6–7. Thus, the Participants believe that that these provisions would not provide for liability against the self-regulatory organizations in the event of a data breach. *Id.* at 7–8. The Participants also note that contractual limitation of liability provisions in connection with other NMS plans and regulatory reporting facilities, including OATS, do not contain the exclusions advocated by SIFMA. *Id.* at 8.

[66] *See id.* at 9. The Participants note that increased costs of operating CAT would be borne by the Participants and Industry alike, which means that a limitation of liability with any categorical exclusions could result in many of the same economic harms that would occur in the absence of any limitation of liability at all. *Id.* The Participants also note that certain relief ordered in litigation could interfere with the Commission's oversight of the CAT. *Id.*

[67] *See* Response Letter at 9. The Participants note that enforcement actions could be brought for cybersecurity-related violations (*e.g.,* failure to comply with Regulation SCI) and violations of the CAT NMS Plan (*e.g.,* for violating the CAT NMS Plan by using CAT Data for non-regulatory purposes). *See id.* at 25–26. The Participants also state that the purpose of the CAT and the Participants' mandate under the CAT NMS Plan is the fulfillment of regulatory functions, and not operation in connection with business activities. *Id.* at 22.

[68] *See id.* at 10.

[69] *See id.*

[70] *See id.*

[71] *See* Response Letter at 11–14.

[72] *See id.* at 11–12. In addition, the Participants state that, among other things, any SRO that engages in bulk downloading must have policies and procedures regarding CAT Data security that are comparable to those implemented and maintained by the Plan Processor for the Central Repository. *Id.* at 12.

[73] *See id.* at 12.

[74] *See id.* at 12–13. The Participants reassert that the customer data stored in the CAT is comparable to the data reported to other regulatory reporting facilities. *Id.* at 13.

[75] *See* Response Letter at 14. This includes prior to approval of the CAT NMS Plan, feedback through the Advisory Committee, and the ability of Industry Members to directly petition the Commission or provide comments on any proposals offered by the Commission. *Id.*

[76] *See supra* note 39.

[77] *See* Response Letter at 18.

[78] *See id.*

[79] *See id.* at 18–19. The Participants note that the Commission, in approving the CAT NMS Plan, explicitly considered the costs of a potential data breach and concluded that the overall benefits of the CAT outweighed any costs. *Id.*

[80] *See id.* at 19.

[81] *See* Response Letter at 22–25.

[82] *See id.* at 21–23. The Participants state that SIFMA's longstanding position is that Congress should abrogate regulatory immunity by statute. *Id.* at 23–24.

[83] *See id.* at 23–25.

the Commission agrees that the Participants, CAT LLC, and FINRA CAT should not be liable for monetary damages while acting to fulfill an important regulatory function in their capacities as self-regulatory organizations, the Commission's sole mechanism for ensuring that protection is to endorse the contractual proposed Limitation of Liability Provisions.[84]

The Participants also state that some comments misunderstand the scope of the proposed Limitation of Liability Provisions.[85] The Participants state that the proposed Limitation of Limitation Provisions would not extinguish liability and only addresses the allocation of liability between Industry Members and the Participants.[86] The Participants state that the Proposed Amendment would not impact the rights or obligations of third parties, including Industry Members' customers and would not extinguish the broad regulatory oversight that the Commission exercises over the CAT or potential investigation and potential enforcement action for any cybersecurity-related violations.[87] The Participants believe that no commenters have offered any explanation as to why the SEC's regulatory regime—which includes cybersecurity protocols developed and refined based on feedback from Industry Members—is insufficient to ensure adequate cybersecurity for CAT Data, or what deficiencies in the Commission's oversight necessitate that Industry Members be afforded an unprecedented private right of action against their regulators.[88] The Participants state that commenters are asking that their primary regulators bear any and all liability for hypothetical ''black swan'' cyber breaches and that such an extraordinary ask is without precedent, and that Participants, implementing a regulatory mandate in their regulatory capacities, should receive liability protections that they are customarily afforded when implementing their regulatory responsibilities pursuant to the direction and oversight of the Commission.[89]

D. Participants' Response to Comments Regarding the CRA Paper

In the Response Letter, the Participants also provide responses to comment letters that addressed the CRA Paper. The Participants explain that the CRA Paper contain two principal analyses: (i) A ''scenario analysis'' in which it identified specific hypothetical breaches and assessed the relative difficulty of implementation, relative frequency, and conditional severity of each; and (ii) a consideration whether the cyber risk presented by the CAT should be addressed by regulation, litigation, or a combination of both approaches.[90]

The Participants state that commenters that believe the CRA Paper did not address certain categories of hypothetical data breaches, and in particular breaches that originate from within FINRA CAT or Participants, misconstrue the CRA Paper's analysis.[91] The Participants state that Charles River did not make any assumptions regarding the identity of potential bad actors or where they may work, and the CRA Paper was not intended to predict every possible scenario, but instead intended to provide an illustrative framework to assess the economic exposures that flow from the gathering, storage, and use of CAT Data.[92] The Participants state that the CRA Paper concludes, in light of the CAT's extensive cybersecurity and other reasons, most potential breaches are relatively low-frequency events because they are either difficult to implement, unlikely to be meaningfully profitable, or both.[93] The Participants also believe that the CRA Paper's conclusion that allowing Industry Members to litigate against CAT LLC, the Participants, and FINRA CAT would provide minimal benefits while imposing substantial costs is not undermined to the extent that commenters identify potential breaches that were not included in Charles River's scenario analysis.[94]

The Participants believe that comments that criticize the CRA Paper's for failing to consider the costs to individual Industry Members in the event of a CAT data breach are based on a fundamental misunderstanding of the relevant economic principles.[95] Specifically, the CRA Paper's focus was on whether the risks of the use of CAT Data for regulatory purposes was best managed through *ex ante* regulation or *ex post* litigation, or a combination of both, and this analysis largely turns on identifying the most effective and efficient mechanisms for incentivizing CAT LLC, the Participants and FINRA CAT to take appropriate precautions.[96] The Participants state that the CRA Paper demonstrates that the extensive regulatory regime that the SEC has enacted creates appropriate and strong incentives for the Participants to take sufficient cybersecurity precautions and to ensure that the CAT is secure, and that allowing Industry Members to litigate against Participants would create substantial costs without any corresponding benefit.[97]

The Participants acknowledge that the CRA Paper explains that the regulatory regime is generally silent with respect to the most efficient method to compensate injured parties and that the CRA Paper offered several suggestions to cover potential losses including insurance, industry loss warranties, and catastrophe bonds.[98] The Participants state that they are willing discuss any of these compensation mechanisms with Industry Members and would welcome a discussion with the Commission to address the viability of these mechanisms and how they might be funded.[99] The Participants reiterate that CAT LLC has obtained the ''maximum extent of cyber-breach insurance coverage available at the time'' and are willing to discuss with Industry Members and the Commission how that coverage might be used to compensate parties harmed by any potential data breach.[100] The Participants also state that they regularly evaluate CAT LLC's insurance and intend to purchase additional coverage to the extent it becomes reasonably available.[101]

The Participants state that they disagree with the conclusions in the

[84] *See id.* at 25.

[85] *See* Response Letter at 25–26.

[86] *See id.* at 25.

[87] *See id.* at 25–26.

[88] *See id.* at 26.

[89] *See id.* at 2. The Participants note that both the Participants and Industry Members are acting pursuant to Commission mandate, but the Participants are also fulfilling a regulatory oversight role and there is no basis for the Participants to assume liability. *Id.* at 21.

[90] *See* Response Letter at 15.

[91] *See id.*

[92] *See id.* (citing CRA Paper 2).

[93] *See* Response Letter at 16 (citing CRA Paper at 18–32).

[94] *See* Response Letter at 16.

[95] *See id.*

[96] *See id.*

[97] *See id.* at 16–17. The Participants also dispute an assertion that the CRA Paper delivered a ''pre-determined conclusion.'' *See id.* at 17 (citing ASA Letter at 2–3).

[98] *See* Response Letter at 27 (citing CRA Paper at 50–53).

[99] *See id.* at 27–28. The Participants state that the Commission is empowered to bring enforcement actions for violations of cybersecurity requirements, and this authority includes the ability to order individuals and entities to disgorge ill-gotten gains which could be used to compensate harmed parties. The Participants also state that creating mechanisms to compensate Industry Members in the event of a data breach would not obviate the need for the proposed Limitation of Liability Provisions. *See id.* at 28.

[100] *See* Response Letter at 17. *See also* Response Letter at 21 and 27.

[101] *See id.* at 21. The Participants state that the decision to purchase the maximum coverage available is not contingent on whether they are protected by a limitation of liability provision. *Id.* at 27.

Lewis Paper and asked Charles River to respond to the issues raised within the Lewis Paper.[102] The Participants state that the Lewis Paper appears to advocate that CAT LLC should be strictly liable for all costs associated with any CAT data breach, regardless of the facts and circumstances, without any economic analysis as to why the longstanding allocation of liability between the Participants and Industry Members should not apply here.[103] In addition, the Participants state that the proposed Limitation of Liability Provisions do not impact the rights of Industry Members' underlying customers, and that Industry Members routinely disclaim liability to those underlying customers, which the Lewis Paper does not address.[104] The Participants also state that the Lewis Paper does not include a scenario analysis like the CRA Paper, and the Participants state that the Lewis Paper incorrectly states that a cyber breach would likely be a single event that affects all Industry Members simultaneously, leading to the erroneous conclusion that CAT LLC is in a better position than individual Industry Members to insure against a cyber breach.[105]

V. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[106] and Rules 700 and 701 of the Commission's Rules of Practice,[107] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [108] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[109] In the Notice, the Commission sought comment on the Proposed Amendment, including whether the amendment is consistent with the Exchange Act.[110] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[111] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act,[112] specifically regarding:
  - Whether the impact of the proposed Limitation of Liability Provisions on the incentives of the Participants to ensure the security of the CAT and CAT Data is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act;
  - whether the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act in light of any regulatory immunity applicable to the Participants; and
  - whether the application of the proposed Limitation of Liability Provisions to willful misconduct, gross negligence, bad faith or criminal acts is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act;
- Whether, and if so how, the Proposed Amendment would affect efficiency, competition or capital formation;
- Whether modifications to the Proposed Amendment, or conditions to its approval, would be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[113]

VI. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposals are consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[114] any request for an opportunity to make an oral presentation.[115]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposals should be approved or disapproved by May 3, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 17, 2021. 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 4–698 on the subject line.

[102] *See* Response Letter at 20.

[103] *See id.*

[104] *See id.*

[105] *See id.* at 20–21.

[106] 17 CFR 242.608.

[107] 17 CFR 201.700; 17 CFR 201.701.

[108] *See* 17 CFR 242.608(b)(2).

[109] *See id.*

[110] *See* Notice, *supra* note 4, 86 FR at 598.

[111] 17 CFR 242.608(b)(2)(i). *See also* Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

[112] *See* 17 CFR 242.608(b)(2).

[113] *See* 17 CFR 242.608(b)(2).

[114] 17 CFR 242.608(b)(2)(i).

[115] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

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 4–698. 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 Participants' principal offices. 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 4–698 and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[116]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07390 Filed 4–9–21; 8:45 am]

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[116] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91491; File No. SR–OCC–2021–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice Relating to OCC's Establishment of Persistent Minimum Skin-in-the-Game

April 7, 2021.

I. Introduction

On February 10, 2021, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2021–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls.[4] The Advance Notice was published for public comment in the **Federal Register** on March 1, 2021,[5] and the Commission has received comments regarding the changes proposed in the Advance Notice.[6] The Commission is hereby providing notice of no objection to the Advance Notice.

II. Background [7]

''Skin-in-the-game,'' as a component of financial risk management, entails a covered clearing agency choosing, upon the occurrence of a default or series of defaults and application of all available assets of the defaulting participant(s), to apply its own capital contribution to the relevant clearing or guaranty fund in full to satisfy any remaining losses prior to the application of any (a) contributions by non-defaulting members to the clearing or guaranty fund, or (b) assessments that the covered clearing agency require non-defaulting participants to contribute following the exhaustion of such participant's funded contributions to the relevant clearing or guaranty fund.[8]

OCC's skin-in-the-game component of its financial risk management regime is described in its current rules, which provide for the use of OCC's own capital to mitigate losses arising out of a Clearing Member default.[9] Specifically, OCC's rules provide for the offsetting of default losses remaining after the application of a defaulted Clearing Member's margin deposits and Clearing Fund contributions with OCC's capital in excess of 110 percent of the Target Capital Requirement at the time of the default.[10] OCC's rules also provide for charging losses remaining after the application of OCC's excess capital to OCC senior management's deferred compensation [11] as well as non-defaulting Clearing Members.[12]

OCC reviewed feedback received in connection with the initial filing of its current rules, relevant papers from

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 5, at 86 FR 12057.

[5] Securities Exchange Act Release No. 91184 (Feb. 23, 2021), 86 FR 12057 (Mar. 1, 2021) (File No. SR–OCC–2021–801) (''Notice of Filing''). On February 10, 2021, OCC also filed a related proposed rule change (SR–OCC–2021–003) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on March 2, 2021, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 91199 (Feb. 24, 2021), 86 FR 12237 (Mar. 2, 2021) (File No. SR–OCC–2021–003). The comment period for the related Proposed Rule Change filing closed on March 23, 2021.

[6] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2021-801/occ2021801.htm.*

Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm.*

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[8] *See* Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70806 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards'').

[9] *See* Securities Exchange Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (File No. SR–OCC–2019–007) (''CMP Approval Order'').

[10] *See* OCC Rule 1006(e), available at *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf* (last visited Mar. 16, 2021). *See also* CMP Approval Order at 5502.

[11] Such deferred compensation is in trust with respect to OCC's Executive Deferred Compensation Plan (''EDCP''). *See* OCC Rule 101(e)(1), available at available at *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf* (last visited Mar. 16, 2021). The specific EDCP funds that comprise a portion of OCC's skin-in-the-game are referred to in OCC's rules as the ''EDCP Unvested Balance.'' *See id.*

[12] *See* OCC Rule 1006(b), available at *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf* (last visited Mar. 16, 2021). *See also* CMP Approval Order at 5502. The application the EDCP Unvested Balance in parallel with non-defaulting Clearing Members' Clearing Fund contributions would necessarily occur before assessments related to the exhaustion of OCC's Clearing Fund.

industry participants and stakeholders concerning skin-in-the-game, and regulatory regimes in jurisdictions outside the United States.[13] OCC's current rules do not, however, dedicate OCC's excess capital for use solely as skin-in-the-game, or guaranty that OCC maintain a minimum amount of skin-in-the-game.[14]

Establishing the Minimum Corporate Contribution. OCC proposes to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls. Such skin-in-the-game would consist of a minimum amount of OCC's own pre-funded resources that OCC would contribute prior to charging a loss to the Clearing Fund (the ''Minimum Corporate Contribution'') and the EDCP Unvested Balance.[15] As proposed, funds comprising the Minimum Corporate Contribution would be excluded from OCC's liquid net assets funded by equity (''LNAFBE'') for purposes of meeting OCC's Target Capital Requirement to ensure that OCC may maintain the Minimum Corporate Contribution exclusively for default management.[16]

OCC proposes to define the Minimum Corporate Contribution to mean the minimum level of OCC's own funds maintained exclusively to cover credit losses or liquidity shortfalls, the level of which OCC's Board of Directors (the ''Board'') shall determine from time to time. To facilitate implementation of OCC's proposal, the Board approved an initial Minimum Corporate Contribution at such a level that OCC's total skin-in-the-game (*i.e.,* the sum of the Minimum Corporate Contribution and OCC's current EDCP Unvested Balance) would equal 25 percent of OCC's Target Capital Requirement. OCC stated that, in setting the initial Minimum Corporate Contribution, the Board considered factors including, but not limited to, the regulatory requirements in each jurisdiction in which OCC is registered or in which OCC is actively seeking recognition, the amount similarly situated central counterparties commit of their own resources to address participant defaults, the EDCP Unvested Balance, OCC's LNAFBE greater than 110 percent of its Target Capital Requirement, projected revenue and expenses, and other projected capital needs.[17]

Replenishing the Minimum Corporate Contribution. OCC proposes that, in the event it were to apply a portion of the Minimum Corporate Contribution to address losses or shortfalls arising out of a Clearing Member default, the size of the Minimum Corporate Contribution would be temporarily reduced, for a period of 270 days, to the amount remaining after its application.[18] Each application of the Minimum Corporate Contribution would trigger a new 270-day period.[19] Under the proposal, OCC would be obligated to notify Clearing Members of any such reduction of the Minimum Corporate Contribution. OCC believes that 270 calendar days, or approximately nine months, is sufficient time for OCC to accumulate the funds necessary to reestablish the Minimum Corporate Contribution.[20]

OCC proposes change to its Rules, Capital Management Policy, Default Management Policy, Clearing Fund Methodology Policy, and Recovery and Orderly Wind-Down Plan to effectuate the changes described above.

III. Discussion and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[21]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[22] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[23]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[24]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[25] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[26] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[27] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(2).[28]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.[29] Specifically, as discussed below,

[13] See Notice of Filing, 86 FR at 12058–59. For example, OCC is cognizant of the European Market Infrastructure Regulation's expectation that skin-in-the-game be a minimum of 25 percent of the central counterparty's regulatory capital requirement. See Notice of Filing, 86 FR at 12059.

[14] See Notice of Filing, 86 FR at 12060.

[15] OCC does not propose altering its rules regarding the use or sizing of the EDCP Unvested Balance.

[16] In addition to the Minimum Corporate Contribution, OCC would continue to commit its LNAFBE greater than 110 percent of its Target Capital Requirement prior to charging a loss to the Clearing Fund. As proposed, OCC would apply the Minimum Corporate Contribution to address default losses before applying its excess LNAFBE.

[17] See Notice of Filing, 86 FR at 12060.

[18] For example, if the Minimum Corporate Contribution were $100 million and OCC applied $25 million to address default losses, then the Minimum Corporate Contribution would be temporarily set at $75 million.

[19] For example, if OCC were to contribute a portion of the Minimum Corporate Contribution on day 1 and another portion 100 days later, the Minimum Corporate Contribution would remain temporarily reduced until day 370.

[20] See Notice of Filing, 86 FR at 12060. OCC stated that the analysis on which its belief is based is the same analysis on which OCC relied to set various thresholds related to OCC's plan for replenishing its regulatory capital. *See id.*

[21] *See* 12 U.S.C. 5461(b).

[22] 12 U.S.C. 5464(a)(2).

[23] 12 U.S.C. 5464(b).

[24] 12 U.S.C. 5464(c).

[25] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Covered Clearing Agency Standards, 81 FR 70786. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[26] 17 CFR 240.17Ad–22.

[27] 12 U.S.C. 5464(b).

[28] 17 CFR 240.17Ad–22(e)(2).

[29] As noted above, the Commission considers all public comments received on the proposal regardless of whether the comments are submitted on the Proposed Rule Change or the Advance

the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[30]

The Commission continues to regard skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.[31] OCC's current rules provide for the application of excess capital as skin-in-the-game. The Commission believes that OCC's proposal to set aside capital to maintain a minimum amount of skin-in-the-game strengthens OCC's existing skin-in-the-game rules. OCC's current rules align senior management's personal economic incentives with OCC's overall risk management incentives,[32] but do not guaranty that an amount of OCC capital would be set aside to ensure a pre-determined minimum level of skin-in-the-game. The Commission believes that holding a Minimum Corporate Contribution, in addition to the EDCP unvested balance, to ensure such a minimum level of skin-in-the-game would help to align OCC's economic incentives as a corporation with risk management more broadly, thereby promoting robust risk management at OCC.

Holding a defined Minimum Corporate Contribution, as opposed to an undefined amount of excess capital, may help to incentivize OCC further to maintain the appropriate amount of resources to manage a Clearing Member default, consistent with the promotion of safety and soundness at OCC. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[33] The Commission believes that the proposed changes would help support the maintenance of OCC as a going concern following a Clearing Member default, which in turn would help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. Finally, the Commission believes that the proposed changes to increase OCC's pre-determined default management resources are consistent with the reduction of systemic risk because such increase enhances the ability of OCC to absorb and contain the spread of any losses that might arise from a member default.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[34]

B. Consistency With Rule 17Ad–22(e)(2) Under the Exchange Act

Rule 17Ad–22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; and support the public interest requirements of the Exchange Act.[35] In adopting Rule 17Ad–22(e)(2), the Commission discussed comments it received regarding the concept of skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.[36] And, while the Commission declined to include a specific skin-in-the-game requirement in the rule, it stated its belief that ''the proper alignment of incentives is an important element of a covered clearing agency's risk management practices,'' and noted that skin-in-the-game ''may play a role in those risk management practices in many instances.'' [37] OCC's current rules require the application management compensation and excess capital as skin-in-the-game, which in turn should help further align the interests of OCC's stakeholders, including OCC management and Clearing Members.[38]

As described above, OCC's proposal would not reduce the resources OCC would apply to address default losses or remove the current skin-in-the-game component of OCC's rules. Rather, OCC proposes to set aside a defined amount of capital for the sole purpose of absorbing losses and shortfalls arising out of a Clearing Member default. OCC has clearly stated the factors that the Board would consider when determining the amount of resources to hold as skin-in-the-game, a portion of which would comprise the Minimum Corporate Contribution. OCC also proposes to establish a clear process for addressing reductions in the Minimum Corporate Contribution arising out of a Clearing Member's default. Accordingly, the Commission believes that the proposed changes to establish a persistent minimum level of skin-in-the-game are consistent with Rule 17Ad–22(e)(2) under the Exchange Act.[39]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–OCC–2021–801) and that OCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2021–003, whichever is later.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07454 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

Notice. One commenter raised issues related solely to the consistency of the proposal with the requirements of Section 17A of the Exchange Act. See letter from Richard J. McDonald, Susquehanna International Group (''SIG''), dated March 30, 2021, to Vanessa Countryman, Secretary, Commission (''SIG Letter''), available at *https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm.*

Specifically, SIG expressed concern regarding (i) the extent to which OCC fees, dues, and other charges would be used to finance the equity windfall of OCC shareholders and their commercial interests and (ii) the effect of the proposal on the protection of investors and the public interest. The Commission's evaluation of the Advance Notice is conducted under the Clearing Supervision Act and, as noted above, generally considers whether the proposal will mitigate systemic risk and promote financial stability. The Commission notes that SIG has not explained or demonstrated how the retention of capital, derived from clearing fees, for use as skin-in-the-game would cause the proposal to be inconsistent with the Clearing Supervision Act. The SIG Letter is directed at the Proposed Rule Change and will be addressed in that context.

[30] 12 U.S.C. 5464(b).

[31] Covered Clearing Agency Standards, 81 FR at 70805–06.

[32] See Securities Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55199 (Oct. 15, 2019) (File No. SR–OCC–2019–805).

[33] See Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Mar. 17, 2021).

[34] 12 U.S.C. 5464(b).

[35] 17 CFR 240.17Ad–22(e)(2).

[36] Covered Clearing Agency Standards, 81 FR at 70805–06.

[37] Covered Clearing Agency Standards, 81 FR at 70806.

[38] *See* CMP Approval Order at 5507.

[39] 17 CFR 240.17Ad–22(e)(2).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 15, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 8, 2021.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–07573 Filed 4–8–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91481; File No. SR–Phlx–2021–19]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's Pricing Schedule at Options 7, Section 8, "Membership Fees"

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 8, ''Membership Fees.''

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its pricing within Options 7, Section 8, ''Membership Fees'' to (1) waive the Inactive Nominee Fee for a six month period; and (2) remove obsolete language. Each change is described below.

Options 7, Section 8

First, Phlx proposes to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Inactive Nominee [3] Fee which is a fee of $600 for 6 months.[4] Phlx proposes to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021. The Exchange notes that the Clerk Fee [5] of $100 per month will continue to be assessed.

By way of background, on March 17, 2019 [sic],[6] Phlx suspended open outcry trading as a result of precautions taken with respect to COVID–19. When the Trading Floor reopened on June 3, 2020,[7] the Exchange permitted each Trading Floor member organization to

[3] The term ''inactive nominee'' shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Options 8, Section 2(a)(3). An Inactive Nominee shall be deemed a Clerk pursuant to Options 8, Section 12(a). An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee is not assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Clerk Fee.

[4] The member organization is assessed $100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

[5] The Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Options 3, Section 19, including Inactive Nominees pursuant to Options 8, Section 7. The Clerk Fee is not imposed on permit holders. *See* Phlx Rules at Options 7, Section 8A.

[6] *See* Options Trader Alert #2020—07.

[7] *See* Options Trader Alert #2020—13.

be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID–19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Certain floor members have utilized Inactive Nominees to staff the Trading Floor due to illness or other circumstances which necessitated a change in staff.

An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. By way of example, an Inactive Nominee would be activated in the event of an emergency due to illness or other factors. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances.

At this time, with COVID–19 precautions still in place on Phlx's trading floor, the Exchange proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee. The Exchange believes that this waiver will enable floor members to plan staffing more efficiently in the upcoming months, including staffing needs during the summer, while the Trading Floor remains socially distanced. With this waiver, member organizations may choose to register Inactive Nominees so that they have back-ups available if they require coverage on the Trading Floor.

Second, Phlx proposes to remove the following obsolete rule text from Options 7, Section 8:

> Phlx waives the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020.

The above rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [11] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [13]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is reasonable. An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances. At this time, with COVID–19 precautions still in place on Phlx's trading floor, the Exchange proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee.

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is equitable and not unfairly discriminatory. All member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 is reasonable, equitable and not unfairly discriminatory. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[12] *See NetCoalition,* at 534–535.

[13] *Id.* at 537.

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response to a proposal, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 does not impose an undue burden on competition. All member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 does not impose an undue burden on competition. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-Phlx-2021–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–19. 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–Phlx–2021–19 and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07384 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91483; File No. SR–OCC–2021–003]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Establish OCC's Persistent Minimum Skin-in-the-Game

April 6, 2021.

On February 10, 2021, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2021–003 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on March 2, 2021.[4] The Commission has received comments regarding the proposal described in the Proposed Rule Change.[5]

Section 19(b)(2) of the Exchange Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 86 FR at 12237.

[4] Securities Exchange Act Release No. 91199 (Feb. 24, 2021), 86 FR 12237 (Mar. 2, 2021) (File No. SR–OCC–2021–003) (''Notice of Filing''). OCC also filed a related advance notice, SR–OCC–2021–801, (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on March 1, 2021. Securities Exchange Act Release No. 91184 (Feb. 23, 2021), 86 FR 12057 (Mar. 1, 2021) (File No. SR–OCC–2021–801).

[5] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm.*

Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2021-801/occ2021801.htm.*

[6] 15 U.S.C. 78s(b)(2).

shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is April 16, 2021. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[7] designates May 31, 2021 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2021–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07386 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91482; File No. SR–CBOE–2021–020]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Adopt Rule 6.10 To Introduce a Voluntary Compression Service for Market Makers

April 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt Rule 6.10. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 6.10 to provide Market-Makers with an additional voluntary compression tool that will permit them to more efficiently compress their index option portfolios in order to reduce the required capital attributable to their portfolios while maintaining their risk exposure. The Exchange understands that regulatory capital requirements have impeded liquidity providers' (market-makers, in particular) ability to provide liquidity to the market. In response, the Exchange has made certain tools available that Trading Permit Holders (''TPHs'') can use to compress the notional size of their portfolios to reduce the capital attributable to those portfolios. Pursuant to Rule 5.6(c), the Exchange may make compression orders available to TPHs, which orders enable TPHs (after submitting compression position lists to the Exchange) to execute orders in S&P 500 Index (''SPX'') options without exposure to reduce the aggregate capital attributable to those positions (subject to certain requirements). Additionally, pursuant to Rule 6.8, TPHs may transfer positions in exchange-listed options off the Exchange if the transfer does not result in a change in ownership and reduces the risk-weighted assets (''RWA'') associated with those positions. The Exchange believes compression continues to be an important tool to enable Market-Makers to efficiently manage the size of their portfolios and the amount of capital that must be maintained by their Clearing TPHs (''CTPHs'') in connection with those portfolios. As a result, the Exchange regularly reviews its compression tools and evaluates potential enhancements to those tools. The Exchange believes that permitting TPHs to execute offsetting SPX options positions without exposure using compression orders and to effect off-floor RWA transfers of exchange-listed options has had a beneficial effect on the bank regulatory capital requirements of CTPHs' parent companies without adversely affecting the quality of the options market. The Exchange has determined that a combination of elements of these two tools would increase the efficiency of compression for Market-Makers. Specifically, the Exchange proposes, notwithstanding Rule 5.12,[3] the Exchange may make available to Market-Makers a multilateral compression service for certain index options identified by the Exchange,[4] pursuant to which a Market-Maker may close or open [5] positions in options listed on the Exchange to reduce regulatory capital attributable to its portfolio.[6]

Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers)

[3] Rule 5.12 generally requires transactions in listed options to occur on a national securities exchange, unless an exception applies. Transactions effected pursuant to proposed Rule 6.10 would be such an exception.

[4] The Exchange will announce which index options for which it will make the compression service available pursuant to Rule 1.5. Rule 1.5 provides that the Exchange announces to Trading Permit Holders all determinations it makes pursuant to the Rules via, among other communication methods, specifications, notices, or regulatory circulars with appropriate advanced notice, which are posted on the Exchange's website. The Exchange intends to initially make the compression service available for SPX options and then will phase in additional index options.

[5] The Exchange intends to phase in its availability of the compression service, and the initial version will be available only to close positions. The Exchange will announce the date on which it will make the compression service available for opening positions as well, pursuant to Rule 1.5.

[6] This is the same purpose as other currently available compression tools, such as compression orders. *See* Rule 5.6(c) (definition of compression orders). Rule 11.6 requires each Market-Maker to maintain net capital sufficient to comply with the requirements of Securities and Exchange Act (the ''Act'') Rule 15c3–1. 17 CFR 240.15c3–1. Additionally, Market-Makers must comply with capital requirements imposed by their CTPHs or the Options Clearing Corporation (''OCC'') (if the Market-Maker is also a CTPH).

(''Net Capital Rules'') requires that every registered broker-dealer, including every Market-Maker, maintain certain specified minimum levels of capital. The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers always have sufficient liquid resources on hand to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[7]

All OCC clearing members are subject to the Net Capital Rules. However, a subset of clearing members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation approved a comprehensive regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules imposed higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for clearing members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, these rules do not permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are based on the aggregate notional value of short positions regardless of offsets. As a result, CTPHs generally must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.[11] The impact of these regulatory capital rules is compounded in index options markets due to the large notional value of index option contracts and the potentially significant number of open index options positions.

The Exchange believes these regulatory capital requirements have impeded efficient use of capital and undermine the critical liquidity role that Market-Makers play in the options market by limiting the amount of capital CTPHs can allocate to clearing member transactions. Specifically, the Exchange understands these rules have caused, and may continue to cause, CTPHs to impose stricter position limits on their clearing members. These stricter position limits may impact the liquidity Market-Makers (who participate on a significant portion of index option trades on the Exchange) might supply in the options market, which impact may be heightened when markets are volatile, and this impact may be compounded when a CTPH has multiple Market-Maker client accounts, each having largely risk-neutral portfolio holdings.[12]

In November 2019, bank regulatory agencies approved a rulemaking requiring banks to replace the Current Exposure Method (''CEM'') with the Standardized Approach to Counterparty Credit Risk (''SA–CCR'') by January 1, 2022. The Exchange believes CEM's primary flaws arise from the methodology's insensitivity to actual risk. For example, CEM does not account for the delta (*i.e.,* market sensitivity) of an option position or fully recognize the offsetting of positions with opposite economic exposures. The Exchange believes implementation of SA–CCR will help correct many of CEM's flaws by incorporating risk-sensitive principles, such as delta weighting options positions and more beneficial netting of derivative contracts that have economically meaningful relationships. This means that SA–CCR, when implemented, will be less punitive to CTPHs (and the market participants for which they clear options positions) than CEM as it relates to options positions. Some CTPHs have implemented SA–CCR, while others have not and continue to use CEM. However, the Exchange believes implementation by all CTPHs of SA–CCR will not eliminate the need for Market-Makers to manage their positions or be concerned about the accumulation of cleared positions (particularly in options with larger notional values) that ultimately contribute to their net capital requirements and those of their clearing firms and thus the capital ratios with which those firms need to comply. The Exchange notes there are few clearing banks, and even fewer that clear for options market-makers. Increased clearing of over-the-counter products, such as swaps, by these same clearing banks means there is a risk of less available clearing bandwidth for listed options, even with the adoption of SA–CCR. Additionally, market-makers will continue to hold positions that are virtually riskless but have a significant capital impact that could be compressed in order to free up balance sheets to enable market-makers to continue to provide meaningful liquidity to the market. Therefore, even when all banks have implemented SA–CCR, the Exchange believes compression will continue to be a valuable tool for Market-Makers.[13]

As noted above, the Exchange currently offers its TPHs tools they may use to reduce the regulatory requirements attributable to their portfolios, which the Exchange believes has had a beneficial effect on the bank regulatory capital requirements of CTPHs' parent companies without adversely affecting the quality of the options market.[14] The proposed rule change is a further enhancement to the set of compression tools the Exchange

[7] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying assets), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to large regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

[11] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[12] Several Market-Makers continue to express to the Exchange that these rules could hamper their ability to provide consistent liquidity in the index options markets, and have inquired about the ability engage in multilateral compression, as they are able to do for their futures positions.

[13] The Exchange notes at least one other market offers certain of its members a multilateral compression tool for competitive products. *See* Chicago Mercantile Exchange, Inc. (''CME'') Rule 857, the purpose of which is to provide market participants and their clearing members with capital relief in listed equities options without materially changing the risk exposure of a given participant's portfolio. *See CME Equity Options Compression Overview, at https://www.cmegroup.com/trading/equity-index/cme-equity-options-compression-overview.html.*

[14] *See, e.g.,* Rules 5.6(c) (definition of compression orders) and 5.32, 5.33, and 5.88 (describing how compression orders may execute), and 6.8 (describing permissible off-floor RWA transfers).

currently offers, combining certain features of those tools. Specifically, pursuant to proposed Rule 6.10(a), in a manner and format and at times determines by the Exchange, of which the Exchange will provide reasonable and sufficient advanced notice, a Market-Maker (''compression participant'') may submit into an Exchange system a list of open index positions it would like to close and, if it chooses, index option positions it would like to open to replace any of those closing positions (''position lists''). A compression participant must include the amount of capital reduction associated with each closing position and the amount of capital increase associated with each opening position (with the amount of capital in a measurement unit of the compression participant's choosing) included on a position list submitted to the Exchange. Market participants measure capital using various industry standards, which provide them with the ability to select the most appropriate measurement unit for their organizations and risk management practices. Therefore, the Exchange believes it is reasonable to permit Market-Makers to provide capital amounts on their position lists using the measurement unit they generally use. The positions in the position list must in the aggregate reduce regulatory capital attributable to those positions (based on the capital amounts provided by compression participants) in accordance with the purpose of the proposed compression service.[15] Additionally, a compression participant may define and input optional risk constraints on its position list that it wants applied to any compression proposal. For example, a compression participant may constrain the net cost of a compression portfolio compared to its specified values or constrain the net delta by expiration that would result from a compression proposal. Permitting compression participants to input these constraints will allow compression participants to effect compression of their portfolios in a manner consistent with their own risk management practices and achieve the goals they seek from the compression service.

The Exchange intends to offer the compression service with sufficient frequency to permit Market-Makers to respond to intra-month reviews of regulatory capital necessary for their positions by clearing firms.[16] The proposed flexibility will permit the Exchange to adjust the frequency (with sufficient notice) of availability of the compression service if the Exchange deems such frequency to be more appropriate, such as in response to market conditions. The proposed flexibility is also consistent with the currently flexibility regarding the availability of compression orders.[17]

The proposed process regarding the submission of position lists is similar to the current process for submitting compression position lists in connection with the submission of compression orders. Currently, prior to submitting compression orders, TPHs must submit lists of open SPX options positions they would like to close using compression orders (while TPHs may open positions using compression orders, but do not need to include those positions on compression position lists submitted in advance to the Exchange). The proposed compression service will similarly require Market-Makers to submit lists of open option positions they would like to close and also require them to submit option positions they would like to open using the compression service.[18] The Exchange believes requiring inclusion of any positions to be opened (in addition to closed) in the positions list submitted to the compression service (as well as capital attributable to those positions) will provide the Exchange with additional information when determining whether the compression participants are using the compression service to reduce regulatory capital attributable to their positions. Therefore, the Exchange believes the proposed requirements for use of the compression service, particularly the requirement to include the amount of capital associated with each position and the requirement that the positions must in the aggregate reduce attributable regulatory capital (similar to compression orders are net position closing or neutral), are reasonable, as they will create additional controls to limit use of the compression service to legitimate compression purposes.

The Exchange believes permitting Market-Makers to open positions as part of the compression service (as they may currently do with compression orders) may provide additional opportunities to reduce more regulatory capital attributable to their portfolios than if they were restricted to only closing positions. The goal of compression is to alleviate bank regulatory capital requirements attributable to a market participant's portfolio. This can be achieved by closing positions, which ultimately reduces the regulatory capital associated with a Market-Maker's portfolio. However, regulatory capital reduction may be also achieved by ''swapping'' open positions with new positions for which there is lower regulatory capital associated. The Exchange understands Market-Makers may do this for risk management purposes. Specifically, Market-Makers retain certain options positions in their portfolios for hedging and risk exposure purposes. However, the calculation of regulatory capital associated with options positions involves a complex formula (and, as noted above, may be calculated using different methods), but it ultimately is calculating an amount based on the quantity of a position times the strike price (which is why the large notional value of index options has created issues for Market-Makers). Therefore, an option position with a lower strike price will likely have lower regulatory capital associated with that position than regulatory capital associated with a higher strike price. A Market-Maker may identify options with lower strikes that provide it with substantially similar risk exposure as some of its open positions while maintaining a hedge within its portfolio. Merely closing such higher-strike positions may reduce the required capital associated with the market participant's portfolio, but such closure may leave portions of that portfolio unhedged and thus subject to higher risk. By ''swapping'' its current open positions in options with higher strikes with positions in options with lower strikes (often using box spreads and combos), a market participant may maintain the same risk exposure in its portfolio while replacing higher-strike positions with lower-strike positions in order to swap related exposures.

For example, suppose a Market-Maker has 100 contracts in an SPX box spread with October expiration and strike prices of 3500 and 3600. Suppose another Market-Maker has 100 contracts for the offsetting box spread, but also want to buy 100 contracts in an SPX box spread with October expiration and strike prices of 1500 and 1600. Each Market-Maker in this transaction would

[15] This is consistent with compression orders. *See* Rule 5.6(c) (definition of compression orders, which provide that compression orders may be used to reduce required capital associated with open SPX positions, and may include open positions to replace closing positions to reduce capital associated with open positions).

[16] The Exchange intends to initially offer the compression service on a weekly basis.

[17] *See* Rule 5.6(c).

[18] When the functionality to permit positions to be opened in the compression service is available, it will be within the discretion of a Market-Maker to open positions as part of the process; however, if a Market-Maker does want to open positions as part of compression, then it must include those opening positions on its position list.

be opening positions in 400 contracts as well as closing positions in 400 contracts. While each Market-Maker would have the same number of open positions after this transaction, the regulatory capital associated with each Market-Maker's portfolio would be significantly reduced given the newly opened positions have strike prices 2000 lower than the closed positions. Execution of this transaction would be riskless and would provide meaningful regulatory capital relief to the Market-Makers. Ultimately, transactions like this example are essentially riskless exchanges that carry no profit or loss for market participants, but rather are intended to provide a seamless method for market participants to reduce margin and capital requirements while maintaining the same risk exposure within their portfolios.

Currently, compression orders are limited to SPX options, as such options have a large notional value and represent the most volume executed on the Exchange.[19] Off-floor RWA transfers may occur in any exchange-listed option; however, transfers of multiply listed equity options are subject to the rules of all options exchanges that list those options, and thus would only be permissible if all other options exchanges permitted such off-floor transfers. The Exchange believes it is appropriate to offer the compression service for index options listed on the Exchange, as such index options may only be listed on the Exchange and its affiliated exchanges (and thus would not be constrained by the rules of other options exchanges to the extent they do not permit off-floor transfers for compression purposes).[20] Additionally, the index value of nearly all index options the Exchange lists for trading is at least 100,[21] making the notional value of an index option at least 10,000.[22] Given the high notional value associated with index option contracts in general, the Exchange believes Market-Makers could benefit from compressing index options beyond SPX options within their portfolio. The following table lists the indexes on which the Exchange currently lists options, as well as the value of the index as of the close of trading on March 1, 2021:

Index (option symbol)	Current value
S&P 500 Index (SPX)	3,901.82
Mini-S&P 500 Index (XSP)	390.18
Russell 2000 Index (RUT)	2,275.32
Mini-Russell 2000 Index (MRUT)	227.53
Cboe Volatility Index (VIX)	23.35
Dow Jones Industrial Average (DJX)	315.36
S&P 100 Index (OEX and XEO)	1,773.40
S&P 500 ESG Index (SPESG)	330.51
S&P Materials Select Sector Index (SIXB)	796.03
S&P Industrials Select Sector Index (SIXI)	933.99
S&P Financial Select Sector Index (SIXM)	409.44
S&P Real Estate Select Sector Index (SIXRE)	182.02
S&P Utilities Select Sector Index (SIXU)	601.62
S&P Health Care Select Sector Index (SIXV)	1,150.89
MSCI EAFE Index (MXEA)	2,198.61
MSCI Emerging Markets Index (MXEF)	1,362.47
Russell 1000 Growth Index (RLG)	2,469.71
Russell 1000 Value Index (RLV)	1,444.77
Russell 1000 Index (RUI)	2,211.99

The large notional size of most index options compounds the negative impact of Net Capital Rules, which apply to positions in all index options, and may impact all client clearing members of clearing firms affiliated with U.S.-bank holding companies. Clearing firms may request that Market-Makers reduce positions in listed options in addition to SPX, and the proposed rule change will provide Market-Makers with an efficient mechanism to do so with respect to their index option positions.

The proposed rule change also limits the compression service to Market-Makers. While compression orders and off-floor RWA transfers are currently available to all TPHs, a prior tool the Exchange offered for compression purposes was limited to Market-Makers.[23] The Exchange believes this is appropriate given the important role Market-Makers play in the options market and, as discussed above, the disproportionate impact Net Capital Rules have had on Market-Makers. Market-Makers in all index options ultimately hold a significant amount of open interest in these high-valued options due to their serving as the primarily liquidity providers, which results in their participation on a significant number of trades that occur. Expanding compression to all index options will permit Market-Makers in all index options to more efficiently compress the size of their portfolios in terms of notional size while maintaining their risk portfolio, which will free up their balance sheets and permit them to continue to provide meaningful liquidity in more markets. This additional liquidity would ultimately benefit all market participants.

Pursuant to proposed paragraph (b), the Exchange will create a compression proposal by conducting an automated matching process to determine which positions among the compression participants can offset. Specifically, at a time after the market close of Regular Trading Hours (''RTH'')[24] on days the Exchange accepts position lists pursuant to proposed paragraph (a), an Exchange automated process will match offsetting positions (in an anonymized manner) of compression participants that submitted position lists. This automated process matches offsetting positions on the position lists of compression participants to maximize the aggregate capital reduction among the compression participants. Because the process is automated, it does not consider the identities of the compression participants and instead objectively optimizes the aggregate compression when creating a compression proposal. The resulting group of offsetting position matches among the compression participants on an anonymous basis constitutes the ''compression proposal.'' Offsetting positions will be matched at the ''compression price.'' The Exchange will programmatically determine the ''compression price'' using generally accepted volatility and options pricing models and considering the national best bid or offer (''NBBO'') at the close of the trading day, the market prices at the daily market time, and the theoretical values provided by the compression participants in their position lists. The compression price may be in $0.01 increments. A compression proposal must be consistent with all risk constraints set by the compressional participants when submitting their position lists. In a manner and format and at times determined by the Exchange, of which the Exchange will provide reasonable and sufficient advanced notice, the Exchange will notify each compression participant of the compression proposal.

This proposed process is similar to the Exchange's provision of individual position files to TPHs with respect to compression orders. Because compression transactions effected through the compression service will be single leg, a compression proposal will

[19] *See* Rules 5.6(c) (definition of compression order).

[20] Certain index options listed on the Exchange are also listed on its affiliated options exchanges, which intend to submit separate filing adopting the proposed multilateral compression process upon Commission approval of this proposed rule filing.

[21] The level of VIX is generally below 100.

[22] The Exchange may consider to further expand the compression service to equity options (like off-floor RWA transfers) and would submit a separate rule filing in the event it determined to do so. The Exchange notes the off-floor compression of equity options, which are multiply listed, would be subject to the rules of other options exchanges.

[23] *See* Securities Exchange Act Notice 84344 (October 2, 2018), 83 FR 50721 (October 9, 2018) (SR–CBOE–2018–056) (which permitted on-floor RWA transfers).

[24] Currently, the RTH trading session closes at 4:15 p.m. Eastern time for most index options. *See* Rule 5.1(b)(2).

not consist of multi-leg positions as the current position files provided by the Exchange with respect to compression orders.[25] Additionally, like the position files the Exchange provides to TPHs with respect to compression orders, the proposed compression service will identify for which positions from a compression participant's position list there is offsetting size from another compression participant.[26] Unlike compression orders, a compression proposal will not identify the Market-Makers that will be the contra-parties to compression transactions. This information is currently provided for compression orders, as TPHs need to seek out contra-parties to submit compression orders. However, the compression service enhances this process by doing this on behalf of Market-Makers, thus reducing this burden on Market-Makers and eliminating the need to identify counterparties in the compression proposal.

The compression proposal will include a compression price for each position (which, like the compression price of compression orders, may be in $0.01 increments).[27] The Exchange calculates this value using substantially similar pricing models that it understands other market participants use when pricing options. The Exchange currently disseminates indicative values for certain classes at the end of the trading day using the method, which the Exchange understands market participants currently use for various purposes including risk management purposes.[28] The Exchange believes its programmatically determined compression price using generally accepted volatility and options pricing models and available pricing information will provide compression participants with a reasonable value at which to effect their compression transactions.

The Exchange believes the proposed matching process enhances the process currently available with respect to compression orders, as it calculates for Market-Makers the positions that may be offset by positions of multiple other Market-Makers that could maximize compression results. Today, if a Market-Maker receives a position file regarding other TPHs that have offsetting size, they must all then coordinate to submit various orders for unexposed execution to achieve the same results. The proposed process more efficiently identifies the different parties with contra-side interest against which a Market-Maker may execute its positions for compression purposes. As a result, the proposed process reduces the burden on Market-Makers of finding other Market-Makers with offsetting size they are willing trade when they attempt to compress their portfolios. With respect to the compression service, the Exchange would be bringing together purchasers and sellers of index options for the purpose of compression, which is consistent with its role as an exchange under the Exchange Act.[29] Those purchasers and sellers would continue to have ultimate discretion as to whether to effect the proposed compression transactions. The Exchange believes compression to be a valuable service to provide to Market-Makers, as compression enhances liquidity in the marketplace, which may lead to more liquidity and competition and tighter spreads, which ultimately benefits the entire market.

Like the current position match files the Exchange provides to TPHs in connection with compression orders, compression proposals generated by the Exchange pursuant to the proposed compression service are provided to Market-Makers for informational purposes only. A Market-Maker can choose to take no action once it receives a compression proposal. Individual Market-Makers will continue to determine whether to submit position lists to the compression service and whether to accept or decline compression proposals (and thus whether to effect or not effect the compression transactions with the compression proposals). As further described below, whether a Market-Maker chooses to accept the compression proposal and effect the compression transactions described therein is solely within the discretion of the Market-Maker. The Exchange's provision of the compression proposal does not constitute advice, guidance, a commitment to trade, an execution, or a recommendation to trade, as is the case today for compression orders.

Proposed paragraph (c) describes the conclusion of the compression process, including how compression transactions may be effected. Specifically, each compression participant for which a compression proposal includes at least one offsetting position match[30] must notify the Exchange in the Exchange-designated form and manner no later than the Exchange-established deadline of whether the compression participant approves the compression proposal. If all compression participants affirmatively approve the compression proposal, then the Exchange effects the transactions comprising the compression proposal at the specified compression prices. If any compression participant for which a compression proposal includes at least one offsetting position match declines (or does not respond to the Exchange by the deadline), then no compression transactions are effected. In other words, whether a Market-Maker effects any compression transactions (at the specified compression prices) set forth in the compression proposal is solely within the discretion of the Market-Maker. If a Market-Maker evaluates a compression proposal and determines it is not in its interest to effect the transactions as set forth in the proposal, then no compression transactions are effected. Because the compression proposal only achieves its goals of maximized compression if all compression participants approve of the proposal, it requires unanimous approval. As is the case for any transaction effected on the Exchange, all counterparties must agree to the transaction.

Following any unanimous approval of a compression proposal, the Exchange (a) distributes the information regarding the completed package to the compression participants (which information will also be available to CTPHs) and to OCC for processing and (b) disseminates the information regarding each compression transaction

[25] *See* rule 5.6(c).

[26] *Id.*

[27] TPHs submit compression orders with the price of execution (which is subject to certain pricing requirements). *See id.* Compression orders may also currently be executed in pennies. Because many series the Exchange expects Market-Makers will attempt to close will be out-of-the-money, and essentially worthless, Market-Makers may not otherwise close positions in these series if a higher minimum increment causes the price to be too much higher than the option's value. The Exchange believes it is reasonable to permit these orders to be entered and executed in penny increments to provide flexibility that will enable Market-Makers to encourage participation in the compression service and maximize the reduction in capital attributable to their positions.

[28] *See* Rule 4.17 (pursuant to which the Exchange currently disseminates indicates values for various options (including most index options the Exchange lists for trading)). The Exchange also uses similar values in certain circumstances when evaluating obvious errors that occur on the Exchange. *See* Rule 6.5, Interpretation and Policy .08.

[29] *See* 15 U.S.C. 78c(a)(1) (which defines an ''exchange'' as an organization that constitutes, maintains, or provides a marketplace or facilities for bringing together purchases and sellers of securities).

[30] It is possible that the automated matching process described in proposed paragraph (b) will not find for a compression participant any offsetting positions of other compression participants. In that case, the compression participant with no offsetting position matches needs to take no action.

effected.[31] The Exchange believes it is appropriate to share the results of any compression transactions with the Clearing Trading Permit Holders of the compression participants, as the impacted positions will ultimately be held within the clearing accounts of these CTPHs. Additionally, CTPHs have an interest in the open interest of the Market-Makers for which they perform clearing services, because CTPHs impose capital restrictions on these Market-Makers based on their open interest.[32] In addition, the Exchange believes it will benefit the market to disseminate information for compression trades as it does for all other transactions so that all market participants have knowledge of compression transactions that occur and have knowledge of any changes to open interest in the applicable products. Compression transactions are effected within the accounts of the compression participants and occur in accordance with OCC Rules (as is the case with other off-floor transfers). Compression transactions may be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[33]

The primary difference between the compression service and compression orders is that the compression transactions Market-Makers decide to effect will occur off-floor after trading hours. Effecting compression transactions after the close of trading will provide Market-Makers with several benefits, including certainty regarding positions they may want to compress (as positions may change regularly throughout the trading day) and not having to interrupt their provision of liquidity during the trading day to engage in risk management. Additionally, this will permit Market-Makers to not divert resources during the trading day from providing liquidity to the market to effecting transactions for risk management purposes. Currently, compression orders may be effected without exposure on the Exchange, which is similar to the proposed compression transactions. The proposed compression service eliminates the step of needing to bring orders that will not be exposed to the Exchange. As the primary purpose of the proposed compression transactions is to compress the notional size of Market-Makers' portfolios so that they may provide additional liquidity into the market (rather than, for example, obtain price improvement), the Exchange believes the benefits of exposure and execution on an exchange are not applicable to compression transactions. Additionally, because the Exchange will disseminate compression transaction information, the compression service will provide transparency to the market regarding compression transactions. The Exchange currently permits transfers of SPX option positions (which may net against each other) to occur off the Exchange for similar reasons.[34]

To demonstrate how the Exchange will conduct its multilateral compression service, suppose three Market-Makers submit to the Exchange the following position lists:

Class	Expiry	Strike	Put/call	Quantity
MM1				
SPX	2020–12–24	3700	C	300
SPX	2020–12–24	3700	P	−100
SPX	2020–12–24	3800	C	−100
SPX	2020–12–24	3800	P	−50
MM2				
SPX	2020–12–24	3700	C	–50
SPX	2020–12–24	3700	P	50
SPX	2020–12–24	3800	C	50
SPX	2020–12–24	3800	P	750
MM3				
SPX	2020–12–24	3700	C	−25
SPX	2020–12–24	3700	P	50
SPX	2020–12–24	3800	C	0
SPX	2020–12–24	3800	P	−25

In total, across the four series, MM1 submitted 550 contracts for compression, MM2 submitted 900 contracts for compression, and MM3 submitted 100 contracts for compression. For purposes of this example, no Market-Maker included additional parameters to be considered in the compression matching process. The Exchange's automated matching process evaluates these positions (on an anonymized basis) to maximize the number of positions among the three Market-Makers that can be compressed, which results in the following trade matches:

[31] The Exchange will be disseminating compression transaction information to OPRA. The Exchange is working with OPRA to have an indicator applied to compression transaction information disseminated through OPRA but does not expect that indicator to be available upon implementation of the compression service.

[32] It is for similar reasons that CTPHs may currently submit compression-position lists to the Exchange in connection with the submission of compression orders. *See* Rule 5.6(c).

[33] Post-trade positions are held in accounts at the OCC. Therefore, any post-trade activity that occurs would be effected within those accounts. The Exchange has held multiple discussions with the OCC regarding the compression service, and the OCC has indicated its ability to accommodate any effected compression transactions. Any compression transactions will be subject to all applicable recordkeeping requirements applicable to Market-Makers under the Act and the rules and regulations thereunder, such as Rule 17a–3 and 17a–4.

[34] *See* Rule 6.8.

Class	Expiry	Strike	Put/call	Trade quantity	Contra	Compression price
MM1						
SPX	2020–12–24	3700	C	−50	MM2	1.00
SPX	2020–12–24	3700	C	−25	MM3	1.00
SPX	2020–12–24	3700	P	50	MM2	1.00
SPX	2020–12–24	3700	P	50	MM3	1.00
SPX	2020–12–24	3800	C	50	MM2	0.50
SPX	2020–12–24	3800	P	50	MM2	1.50
MM2						
SPX	2020–12–24	3700	C	50	MM1	1.00
SPX	2020–12–24	3700	P	−50	MM1	1.00
SPX	2020–12–24	3800	C	−50	MM1	0.50
SPX	2020–12–24	3800	P	−50	MM1	1.50
SPX	2020–12–24	3800	P	−25	MM3	1.50
MM3						
SPX	2020–12–24	3700	C	25	MM1	1.00
SPX	2020–12–24	3700	P	−50	MM1	1.00
SPX	2020–12–24	3800	P	25	MM2	1.50

In total, if all three Market-Makers approved of this compression proposal, MM1 would compress 275 contracts, MM2 would compress 225 contracts, and MM3 would compress 100 contracts, for a total of 600 contracts among all three Market-Makers, representing nearly 40% of the 1,550 total contracts submitted by the three Market-Makers. With a notional value of nearly $400,000 per SPX contract, this compression would permit these Market-Makers to eliminate positions from their accounts that equate to a significant reduction in necessary capital to be maintained in those accounts, which the Market-Makers could instead put back into the market.[35]

The Exchange believes the proposed compression service will provide Market-Makers with an additional tool to reduce regulatory capital attributable to their portfolios in accordance with their businesses and risk management practices. The Exchange understands from customers, and Market-Makers in particular, there continues to be a significant need to reduce regulatory capital attributable to their open interest based on then-current market conditions. The need for compression is particularly true during times of extreme volatility, such as the recent historic levels of market volatility, which can make providing liquidity in index options immensely more challenging when market participants need liquidity the most. The Exchange believes the ability of Market-Makers to compress their portfolios helps reduce the risk of market dislocation, especially during periods of increased volume and volatility, as they can continue providing liquidity during such times (which may increase the regulatory capital attributed to their portfolios) because they will know that they can subsequently reduce their open positions (and concomitant regulatory capital).

As noted above, because some CTPHs carrying these are bank-owned broker/dealers, those CTPHs are subject to further bank regulatory capital requirements, which result in these additional punitive capital requirements being passed on to their market-maker clients.[36] The Exchange believes implementation of SA–CCR by all CTPHs will not eliminate the need for Market-Makers to engage in the compression of their portfolios. Market-Makers regularly avail themselves of compression orders, in which they use the information provided in the Exchange-provided position lists to identify potential counterparties that similarly need to close index option open interest. Additionally, certain TPHs avail themselves of off-floor RWA transfers across their own accounts to similarly achieve this purpose. The proposed compression transactions will be able to occur in numerous options as part of multilateral transactions effected at a single time, which will permit Market-Makers' to compress their portfolios more efficiently than they can using current compression tools. The proposed compression service streamlines current compression tools, which the Exchange believes will permit Market-Makers to reduce more efficiently any potential negative impact on the market-making community that has resulted from bank regulatory capital requirements. The Exchange expects the proposed compression service will provide Market-Makers with an additional avenue to free up much needed capital, which will benefit the entire market and all investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[37] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[38] 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

[35] The Exchange notes each Market-Maker would retain any uncompressed positions. Each Market-Maker would have the option to resubmit these uncompressed positions on a new position list at the times permitted by the Exchange to potentially be part of a different compression proposal. Additionally, if any of the Market-Makers declined this compression proposal, the Market-Makers could similarly resubmit new position lists if they so choose.

[36] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

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) [39] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it seeks to further mitigate the potentially negative effects of net capital requirements on liquidity in the index options markets. As described above, current regulatory capital requirements impede efficient use of capital and undermine the critical liquidity role that Market-Makers play in the index options market by limiting the amount of capital CTPHs allocate to clearing member transactions. Specifically, the rules have caused CTPHs to impose stricter position limits on their clearing members. In turn, this could force Market-Makers to reduce the size of their quotes and result in reduced liquidity in the market. The Exchange believes that providing Market-Makers with a more efficient mechanism to reduce regulatory capital attributable to their portfolios will permit Market-Makers to contribute to the availability of liquidity in the index options market and help ensure that these markets retain their competitive balance. The Exchange believes that the proposed rule would serve to protect investors by helping maintain a consistent continued depth of liquidity, particularly in volatile market conditions when liquidity is needed the most by investors.

The proposed rule change will provide liquidity providers with the ability to reduce regulatory capital more efficiently attributable to their open interest in index options as part of a multilateral matching process. Current compression tools require Market-Makers to identify counterparties against which to execute compression volume as part of multiple transactions or limit how positions may be transferred off-exchange. The proposed compression process is a streamlined version of the process used for compression orders, with three main differences (some of which incorporate elements of off-floor RWA transfers). First, the compression service would eliminate the burden on Market-Makers to identify potentially multiple counterparties to effect compression transactions that would achieve the compression goals of all compression transaction parties. The Exchange understands that TPHs generally submit compression-list positions with the goal of identifying other TPHs with offsetting positions that will enable them to submit compression orders. While the Exchange provides TPHs that submit compression-list positions with a list of positions for which there is offsetting size and the identities of the TPHs with that offsetting size, TPHs must still seek each other out to determine how to offset as much as possible among each other to achieve their compression goals, and then submit various crossing orders to do so. The proposed compression service eliminates this step, as the Exchange's automated process will match offsetting size among multiple compression participants as a single step. With respect to the proposed compression service, the Exchange would be bringing together purchases and sellers of index options for the purpose of compression who ultimately decide into which transactions they will or will not enter, which is consistent with its role as an exchange under the Exchange Act.[40]

Second, unlike compression orders, compression transactions effected through the proposed compression service would occur off-exchange and outside of regular trading hours. Compression orders are executed on the Exchange, but are not exposed before execution. The Exchange recognizes the numerous benefits of executing options transactions occur on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes exposure and execution of compression transactions on the Exchange would have minimal benefits.[41] When TPHs previously exposed compression orders to the trading floor, the Exchange observed that market participants generally deferred their allocations to permit a clean cross. Because orders that were executed in compression forums on the trading floor were generally not broken up, and because the purpose of these trades is unrelated to profits and losses (making the price at which the transaction is executed relatively unimportant like competitive trades), the Exchange believes it is appropriate to not require exposure of these orders in an electronic or open outcry setting. Compression orders are currently not exposed on the Exchange for the same purpose.[42] The Exchange believes that TPHs understand the benefits that compression may bring to liquidity on the Exchange to the benefit of all market participants, which benefit the Exchange believes is greater than the benefit of exposing compression transactions prior to execution.

The Exchange believes the benefits of permitting compression transactions to occur off the exchange exceed any benefits that may result from executing these orders on the Exchange. The Exchange notes that the benefits of requiring a broker to expose an order on the trading floor generally flow to that order, which include the potential of price improvement for the order and to locate liquidity against which to execute the order. The compression service, however, will have located the necessary liquidity to offset the positions a Market-Maker is seeking to close (or open) as part of compression, as that is necessary given the nature of these transactions. Additionally, the Compression transactions have a narrow scope and are intended to achieve a limited purpose. The compression service is not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which a compression transaction occurs is a secondary concern for the participants—the resulting reduction in capital attributable a Market-Maker's portfolio is the critical part of compression. Additionally, the Exchange intends to disseminate transaction information for all effected compression transactions to OPRA,[43] so there will be transparency to the public regarding the prices and sizes of compression transactions. Because compression transactions will be effected off-exchange and not during the trading day, they will not be subject to an NBBO or customer priority like compression orders. However, the prices of these transactions must be executed at a programmatically determined price that incorporates

[39] *Id.*

[40] *See* 15 U.S.C. 78c(a)(1) (which defines an ''exchange'' as an organization that constitutes, maintains, or provides a marketplace or facilities for bringing together purchases and sellers of securities).

[41] Because compression transactions will be effected within clearing accounts at the OCC, any compression transactions will continue have a clearing guarantee.

[42] *See* Rules 5.32, 5.33, and 5.88.

[43] As discussed above, the Exchange is working with OPRA to have an indicator applied to compression transaction information disseminated through OPRA but does not expect that indicator to be available upon implementation of the compression service.

available pricing information and uses generally accepted volatility and options pricing models, which the Exchange believes will result in compression transactions being executed at reasonable market prices.[44] The Exchange notes other off-floor transfers effected for compression purposes are not required to occur at prices at or within the then-prevailing NBBO or better than any resting Priority Customer orders.[45] The proposed rule change is narrow in scope, as it is limited to Market-Makers and index options and to transactions executed for the purpose of reducing required regulatory capital, which the Exchange believes makes permitting compression transactions to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

Third, the proposed compression service will be limited to Market-Makers, unlike compression orders, which are available to all TPHs.[46] Although the Exchange is seeking to limit participation in the compression service to Market-Makers, the Exchange believes the proposal is not designed to permit discrimination between customers, issuers, brokers, or dealers. The Exchange believes it is appropriate to restrict the compression service to Market-Makers given the critical role Market-Makers play in the options markets. The proposed rule change seeks to alleviate the negative impact of bank capital requirements on the primary liquidity providers in the listed options market (*i.e.,* Market-Makers), who have been and continue to be disproportionately impacted by Net Capital Requirements governing bank-affiliated clearing firms.[47] As discussed above, the proposed rule change would reduce the burden on Market-Makers to compress the size of their portfolios compared to currently available compression tools. Additionally, given that the proposed compression transactions may only occur if all parties agree to a compression proposal, the Exchange wants to ensure that compression participants are those willing to put the resources into creating position lists and engage in the compression transactions in order to encourage participation.[48] The vast majority of market participants that have made use of the Exchange's other compression tools are Market-Makers, so the Exchange believes limiting the proposed compression service will not unduly burden other TPHs.[49] Market-Makers are subject to quoting obligations, which generally result in them taking on significant amounts of positions that ultimately become subject to capital requirements, which may ultimately restrict the liquidity these Market-Makers can provide to the market. The Exchange believes the proposed rule change will still benefit all market participants, as the resulting compression transactions will result in the ability of Market-Makers to provide additional liquidity to the index options market. The Exchange believes the ability for Market-Makers to efficiently and effectively compress their portfolios in one step off the Exchange will reduce the risk of market dislocation and not interfere with Market-Maker's continuous provision of liquidity, especially during periods of increased volume and volatility. Market-Makers will be able to continue providing liquidity during such times (increasing the capital attributed to their portfolios) because they will know that they can subsequently reduce their open positions across numerous options at one time.

The Exchange also believes it is reasonable to limit the proposed compression service to index options. Currently, compression orders are limited to SPX options, as such options have a large notional value and represent the most volume executed on the Exchange.[50] Off-floor RWA transfers may occur in any exchange-listed option; however, transfers of multiply listed equity options are subject to the rules of all options exchanges that list those options, and thus would only be permissible if all other options exchanges permitted such off-floor transfers. The Exchange believes it is appropriate to offer the compression service for index options listed on the Exchange, as such index options may only be listed on the Exchange and its affiliated exchanges (and thus would not be constrained by the rules of other options exchanges to the extent they do not permit off-floor transfers for compression purposes).[51] Additionally, the index value of nearly all index options the Exchange lists for trading is at least 100,[52] making the notional value of an index option at least 10,000.[53] Given the high notional value associated with index option contracts in general, the Exchange believes Market-Makers could benefit from compressing index options beyond SPX options within their portfolio. The large notional size of most index options compounds the negative impact of Net Capital Rules, which apply to positions in all index options, and may impact all client clearing members of clearing firms affiliated with U.S.-bank holding companies. Clearing firms may request that Market-Makers reduce positions in listed options in addition to SPX, and the proposed rule change will provide Market-Makers with an efficient mechanism to do so with respect to their index option positions.

The proposed flexibility with respect to when the Exchange will accept and make available lists of positions Market-Makers would like to compress will permit the Exchange to react to market conditions and facilitate Market-Makers' reduction of index option open interest in response to volatility as necessary.[54] The Exchange intends to make the compression service available with sufficient frequency to permit Market-Makers to effect compression transactions in accordance with their own needs (as long as they previously submitted the applicable positions to the Exchange in advance), as well as to address intra-month position reviews by their CTPHs. The Exchange believes this enhanced compression process will allow Market-Makers to more efficiently reduce the necessary regulatory capital associated with their options positions and permit them to provide more liquidity in the market. This additional

[44] Additionally, the Exchange believes the fact that compression transactions will occur at a programmatically determined price (and thus not permitting compression participants to determine their own compression prices) will provide an additional control to limit the use of the compression service to legitimate compression purposes.

[45] *See* Rule 6.8.

[46] The Exchange notes a previously available compression tool was limited to Market-Makers for a similar purpose. *See* Securities Exchange Act Notice 84344 (October 2, 2018), 83 FR 50721 (October 9, 2018) (SR–CBOE–2018–056) (which permitted on-floor RWA transfers).

[47] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[48] CME currently limits participants in its compression service to those that satisfy certain eligibility criteria.

[49] The Exchange notes that current compressions tools will continue to remain available to all TPHs. *See* Rules 5.6(c) and 6.8.

[50] *See* Rules 5.6(c) (definition of compression order).

[51] Certain index options listed on the Exchange are also listed on its affiliated options exchanges, which intend to submit separate filing adopting the proposed multilateral compression process upon Commission approval of this proposed rule filing.

[52] The level of VIX is generally below 100.

[53] The Exchange may consider to further expand the compression service to equity options (like off-floor RWA transfers) and would submit a separate rule filing in the event it determined to do so. The Exchange notes the off-floor compression of equity options, which are multiply listed, would be subject to the rules of other options exchanges.

[54] This flexibility is consistent with the Exchange's current flexibility regarding the availability of compression orders.

liquidity may result in tighter spreads and more execution opportunities, which benefits all investors, particularly in volatile markets.

It is critical that Market-Makers be able to efficiently manage capital and margin requirements so that they continuously have sufficient capital available to provide to the markets, which benefits all market participants. Many Market-Makers clear through CTPHs that have been impacted by bank regulatory capital requirements, and therefore the Exchange believes all market participants understand and respect the need of Market-Makers to reduce capital attributable to their positions in accordance with capital reviews performed by CTPHs as efficiently as possible, including through the use of compression. Market-Makers regularly avail themselves of compression orders, in which they use the information provided in the Exchange-provided position lists to identify potential counterparties that similarly need to close index option open interest. Additionally, certain TPHs avail themselves of off-floor RWA transfers across their own accounts to similarly achieve this purpose. The Exchange believes the proposed rule change is narrowly tailored for the specific purpose of facilitating the ability of Market-Makers to alleviate the negative effects of current bank regulatory capital requirements on index options that generally have large notional values. The proposed compression process will permit multilateral transactions in numerous options to be effected at a single time, which will permit Market-Makers' to compress their portfolios more efficiently than they can using current compression tools. The proposed compression service streamlines current compression tools, which the Exchange believes will permit Market-Makers to reduce more efficiently any potential negative impact on the market-making community that has resulted from bank regulatory capital requirements. The Exchange expects the proposed compression service will provide Market-Makers with an additional avenue to free up much needed capital, which will benefit the entire market and all investors. The Exchange believes the proposed rule change will protect investors by providing a more seamless execution of compression transactions and thus facilitate a more efficient way for liquidity providers to meet their capital requirements, which will protect investors as a result of the continued depth of liquidity in the index options market. Continuous increased liquidity in the options market may provide more trading opportunities and tighter spreads, providing for robust markets for all market participants.

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 purpose of the proposed rule change is to alleviate the negative impact of bank capital requirements on options market liquidity providers. The proposed compression service is not intended to be a competitive trading tool.

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the compression service will be available to all Market-Makers and to all index options, which generally carry a higher notional value (as noted above). Use of the compression service is completely voluntary and within the discretion of a Market-Maker. The Exchange believes it is appropriate to restrict the compression service to Market-Makers given the critical role Market-Makers play in the options markets.[55] As discussed above, the proposed rule change would reduce the burden on Market-Makers to compress the size of their portfolios compared to currently available compression tools. Additionally, given that the proposed compression transactions may only occur if all parties agree to a compression proposal, the Exchange wants to ensure that compression participants are those willing to put the resources into creating position lists and engage in the compression transactions in order to encourage participation.[56] The vast majority of market participants that used the Exchange's other compression tools are Market-Makers, so the Exchange believes limiting the proposed compression service will not unduly burden other TPHs. Market-Makers are subject to quoting obligations, which generally result in them taking on significant amounts of positions that ultimately become subject to capital requirements, which may ultimately restrict the liquidity these Market-Makers can provide to the market. The Exchange believes the proposed rule change will still benefit all market participants, as the resulting compression transactions will result in the ability of Market-Makers to provide additional liquidity to the index options market. The Exchange notes that all TPHs continue to have the opportunity to compress positions using the other compression tools the Exchange makes available.

The Exchange also believes it is reasonable to limit the proposed compression service to index options. Currently, compression orders are limited to SPX options, as such options have a large notional value and represent the most volume executed on the Exchange.[57] Off-floor RWA transfers may occur in any exchange-listed option; however, transfers of multiply listed equity options are subject to the rules of all options exchanges that list those options, and thus would only be permissible if all other options exchanges permitted such off-floor transfers. The Exchange believes it is appropriate to offer the compression service for index options listed on the Exchange, as such index options may only be listed on the Exchange and its affiliated exchanges (and thus would not be constrained by the rules of other options exchanges to the extent they do not permit off-floor transfers for compression purposes).[58] Additionally, the index value of nearly all index options the Exchange lists for trading is at least 100,[59] making the notional value of an index option at least 10,000.[60] Given the high notional value associated with index option contracts in general, the Exchange believes Market-Makers could benefit from compressing index options beyond SPX options within their portfolio. The large notional size of most index options compounds the negative impact of Net Capital Rules, which apply to positions in all index options, and may impact all client clearing members of clearing firms affiliated with U.S.-bank holding companies. Clearing firms may request that Market-Makers reduce positions in listed options in addition to SPX, and the proposed rule change will provide Market-Makers with an efficient

[55] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[56] CME currently limits participants in its compression service to those that satisfy certain eligibility criteria.

[57] *See* Rules 5.6(c) (definition of compression order).

[58] Certain index options listed on the Exchange are also listed on its affiliated options exchanges, which intend to submit separate filing adopting the proposed multilateral compression process upon Commission approval of this proposed rule filing.

[59] The level of VIX is generally below 100.

[60] The Exchange may consider to further expand the compression service to equity options (like off-floor RWA transfers) and would submit a separate rule filing in the event it determined to do so. The Exchange notes the off-floor compression of equity options, which are multiply listed, would be subject to the rules of other options exchanges.

mechanism to do so with respect to their index option positions.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it will apply only to index options that are currently listed for trading only on the Exchange (and its affiliated options exchanges).[61] The proposed rule change is intended create a more efficient effective mechanism for market participants to reduce regulatory capital attributable to all index options in their portfolios. The proposal is broader than compression orders, which are limited to SPX options, and the Exchange believes making the compression service available to all index options will provide Market-Makers with additional compression opportunities, which will free up their balance sheets to provide more liquidity in all index options, not just SPX.[62] When attempting to compress positions, Market-Makers are not seeking price improvement but rather looking to free up capital that will permit them to continue to provide liquidity to the market in their appointed classes, and thus is not intended to have a competitive impact. Because compression transaction information will be disseminated, all market participants will have access to the same information regarding compression transactions as they do to all other transaction information that occurs on the Exchange. The compression service is intended to have a limited purpose, which is to relieve the burden on liquidity providers in the options market by reducing the capital requirements attributable to their open positions. As a result, Market-Makers may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

Additionally, as noted above, the proposed multilateral compression service is substantially similar to one CME offers for the compression of futures positions.[63]

[61] If the Commission approves the proposed rule change, the Exchange's affiliated options exchanges intend to submit copycat rule filings.

[62] As discussed above, the Exchange may consider to further expand the compression service to equity options (like off-floor RWA transfers) and would submit a separate rule filing in the event it determined to do so. The Exchange notes the off-floor compression of equity options, which are multiply listed, would be subject to the rules of other options exchanges.

[63] *See* CME Rule 857.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2021–020 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–CBOE–2021–020. 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–CBOE–2021–020 and should be submitted on or before May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07385 Filed 4–9–21; 8:45 am]

BILLING CODE 8011–01–P

[64] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before May 12, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain*

SUPPLEMENTARY INFORMATION: SBA has authority under 15 U.S.C. 634(b) and 31 U.S.C. 3711 to compromise and settle debts owed to the Agency by borrowers or guarantors in SBA's loan programs. The financial information provided by debtors on SBA Form 770 is a prerequisite to such compromise or settlement. SBA uses the information in making a determination regarding the repayment and or compromise of the debts and other liquidation proceedings, including litigation by the Agency and/or the Department of Justice..

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0012.

Title: Financial Statement of Debtor.

SBA Form Number: SBA Form 770.

Description of Respondents: Debtors in SBA Loan Program.

Estimated Number of Respondents: 5,000.

Estimated Annual Responses: 5,000.

Estimated Annual Hour Burden: 5,000.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–07421 Filed 4–9–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974 System of Records Notice

AGENCY: U.S. Small Business Administration.

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to modify its system of records titled, Servicing and Contracts System/Minority Enterprise Development Headquarters Repository (SBA 30), to its inventory of records systems subject to the Privacy Act of 1974 as amended. Publication of this notice complies with the Privacy Act and the Office of Management and Budget (OMB) Circulars A–108 and A–130 requirement for agencies to publish a notice in the **Federal Register** whenever the agency establishes a new, modified or rescinds a system of records. System of Records Notice (SORN) Servicing and Contracts System/Minority Enterprise Development Headquarters Repository, (SBA 30), includes modifying: System title, system location, contact information, authority, purpose, categories of individuals, categories of records, record source categories, routine use, storage, retention, retrieval safeguards, record access, contesting, and notification procedures. SBA 30 has expanded the scope of its system of records with additional applications serving a unique purpose for carrying out the mission of the SBA Office of Government Contracting and Business Development. To complement its expanded purpose, the modified system of record new title, Government Contracting and Business Development, (SBA 30).

DATES: Submit comments on or before May 12, 2021. This revised system will be effective upon publication.

ADDRESSES: You may submit comments on this notice by any of the following methods: *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail/Hand Delivery/Courier:* Submit written comments to: Dr. Francis Spampinato, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 3rd Street SW, Suite 6300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: General questions, please contact Hilary F. Cronin, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 3rd Street SW, Suite 6300, Washington, DC 20416 or via email *Hilary.Cronin@sba.gov,* telephone (202) 205–7055.

For Privacy related matters, please contact Keith A. Bluestein, Chief Information Officer/Senior Agency Official for Privacy, Office of the Chief Information Officer, U.S. Small Business Administration, 409 3rd Street SW, Suite 4000, Washington, DC 20416 or via email to *Privacyofficer@sba.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of a Federal agency from which information is retrieved by the name of an individual or by a number, symbol or another identifier assigned to the individual. The Privacy Act requires each Federal agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each system of records the agency maintains, the purposes for which the Agency uses the Personally Identifiable Information (PII) in the system, the routine uses for which the Agency discloses such information outside the Agency, and how individuals can exercise their rights related to their PII information.

The modified Privacy Act system of records for titled, Servicing and Contracts System/Minority Enterprise Development Headquarters Repository, newly titled Government Contracting and Business Development (GCBD), (SBA 30) will be used by small business, SBA personnel and overseen by Office of Government Contracting and Business Development. SBA 30 collects personal, business and financial information to determine if applicants are eligible and if current participants are compliant with statutory and regulatory requirements for continued eligibility for participation in the following government programs: 8(a) Business Development Program, ASMPP, WOSB Federal Contracting Program and HUBZone. Multiple SBA IT systems/applications are used to certify the participants on an SBA platform.

Certify.sba.gov is a certification management system used for elements of initial certification and continuing eligibility functions for the 8(a) Business Development program and ASMPP. Its primary component is a custom developed application which includes an interface for small businesses to manage their eligibility documents and applications for various contracting programs, as well as workflows for SBA staff and other government support staff. Beta.Certify is a certification management system used for elements of initial certification and continuing eligibility functions for the WOSB Program. Its primary component is a custom developed application which includes an interface for small businesses to manage their eligibility documents and applications for various contracting programs, as well as workflows for SBA staff and other government support staff. HUBZone

Certification Tracking System (HCTS) is a certification management system used for elements of initial certification and continuing eligibility for the HUBZone program. The modification of SBA 30 will not have any undue impact on the privacy of individuals and its use is compatible with collection.

SYSTEM NAME AND NUMBER:

Government Contracting and Business Development System, SBA 30.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

SBA Headquarters, 409 3rd Street SW, Washington, DC 20416.

SYSTEM MANAGER(S):

Hilary F. Cronin, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 3rd Street SW, Suite 6300, Washington, DC 20416.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 636 (j); 15 U.S.C. 637; 15 U.S.C. 657 a (a); Public Law, 105–13, 111 Stat 26275 (15 U.S.C. 631); and 13 CFR 125.9.

PURPOSES OF THE SYSTEM:

To collect personal, business, and financial information used to determine eligibility of applicants and current participants in the Agency's certification program to include but not limited to: 8(a) Business Development Program, All Small Mentor Protégé Program (ASMPP), Women-Owned Small Business (WOSB) Federal Contracting Program and Historically Underutilized Business Zone (HUBZone) programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and program participants in SBA's 8(a) Business Development program, ASMPP Program, WOSB Federal Contracting Program, and HUBZone Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, business, and financial information.

RECORD SOURCE CATEGORIES:

Small business applicants or participants in the 8(a) Business Development program, ASMPP Program, HUBZone Program, and WOSB Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside SBA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including offices of the U.S Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is deemed by the SBA to be relevant or necessary to the litigation or the SBA has an interest in such litigation when any of the following are a party to the litigation or have an interest in the litigation: (1) Any employee or former employee of the SBA in his or her official capacity; (2) Any employee or former employee of the SBA in his or her individual capacity when DOJ or SBA has agreed to represent the employee or a party to the litigation or have an interest in the litigation; or (3) The United States or any agency thereof.

B. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual. The member's access rights are no greater than those of the individual.

C. To the National Archives and Records Administration (NARA) or General Services Administration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization, including the SBA's Office of Inspector General, for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) SBA suspects or has confirmed that there has been a breach of the system of records, (2) SBA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SBA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SBA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when SBA 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.

G. To another agency or agent of a Government jurisdiction within or under the control of the U.S., lawfully engaged in national security or homeland defense when disclosure is undertaken for intelligence, counterintelligence activities (as defined by 50 U.S.C. 3003(3)), counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. law or Executive Order.

H. To SBA employees, contractors, grantees, and experts who have been engaged by SBA to assist in the performance and performance improvement of a service related to this system of records and who need access to the records to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sec. 552a.

I. To SBA employees, contractors, and other regulators for regulatory purposes.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information is stored electronically and is protected through the implementation of multi-factor access controls, user permissions, event logging, and monitoring. External media are further protected using encryption.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name of individual, business name, and Data Universal Numbering System.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with latest edition SBA Standard Operating Procedure (SOP) series 00 41, schedules Records Management Records 4.1 and Agency Accountability Records 5.7. Records maintained as part of the General Records Schedules (GRS) are disposed of in accordance with applicable SBA policies.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access and use are limited to persons with official need to know. Users are evaluated on a recurring basis to ensure need-to-know still exists. Safeguards are implemented in accordance with the Federal Information Security Modernization Act of 2014 (FISMA) and

are evaluated on a recurring basis to ensure desired operation.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should submit a Privacy Act request to the SBA Chief, Freedom of Information and Privacy Act Office, U.S. Small Business Administration, 409 Third St. SW, Eighth Floor Washington, DC 20416 or *FOIA@sba.gov.* Individuals must provide their full name, mailing address, personal email address, telephone number, and a detailed description of the records being requested. Individuals requesting access must also follow SBA's Privacy Act regulations regarding verification of identity and access to records (13 CFR part 102 subpart B).

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information contained in records about them should submit a Privacy Act request to the SBA Chief, Freedom of Information and Privacy Act Office, U.S. Small Business Administration, 409 Third St. SW, Eighth Floor, Washington, DC 20416 or *FOIA@sba.gov.* Individuals must provide their full name, mailing address, personal email address, telephone number, and a detailed description of the records being requested. Requesting individuals must follow SBA's Privacy Act regulations regarding verification of identity and access to records (13 CFR part 102 subpart B).

NOTIFICATION PROCEDURES:

Individuals may make record inquiries in person or in writing to the Systems Manager through the SBA Chief, Freedom of Information and Privacy Act Office, U.S. Small Business Administration, 409 Third St. SW, Eighth Floor, Washington, DC 20416 or *FOIA@sba.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

[FR Doc. 2004–54823, Vol. 69, No. 175]

Hilary F. Cronin,

Director of Technology Solutions, Office of Government Contracting and Business Development.

[FR Doc. 2021–07363 Filed 4–9–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11401]

Certification Under Section 1704(A)(2) of the Sudan Claims Resolution Act Relating to the Receipt of Funds for Settlement of Claims Against Sudan

By virtue of the authority vested in me as Secretary of State, including pursuant to section 1704(a)(2) of the Sudan Claims Resolution Act (Title XVII, Division FF, Pub. L. 116–260) (the ''Act''), I hereby certify that:

(A) The August 12, 1993, designation of Sudan as a state sponsor of terrorism has been formally rescinded;

(B) Sudan has made final payments with respect to the private settlement of the claims of victims of the U.S.S. COLE attack; and

(C) the United States Government has received funds pursuant to the United States-Sudan Claims Settlement Agreement that are sufficient to ensure:

(i) Payment of the agreed private settlement amount for the death of a citizen of the United States who was an employee of the United States Agency for International Development in Sudan on January 1, 2008;

(ii) meaningful compensation for claims of citizens of the United States (other than individuals described in section 1707(a)(1) of the Act) for wrongful death or physical injury in cases arising out of the August 7, 1998, bombings of the United States embassies located in Nairobi, Kenya, and Dar es Salaam, Tanzania; and

(iii) funds for compensation through a fair process to address compensation for terrorism-related claims of foreign nationals for wrongful death or physical injury arising out of the events referred to in clause (ii).

This certification shall be published in the **Federal Register** and shall be transmitted, along with the accompanying Memorandum of Justification, to the appropriate congressional committees.

Dated: March 20, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–07474 Filed 4–9–21; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 11399]

Notice of Public Meeting in Preparation for the International Maritime Organization FAL 45 Meeting

The Department of State will conduct a public meeting at 9:00 a.m. on Tuesday, May 25, 2021, by way of teleconference. The primary purpose of this meeting is to prepare for the forty fifth session of the International Maritime Organization's (IMO) Facilitation Committee (FAL 45) to be held virtually from Tuesday, June 1, to Friday, June 4, 2021, and on Monday, June 7, 2021. Members of the public may participate up to the capacity of the teleconference phone line, which will handle 500 participants. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 115 550 18#.

The agenda items to be considered at FAL 45 include:

—Decisions of other IMO bodies
—Consideration and adoption of proposed amendments to the Convention
—Review and update of the annex of the FAL Convention
—Application of single-window concept
—Review and revision of the IMO Compendium on Facilitation and Electronic Business, including additional e-business solutions
—Developing guidance for authentication, integrity and confidentiality of content for the purpose of exchange via a maritime single window
—Consideration of descriptions of Maritime Services in the context of e-navigation
—Development of guidelines for harmonized communication and electronic exchange of operational data
—Development of amendments to the *Recommendations on the establishment of National Facilitation Committees* (FAL.5/Circ.2)
— Developments of guidelines on creating a tool to measure domestic implementation of the FAL Convention
—Unsafe mixed migration by sea
—Consideration and analysis of reports and information on persons rescued at sea and stowaways
—Guidance to address maritime corruption
—Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)
—Technical cooperation activities related to facilitation of maritime traffic relations with other organizations
—Application of the Committee's procedures on organization and method of work
—Work program
—Any other business

Please note: the IMO may adjust the FAL 45 agenda to accommodate the

constraints associated with the virtual meeting format. Any changes to the agenda will be notified to those who RSVP and to those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, Mr. James Bull, by email at *James.T.Bull@uscg.mil,* by phone at (202) 372–1144, or in writing at 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington, DC 20593–7509 prior to the meeting with any questions. Members of the public needing reasonable accommodation should advise Mr. Bull not later than May 18, 2021. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2021–07411 Filed 4–9–21; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11400]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization MEPC 76 Meeting

The Department of State will conduct an open meeting of the Shipping Coordinating Committee at 10:00 a.m. on Thursday, June 3, 2021, by way of teleconference. The primary purpose of the meeting is to prepare for the seventy sixth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 76) to be held virtually from Thursday, June 10, 2021 to Friday, June 11, 2021, and from Monday, June 14, 2021 to Thursday, June 17, 2021.

Members of the public may participate up to the capacity of the teleconference phone line, which will handle 500 participants. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 138 541 34#.

The agenda items to be considered at the advisory committee mirror those to be considered at MEPC 76, and include:

—Adoption of the agenda
—Decisions of other bodies
—Consideration and adoption of amendments to mandatory instruments
—Harmful aquatic organisms in ballast water
—Air pollution prevention
—Energy efficiency of ships
—Reduction of GHG emissions from ships
—Follow-up work emanating from the Action Plan to address marine plastic litter from ships
—Pollution prevention and response
—Reports of other sub-committees
—Technical cooperation activities for the protection of the marine environment
—Work programme of the Committee and subsidiary bodies
—Any other business
—Consideration of the report of the Committee

Please note: the IMO may, on short notice, adjust the MEPC 76 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP and those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, LT Jessica Anderson, by email at *Jessica.P.Anderson@uscg.mil,* by phone at (202) 372–1376, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509. Members of the public needing reasonable accommodation should advise LT Anderson not later than May 27, 2021. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

Jeremy M. Greenwood,

Executive Secretary, Shipping Coordinating Committee, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2021–07417 Filed 4–9–21; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0040]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 22, 2021, the New Orleans Public Belt Railroad (NOPB), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240, Qualification and Certification of Locomotive Engineers, and part 242, Qualification and Certification of Conductors. FRA assigned the petition Docket Number FRA–2021–0040.

The relief is requested as part of NOPB's proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. NOPB seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(l)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(l)–(4), (e)(6)–(11), (f)(l)–(2); and 242.407. The C^3RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^3RS Implementing Memorandum of Understanding.

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 May 27, 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. 2021–07473 Filed 4–9–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0048]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 1, 2021, Tri-County Metropolitan Transportation District of Oregon (TriMet) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 219, Control of Alcohol and Drug Use, and 229, Railroad Locomotive Safety Standards. FRA assigned the petition Docket Number FRA–2011–0048.

Specifically, TriMet seeks to extend its current relief from 49 CFR part 219. TriMet explains it alternatively complies with the Federal Transit Administration's 49 CFR part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, which provides an equivalent level of safety.

TriMet also seeks to extend its relief from 49 CFR 229.125, *Headlights and auxiliary lights,* explaining that its rail fixed guideway transit vehicles are designed to operate on city streets in close proximity to automobile traffic. TriMet states that these vehicles also comply with the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard No. 108 for lamps and reflective devices. TriMet further states that its rolling stocks' headlights meet requirements for conspicuity and are the same as those found in the rest of the fleet that currently operate on rail fixed guideway urban transit systems not under FRA's jurisdiction. TriMet explains that while the auxiliary lights do not meet the brightness requirements of 49 CFR 229.125(d)(2), the auxiliary lights provide an equivalent level of conspicuity to the light rail vehicles, thereby meeting FRA's regulatory objective.

This extension of relief would only apply to TriMet's 7.3-mile long MAX Orange Line rail fixed guideway urban rapid transit passenger service's limited connections to the general railroad system where it operates in the cities of Portland and Milwaukie, Oregon, serving 10 stations. Two segments of the Orange Line share a common corridor with Union Pacific Railroad Company (UPRR) and Portland & Western Railroad (PWRR). That corridor includes a total of seven railroad-transit shared road crossings (highway-rail) with UPRR and PWRR, and one railroad-transit at-grade crossing (rail-rail) with Oregon Pacific Railroad.

FRA first granted this relief in 2011 prior to revenue service, and extended the relief in 2016 when revenue service commenced. In its petition, TriMet states that there have been no significant changes to the configuration of the Orange Line, no accidents on the Orange Line arising from its limited connections to the general railroad system, and no accidents related to the waiver of the two regulations under consideration.

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 May 27, 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. 2021–07472 Filed 4–9–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. 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 (SDN 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: Andrea Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855;

or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

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 (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 7, 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 authorities listed below.

Individuals

1. KHAN, Abid Ali (a.k.a. ABID, Thakur; a.k.a. ALI, Abid; a.k.a. KHAN, Abid; a.k.a. ''ABID''), Hakim Abad, Nowshera, KPK, Pakistan; KPK, Pakistan; DOB 13 Mar 1981; POB Nowshera, Pakistan; nationality Pakistan; citizen Pakistan; Email Address *thakurabid@gmail.com;* alt. Email Address *pakistancopy@gmail.com;* Gender Male; Passport DA 1790252 (Pakistan) (individual) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION). Designated pursuant to section 1(a)(ii)(B) of Executive Order 13581 of July 25, 2011, ''Blocking Property of Transnational Criminal Organizations'' (E.O. 13581), as amended by E.O. 13863 of March 15, 2019, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Transnational Criminal Organizations,'' for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION (ABID ALI KHAN TCO), a person determined to be subject to E.O. 13581. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or having purported to act for or on behalf of, directly or indirectly, the ABID ALI KHAN TCO [TCO].

2. KARIM, Shakeel (a.k.a. FAZAL, Shakeel Karim; a.k.a. ''KAREEM, Shakeel''), Mohallah Gharib Abad Post Office Hathian, Dist. Mardan, Mardan, KPK, Pakistan; DOB 01 Jan 1975; POB Mardan, Pakistan; nationality Pakistan; citizen Pakistan; Email Address *shksma@gmail.com;* Gender Male; Passport AF5164852 (Pakistan) issued 01 Oct 2011 expires 29 Sep 2016 (individual) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION). Designated pursuant to section 1(a)(ii)(B) of E.O. 13581, as amended by E.O. 13863, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ABID ALI KHAN TCO, a person determined to be subject to E.O. 13581.

3. GUL, Redi Hussein Khal (a.k.a. ''GUL, Redi''; a.k.a. ''GULL, Rida''), Nowshera, Pakistan; DOB 25 Dec 1981; POB Afghanistan; nationality Afghanistan; citizen Afghanistan; Gender Male (individual) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION). Designated pursuant to section 1(a)(ii)(B) of E.O. 13581, as amended by E.O. 13863, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ABID ALI KHAN TCO, a person determined to be subject to E.O. 13581 [TCO]. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or purported to act for or on behalf of, directly or indirectly, the ABID ALI KHAN TCO [TCO].

4. WARAICH, Choudry Ikram (a.k.a. WARAICH, Ikram; a.k.a. WARAICH, Iqbal; a.k.a. WARRAICH, Ullah; a.k.a. WARRICH, Akram; a.k.a. ''AKRAM, Mohammed''), Dubai, United Arab Emirates; DOB 01 Jan 1985; POB Gujrat, Pakistan; nationality Pakistan; citizen Pakistan; Passport CD1328422 (Pakistan) (individual) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION). Designated pursuant to section 1(a)(ii)(B) of E.O. 13581, as amended by E.O. 13863, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ABID ALI KHAN TCO, a person determined to be subject to E.O. 13581 [TCO].

Entities

1. ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION, Pakistan; Afghanistan; United Arab Emirates [TCO]. Designated pursuant to section 1(a)(ii)(A) of E.O. 13581, as amended by E.O. 13863, for being a foreign person that constitutes a significant transnational criminal organization [TCO].

2. FRIENDS TRAVEL INN PRIVATE LIMITED (a.k.a. FRIENDS TRAVEL INN PVT LTD), Basement Al Hajj Tower Basement Jhangir Abad Bus Stop, University Road, Peshawar 25000, Pakistan; Basement Al Haj Tower, University Road, Peshawar, Kyhber Pakhtunkhwa 25000, Pakistan; website *www.ftravelinn.com;* Organization Established Date 04 Jul 2010; Organization Type: Travel agency activities; Commercial Registry Number 0072107 (Pakistan) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION). Designated pursuant to section 1(a)(ii)(C) of E.O. 13581, as amended by E.O. 13863, for having acted or for having purported to act for or on behalf of, directly or indirectly, Shakeel Karim and the ABID ALI KHAN TCO, persons determined to be subject to E.O. 13581 [TCO].

Dated: April 7, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–07418 Filed 4–9–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its seventeenth meeting on Wednesday, April 28, 2021 via webcast, beginning at 10:00 a.m. Eastern Time. The meeting will be open to the public, and advance registration is required.

DATES: The meeting will be held Wednesday, April 28, 2021, beginning at 10:00 a.m. Eastern Time.

ADDRESSES: The meeting will be held via webcast using Zoom. Participants are required to register ahead of time. Register in advance for the meeting using this Zoom attendee registration link: *https://ofr-treasury.zoomgov.com/webinar/register/WN_N6dZBfM5Q7qGBt-7Bb4gsQ.*

After registering, you will receive a confirmation email with a unique link to join the meeting.

Reasonable Accommodation: If you require a reasonable accommodation or sign language interpreter, please contact *ReasonableAccommodationRequests@treasury.gov.* Please submit requests at least five days before the event.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn:

Melissa Avstreih, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the Committee's website, *https://www.financialresearch.gov/frac/,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by calling (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the seventeenth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members are the impacts of sustained low interest rates, how policies and programs that were launched to support the COVID economy might have sown the seeds of future vulnerabilities, and the impact of climate change on financial stability. For more information on the OFR and the Committee, please visit the OFR website at *http://www.financialresearch.gov.*

Sean Dillon,

Senior Advisor.

[FR Doc. 2021–07426 Filed 4–9–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0788]

Agency Information Collection Activity Under OMB Review: Description of Materials

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0788.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0788'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Description of Materials, VA Form 26–1852.

OMB Control Number: 2900–0788.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1852 is completed by builders in Specially Adapted Housing (SAH) projects involving construction as authorized under Title 38, U.S.C., section 2101 (a), section 2101 (b), and the Temporary Residence Adaptations (TRA) grant under Title 38, U.S.C., section 2102A. This form is also completed by builders who propose to construct homes to be purchased by veterans using their VA home loan benefit as granted in Title 38 U.S.C., section 3710(a)(1). SAH field staff review the data furnished on the form for completeness and it is essential to determine the acceptability of the construction materials to be used. In cases of new home construction, a technically qualified individual, not VA staff, is required to review the list of materials and certify they meet or exceed general residential construction material requirements, as specified by the International Residential Code and residential building codes adopted by local building authorities, and are in substantial conformity with VA Minimum Property requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 86 FR 5319 on January 19, 2021, page 5319.

Affected Public: Private Sector.

Estimated Annual Burden: 9,518 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 16,950 per year and for SAH cases it is 2,086 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–07441 Filed 4–9–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1748–P]

RIN 0938–AU38

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2022. As required by statute, this proposed rule includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2022. In addition, this proposed rule includes proposals for the IRF Quality Reporting Program (QRP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 7, 2021.

ADDRESSES: In commenting, please refer to file code CMS–1748–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1748–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1748–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Johnson, (410) 786–6954, for general information.

Catie Cooksey, (410) 786–0179, for information about the IRF payment policies and payment rates.

Kadie Derby, (410) 786–0468, for information about the IRF coverage policies.

Ariel Adams, (410) 786–8571, for information about the IRF quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Information Through the Internet on the CMS Website

The IRF prospective payment system (IRF PPS) Addenda along with other supporting documents and tables referenced in this proposed rule are available through the internet on the CMS Website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS*.

We note that prior to 2020, each rule or notice issued under the IRF PPS has included a detailed reiteration of the various regulatory provisions that have affected the IRF PPS over the years. That discussion, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS Website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS*.

I. Executive Summary

A. Purpose

This proposed rule would update the prospective payment rates for IRFs for FY 2022 (that is, for discharges occurring on or after October 1, 2021, and on or before September 30, 2022) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this proposed rule includes the classification and weighting factors for the IRF PPS's case-mix groups (CMGs) and a description of the methodologies and data used in computing the prospective payment rates for FY 2022. This proposed rule proposes to add one new measure to the IRF QRP and modify the denominator for another measure currently under the IRF QRP beginning with the FY 2023 IRF QRP. In addition, this proposed rule proposes to modify the number of quarters used for publicly reporting certain IRF QRP measures due to the public health emergency (PHE). Finally, we are seeking comment on the use of Health Level Seven International (HL7®) Fast Healthcare Interoperability Resources® (FHIR)-based standards in post-acute care, specifically the IRF QRP, and on our continued efforts to close the health equity gap.

B. Summary of Major Provisions

In this proposed rule, we use the methods described in the FY 2021 IRF PPS final rule (85 FR 48424) to update the prospective payment rates for FY 2022 using updated FY 2020 IRF claims and the most recent available IRF cost report data, which is FY 2019 IRF cost report data. This proposed rule proposes to update certain requirements for the IRF QRP, and also makes requests for information.

C. Summary of Impact

TABLE 1: Cost and Benefit

Provision Description	Transfers/Costs
FY 2022 IRF PPS payment rate update	The overall economic impact of this proposed rule is an estimated $160 million in increased payments from the Federal Government to IRFs during FY 2022.
FY 2022 IRF QRP changes	The overall economic impact of this proposed rule is an estimated increase in cost to IRFs of $487,338.96 beginning with 2022.

II. Background

A. Statutory Basis and Scope

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057).

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market definitions; modifications to the CMGs, tier comorbidities; and CMG relative weights, implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket index used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs) (hereinafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2020, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS*.

In late 2019, the United States began responding to an outbreak of a virus named ''SARS–CoV–2'' and the disease it causes, which is named ''coronavirus disease 2019'' (abbreviated ''COVID–19''). Due to our prioritizing efforts in support of containing and combatting the PHE for COVID–19, and devoting significant resources to that end, we published two interim final rules with comment period affecting IRF payment and conditions for participation. The

interim final rule with comment period (IFC) entitled, ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'', published on April 6, 2020 (85 FR 19230) (hereinafter referred to as the April 6, 2020 IFC), included certain changes to the IRF PPS medical supervision requirements at 42 CFR 412.622(a)(3)(iv) and 412.29(e) during the PHE for COVID–19. In addition, in the April 6, 2020 IFC, we removed the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all IRFs during the PHE for COVID–19. In the FY 2021 IRF PPS final rule, to ease documentation and administrative burden, we also removed the post-admission physician evaluation documentation requirement at 42 CFR 412.622(a)(4)(ii) permanently beginning in FY 2021.

A second IFC entitled, ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' was published on May 8, 2020 (85 FR 27550) (hereinafter referred to as the May 8, 2020 IFC). Among other changes, the May 8, 2020 IFC included a waiver of the ''3-hour rule'' at § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, enacted on March 27, 2020). In the May 8, 2020 IFC, we also modified certain IRF coverage and classification requirements for freestanding IRF hospitals to relieve acute care hospital capacity concerns in states (or regions, as applicable) that are experiencing a surge during the PHE for COVID–19. In addition to the policies adopted in our IFCs, we responded to the PHE with numerous blanket waivers [1] and other flexibilities,[2] some of which are applicable to the IRF PPS.

B. Provisions of the PPACA and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act'' or ''PPACA''.

The PPACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the PPACA also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a ''productivity adjustment'' for FY 2012 and each subsequent FY). The productivity adjustment for FY 2022 is discussed in section V.B. of this proposed rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket update may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Sections 3004(b) of the PPACA and section 411(b) of the MACRA (Pub. L. 114–10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b) of PPACA reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2 percentage point reduction to the market basket increase factor otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2 percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY. Reporting-based reductions to the market basket increase factor are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number. A free download of the Grouper software is available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html*. The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at *https://www.cms.gov/medicare/quality-safety-oversight-general-information/iqies*.

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996) -compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is

[1] CMS, ''COVID–19 Emergency Declaration Blanket Waivers for Health Care Providers,'' (updated Feb. 19 2021) (available at *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf*).

[2] CMS, ''COVID–19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing,'' (updated March 5, 2021) (available at *https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf*).

discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit an informational-only bill (type of bill (TOB) 111), which includes Condition Code 04 to their MAC. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the ''Medicare Program; Electronic Submission of Medicare Claims'' final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at *http://www.cms.gov/manuals/downloads/clm104c25.pdf*.

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at *http://www.cms.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the ''Pricer'' software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their health information.

To further interoperability in post-acute care settings, CMS and Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) (*https://pacioproject.org/*) to facilitate collaboration with industry stakeholders to develop FHIR standards. These standards could support the exchange and reuse of patient assessment data derived from the minimum data set (MDS), inpatient rehabilitation facility patient assessment instrument (IRF–PAI), long term care hospital continuity assessment record and evaluation (LCDS), outcome and assessment information set (OASIS), and other sources. The PACIO Project has focused on FHIR implementation guides for functional status, cognitive status and new use cases on advance directives and speech, and language pathology. We encourage post-acute care (PAC) provider and health IT vendor participation as these efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as the authoritative resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED). The DEL furthers CMS' goal of data standardization and interoperability. When combined with digital information systems that capture and maintain these coded elements, their standardized clinical content can reduce provider burden by supporting exchange of standardized healthcare data; supporting provider exchange of electronic health information for care coordination, person-centered care; and supporting real-time, data driven, clinical decision making. Standards in the Data Element Library (*https://del.cms.gov/DELWeb/pubHome*) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2021 ISA is available at *https://www.healthit.gov/isa*.

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, enacted on December 13, 2016) requires HHS to take new steps to enable the electronic sharing of health information ensuring interoperability for providers and settings across the care continuum. The Cures Act includes a trusted exchange framework and common agreement (TEFCA) provision [3] that will enable the nationwide exchange of electronic health information across health information networks and provide an important way to enable bi-directional health information exchange in the future. For more information on current developments related to TEFCA, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement* and *https://rce.sequoiaproject.org/*.

The ONC final rule entitled, ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' final rule (85 FR 25642) published in the May 1, 2020 **Federal Register** (hereinafter ''ONC Cures Act Final Rule'') implemented policies related to information blocking required under section 4003 of the 21st Century Cures Act. Information blocking is generally defined as a practice by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of Health and Human Services (HHS) as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information. The definition of information blocking includes a knowledge standard, which is different for health care providers than for health IT developers of certified health IT and health information networks or health information exchanges. A healthcare provider must know that the practice is unreasonable as well as likely to interfere with access, exchange, or use of electronic health information. To deter information blocking, health IT developers of certified health IT, health information

[3] ONC, *Draft 2 Trusted Exchange Framework and Common Agreement, https://www.healthit.gov/sites/default/files/page/2019-04/FINALTEFCAQTF41719508version.pdf.*

networks and health information exchanges whom the HHS Inspector General determines, following an investigation, have committed information blocking, are subject to civil monetary penalties of up to $1 million per violation. Appropriate disincentives for health care providers need to be established by the Secretary through rulemaking. Stakeholders can learn more about information blocking at *https://www.healthit.gov/curesrule/final-rule-policy/information-blocking*. ONC has posted information resources including fact sheets (*https://www.healthit.gov/curesrule/resources/fact-sheets*), frequently asked questions (*https://www.healthit.gov/curesrule/resources/information-blocking-faqs*), and recorded webinars (*https://www.healthit.gov/curesrule/resources/webinars*).

We invite providers to learn more about these important developments and how they are likely to affect IRFs.

III. Summary of Provisions of the Proposed Rule

In this proposed rule, we are proposing to update the IRF PPS for FYs 2022 and 2023.

The proposed policy changes and updates to the IRF prospective payment rates for FY 2022 are as follows:

- Update the CMG relative weights and average length of stay values for FY 2022, in a budget neutral manner, as discussed in section IV. of this proposed rule.
- Update the IRF PPS payment rates for FY 2022 by the market basket increase factor, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V. of this proposed rule.
- Update the FY 2022 IRF PPS payment rates by the FY 2022 wage index and the labor-related share in a budget-neutral manner, as discussed in section V. of this proposed rule.
- Describe the calculation of the IRF standard payment conversion factor for FY 2022, as discussed in section V. of this proposed rule.
- Update the outlier threshold amount for FY 2022, as discussed in section VI. of this proposed rule.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2022, as discussed in section VI. of this proposed rule.

The proposed policy changes and updates to the IRF QRP for FYs 2022 and 2023 are as follows:

- Propose revisions and updates to quality measures and reporting requirements under the IRF QRP, as well as make requests for information as discussed in section VII. of this proposed rule.

IV. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2022

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and average length of stay values for FY 2022. Typically, we use the most recent available data to update the CMG relative weights and average lengths of stay. As such, section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. For FY 2022, we are proposing to use the FY 2020 IRF claims and FY 2019 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2020 IRF cost report data are available for analysis, but the majority of the FY 2020 IRF claims data are available for analysis. We are proposing that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2022 CMG relative weights and average length of stay values in the final rule.

We are proposing to apply these data using the same methodologies that we have used to update the CMG relative weights and average length of stay values each FY since we implemented an update to the methodology. The detailed CCR data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this proposed rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2022 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2021 IRF PPS final rule (85 FR 48424).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we propose to update the CMG relative weights for FY 2022 in such a way that total estimated aggregate payments to IRFs for FY 2022 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2022 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2022 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2022 by applying the proposed changes to the CMG relative weights (as discussed in this proposed rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor of 1.0000 that would maintain the same total estimated aggregate payments in FY 2022 with and without the proposed changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2022 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V.E. of this proposed rule, we discuss the proposed use of the existing methodology to calculate the proposed standard payment conversion factor for FY 2022.

In Table 2, ''Proposed Relative Weights and Average Length of Stay Values for Case-Mix Groups,'' we present the proposed CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay values for each CMG and tier for FY 2022. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

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TABLE 2: Proposed Relative Weights And Average Length Of Stay Values For The Case-Mix Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0101	Stroke M >=72.50	0.9729	0.8639	0.7853	0.7486	9	10	9	9
0102	Stroke M >=63.50 and M <72.50	1.2647	1.1230	1.0209	0.9731	12	12	11	11
0103	Stroke M >=50.50 and M <63.50	1.6180	1.4366	1.3061	1.2449	14	15	14	14
0104	Stroke M >=41.50 and M <50.50	2.0786	1.8457	1.6779	1.5994	18	19	18	18
0105	Stroke M <41.50 and A >=84.50	2.4406	2.1671	1.9701	1.8779	22	23	21	20
0106	Stroke M <41.50 and A <84.50	2.8592	2.5388	2.3080	2.2000	26	26	23	23
0201	Traumatic brain injury M >=73.50	1.0694	0.8797	0.7999	0.7521	11	11	9	9
0202	Traumatic brain injury M >=61.50 and M <73.50	1.3934	1.1462	1.0422	0.9800	13	13	12	11
0203	Traumatic brain injury M >=49.50 and M <61.50	1.7063	1.4036	1.2763	1.2000	14	15	14	13
0204	Traumatic brain injury M >=35.50 and M <49.50	2.0449	1.6822	1.5296	1.4382	18	18	16	16
0205	Traumatic brain injury M <35.50	2.6478	2.1781	1.9805	1.8622	27	23	20	19
0301	Non-traumatic brain injury M >=65.50	1.2338	0.9706	0.8983	0.8467	11	10	10	10
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5850	1.2469	1.1540	1.0878	13	13	12	12
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.8997	1.4945	1.3831	1.3037	16	15	14	14
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.1769	1.7125	1.5849	1.4939	19	18	16	16
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.4005	1.8884	1.7478	1.6474	21	20	17	17
0401	Traumatic spinal cord injury M >=56.50	1.3850	1.1092	1.0637	0.9614	13	12	12	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.8554	1.4859	1.4251	1.2880	18	16	14	15
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	2.1403	1.7141	1.6439	1.4858	19	18	17	17
0404	Traumatic spinal cord injury M <31.50 and A <61.50	3.3192	2.6583	2.5494	2.3041	34	30	25	22
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.7059	2.1670	2.0783	1.8784	25	22	22	20
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.6190	2.8983	2.7796	2.5122	34	30	30	26
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.6385	3.7148	3.5627	3.2200	49	37	34	36
0501	Non-traumatic spinal cord injury M >=60.50	1.3162	0.9883	0.9260	0.8455	11	11	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.6620	1.2480	1.1693	1.0677	15	13	13	12
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.9053	1.4306	1.3405	1.2239	16	15	14	14
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.2500	1.6895	1.5830	1.4453	20	17	17	16
0505	Non-traumatic spinal cord injury M <39.50	3.1486	2.3642	2.2152	2.0226	28	24	23	21
0601	Neurological M >=64.50	1.3629	1.0324	0.9664	0.8634	11	11	10	10
0602	Neurological M >=52.50 and M <64.50	1.6674	1.2631	1.1823	1.0563	13	13	12	12
0603	Neurological M >=43.50 and M <52.50	1.9848	1.5036	1.4074	1.2573	16	15	14	14
0604	Neurological M <43.50	2.4144	1.8290	1.7120	1.5295	20	18	17	16
0701	Fracture of lower extremity M >=61.50	1.1986	0.9563	0.9156	0.8348	11	11	10	10

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.5247	1.2165	1.1648	1.0620	13	13	13	12
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.8632	1.4865	1.4233	1.2977	16	16	15	14
0704	Fracture of lower extremity M <41.50	2.2489	1.7943	1.7180	1.5664	18	18	18	17
0801	Replacement of lower-extremity joint M >=63.50	1.1386	0.8833	0.8184	0.7626	11	10	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.3289	1.0310	0.9551	0.8901	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.4961	1.1606	1.0752	1.0020	13	13	12	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.6875	1.3092	1.2129	1.1303	15	14	13	12
0805	Replacement of lower-extremity joint M <42.50	2.0883	1.6201	1.5009	1.3987	17	16	16	15
0901	Other orthopedic M >=63.50	1.2475	0.9593	0.8989	0.8157	11	11	10	9
0902	Other orthopedic M >=51.50 and M <63.50	1.5716	1.2086	1.1325	1.0276	13	13	12	12
0903	Other orthopedic M >=44.50 and M <51.50	1.8481	1.4212	1.3317	1.2084	15	15	14	13
0904	Other orthopedic M <44.5	2.1660	1.6656	1.5607	1.4162	18	17	16	15
1001	Amputation lower extremity M >=64.50	1.2472	1.0560	0.9389	0.8675	12	12	10	10
1002	Amputation lower extremity M >=55.50 and M <64.50	1.5259	1.2919	1.1487	1.0613	14	14	13	12
1003	Amputation lower extremity M >=47.50 and M <55.50	1.8229	1.5434	1.3723	1.2679	15	17	15	14
1004	Amputation lower extremity M <47.50	2.2744	1.9257	1.7122	1.5820	19	19	18	17
1101	Amputation non-lower extremity M >=58.50	1.3540	1.1270	1.0487	0.8804	13	12	11	10
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.6828	1.4006	1.3034	1.0941	14	13	14	10
1103	Amputation non-lower extremity M <52.50	1.9108	1.5905	1.4800	1.2424	16	16	15	14
1201	Osteoarthritis M >=61.50	1.4794	0.9137	0.9137	0.8190	12	10	10	10
1202	Osteoarthritis M >=49.50 and M <61.50	1.9225	1.1874	1.1874	1.0643	15	12	13	12
1203	Osteoarthritis M <49.50 and A >=74.50	2.3207	1.4333	1.4333	1.2848	17	16	16	14
1204	Osteoarthritis M <49.50 and A <74.50	2.3997	1.4821	1.4821	1.3285	16	14	16	14
1301	Rheumatoid other arthritis M >=62.50	1.2121	1.0358	0.8850	0.8198	10	12	9	10
1302	Rheumatoid other arthritis M >=51.50 and M <62.50	1.5199	1.2989	1.1098	1.0280	12	12	12	11
1303	Rheumatoid other arthritis M >=44.50 and M <51.50 and A >=64.50	1.8332	1.5666	1.3385	1.2399	14	15	14	13
1304	Rheumatoid other arthritis M <44.50 and A >=64.50	2.1843	1.8667	1.5949	1.4774	16	24	16	16
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.2272	1.9033	1.6262	1.5064	15	17	17	15
1401	Cardiac M >=68.50	1.1149	0.8984	0.8349	0.7612	10	10	9	9
1402	Cardiac M >=55.50 and M <68.50	1.4213	1.1454	1.0644	0.9704	12	12	11	11
1403	Cardiac M >=45.50 and M <55.50	1.7207	1.3866	1.2885	1.1748	15	14	13	13
1404	Cardiac M <45.50	2.1001	1.6924	1.5727	1.4339	18	17	16	15
1501	Pulmonary M >=68.50	1.2741	1.0574	0.9784	0.9197	12	11	10	9
1502	Pulmonary M >=56.50 and M <68.50	1.5564	1.2917	1.1951	1.1235	13	12	12	11
1503	Pulmonary M >=45.50 and M <56.50	1.8125	1.5043	1.3918	1.3084	15	15	14	13

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1504	Pulmonary M <45.50	2.1270	1.7653	1.6333	1.5354	19	17	15	15
1601	Pain syndrome M >=65.50	1.1283	0.8615	0.8604	0.7719	10	10	9	9
1602	Pain syndrome M >=58.50 and M <65.50	1.3396	1.0229	1.0216	0.9166	11	11	11	10
1603	Pain syndrome M >=43.50 and M <58.50	1.6496	1.2596	1.2580	1.1286	14	13	14	13
1604	Pain syndrome M <43.50	1.9420	1.4828	1.4809	1.3287	15	14	16	14
1701	Major multiple trauma without brain or spinal cord injury M >=57.50	1.3943	1.0494	0.9731	0.8991	11	12	11	11
1702	Major multiple trauma without brain or spinal cord injury M >=50.50 and M <57.50	1.7121	1.2886	1.1949	1.1040	16	13	13	12
1703	Major multiple trauma without brain or spinal cord injury M >=41.50 and M <50.50	2.0059	1.5098	1.4000	1.2935	18	16	15	14
1704	Major multiple trauma without brain or spinal cord injury M >=36.50 and M <41.50	2.3279	1.7522	1.6248	1.5011	19	19	17	16
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.5833	1.9443	1.8030	1.6658	21	20	19	18
1801	Major multiple trauma with brain or spinal cord injury M >=67.50	1.2504	0.9567	0.8874	0.8130	13	11	11	10
1802	Major multiple trauma with brain or spinal cord injury M >=55.50 and M <67.50	1.5317	1.1719	1.0870	0.9959	16	13	12	11
1803	Major multiple trauma with brain or spinal cord injury M >=45.50 and M <55.50	1.8860	1.4430	1.3384	1.2262	17	17	14	14
1804	Major multiple trauma with brain or spinal cord injury M >=40.50 and M <45.50	2.2274	1.7042	1.5807	1.4482	25	18	17	15
1805	Major multiple trauma with brain or spinal cord injury M >=30.50 and M <40.50	2.6837	2.0533	1.9046	1.7449	26	21	20	19
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.7070	2.8362	2.6308	2.4102	38	29	24	28
1901	Guillain-Barré M >=66.50	1.0976	0.9081	0.8405	0.8366	11	11	10	10
1902	Guillain-Barré M >=51.50 and M <66.50	1.6045	1.3274	1.2287	1.2229	15	14	14	14
1903	Guillain-Barré M >=38.50 and M <51.50	2.3095	1.9107	1.7686	1.7603	20	21	19	19
1904	Guillain-Barré M <38.50	3.6029	2.9807	2.7590	2.7461	39	29	29	29
2001	Miscellaneous M >=66.50	1.2041	0.9660	0.8936	0.8160	11	10	10	9
2002	Miscellaneous M >=55.50 and M <66.50	1.4854	1.1916	1.1024	1.0066	13	12	12	11
2003	Miscellaneous M >=46.50 and M <55.50	1.7534	1.4067	1.3013	1.1883	15	15	14	13
2004	Miscellaneous M <46.50 and A >=77.50	2.0603	1.6529	1.5291	1.3963	18	17	16	15
2005	Miscellaneous M <46.50 and A <77.50	2.2181	1.7794	1.6462	1.5032	19	18	16	16
2101	Burns M >=52.50	1.9171	1.3320	1.1494	1.1100	19	14	13	12
2102	Burns M <52.50	2.7811	1.9324	1.6675	1.6103	24	21	16	17
5001	Short-stay cases, length of stay is 3 days or fewer				0.1659				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6894				7

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
5102	Expired, orthopedic, length of stay is 14 days or more				2.0452				19
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.9082				9
5104	Expired, not orthopedic, length of stay is 16 days or more				2.2323				21

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Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the proposed revisions for FY 2022 would affect particular CMG relative weight values, which would affect the overall distribution of payments within CMGs and tiers. We note that, because we propose to implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2022 would not be affected as a result of the proposed CMG relative weight revisions. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 3: Distributional Effects of the Changes to the CMG Relative Weights

Percentage Change in CMG Relative Weights	Number of Cases Affected	Percentage of Cases Affected
Increased by 15% or more	28	0.0%
Increased by between 5% and 15%	3,148	0.8%
Changed by less than 5%	365,764	97.3%
Decreased by between 5% and 15%	6,850	1.8%
Decreased by 15% or more	39	0.0%

As shown in Table 3, 97.3 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions for FY 2022. The proposed changes in the average length of stay values for FY 2022, compared with the FY 2021 average length of stay values, are small and do not show any particular trends in IRF length of stay patterns.

We invite public comment on our proposed updates to the CMG relative weights and average length of stay values for FY 2022.

V. Proposed FY 2022 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, in this proposed rule, we are proposing to update the IRF PPS payments for FY 2022 by a market basket increase factor as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

In FY 2016, we finalized the use of a 2012-based IRF market basket, using Medicare cost report (MCR) data for both freestanding and hospital-based IRFs (80 FR 47049 through 47068). Beginning with FY 2020, we finalized a rebased and revised IRF market basket to reflect a 2016 base year. The FY 2020 IRF PPS final rule (84 FR 39071 through 39086) contains a complete discussion of the development of the 2016-based IRF market basket.

B. Proposed FY 2022 Market Basket Update and Productivity Adjustment

For FY 2022 (that is, beginning October 1, 2021 and ending September 30, 2022), we are proposing to update the IRF PPS payments by a market basket increase factor as required by section 1886(j)(3)(C) of the Act, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. For FY 2022, we are proposing to use the same methodology described in the FY 2021 IRF PPS final rule (85 FR 48432 through 48433), with one proposed modification to the 2016-based IRF market basket.

For the price proxy for the For-profit Interest cost category of the 2016-based IRF market basket, we are proposing to use the iBoxx AAA Corporate Bond Yield index instead of the Moody's AAA Corporate Bond Yield index. Effective for December 2020, the Moody's AAA Corporate Bond series is no longer available for use under license to IHS Global Inc. (IGI), the nationally-recognized economic and financial forecasting firm with which we contract to forecast the components of the market baskets and multi-factor productivity (MFP). Since IGI is no longer licensed to use and publish the Moody's series, IGI was required to discontinue the publication of the associated historical data and forecasts of this series. Therefore, IGI constructed a bond yield index (iBoxx) that closely replicates the Moody's corporate bond yield indices currently used in the market baskets.

We compared the iBoxx AAA Corporate Bond Yield index with the

Moody's AAA Corporate Bond Yield index and found that the average growth rates in the history of the two series are very similar. Over the historical time period of FY 2001 to FY 2020, the 4-quarter percent change moving average growth in the iBoxx series was approximately 0.1 percentage point higher, on average, than the Moody's series. However, given the relatively small weight for this cost category, replacing the Moody's series with the iBoxx series does not impact the historical top-line market basket increases when rounded to the nearest tenth of a percentage point over the past ten fiscal years (FY 2011 to FY 2020). Therefore, because the iBoxx AAA Corporate Bond Yield index captures the same technical concept as the current corporate bond proxy and tracks similarly to the current measure that is no longer available, we believe that using the iBoxx AAA Corporate Bond Yield index is technically appropriate to use in the 2016-based IRF market basket.

Consistent with historical practice, we are proposing to estimate the market basket update for the IRF PPS for FY 2022 based on IGI's forecast using the most recent available data. Based on IGI's fourth quarter 2020 forecast with historical data through the third quarter of 2020, the proposed 2016-based IRF market basket increase factor for FY 2022 is projected to be 2.4 percent. We are also proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket update), we would use such data, if appropriate, to determine the FY 2022 market basket update in the final rule.

According to section 1886(j)(3)(C)(i) of the Act, the Secretary shall establish an increase factor based on an appropriate percentage increase in a market basket of goods and services. Section 1886(j)(3)(C)(ii) of the Act then requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business MFP (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment''). The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measure of private nonfarm business MFP. Please see *http://www.bls.gov/mfp* for the BLS historical published MFP data. A complete description of the MFP projection methodology is available on the CMS website at *https://www.cms.gov/Research-Statistics-Dataand-Systems/Statistics-Trends-andReports/MedicareProgramRatesStats/MarketBasketResearch.html*.

Using IGI's fourth quarter 2020 forecast, the 10-year moving average growth of MFP for FY 2022 is projected to be 0.2 percent. Thus, in accordance with section 1886(j)(3)(C) of the Act, we are proposing to base the FY 2022 market basket update, which is used to determine the applicable percentage increase for the IRF payments, on IGI's fourth quarter 2020 forecast of the 2016-based IRF market basket. We are proposing to then reduce this percentage increase by the estimated MFP adjustment for FY 2022 of 0.2 percentage point (the 10-year moving average growth of MFP for the period ending FY 2022 based on IGI's fourth quarter 2020 forecast). Therefore, the proposed FY 2022 IRF update is equal to 2.2 percent (2.4 percent market basket update less 0.2 percentage point MFP adjustment). Furthermore, if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket and/or MFP), we would use such data, if appropriate, to determine the FY 2022 market basket update and MFP adjustment in the final rule.

For FY 2022, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent. As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary is proposing to update the IRF PPS payment rates for FY 2022 by an adjusted market basket increase factor which, based on the most recently available data, is 2.2 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2022.

We invite public comment on our proposals.

C. Proposed Labor-Related Share for FY 2022

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs which are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act, for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We are proposing to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2016-based IRF market basket, we calculate the proposed labor-related share for FY 2022 as the sum of the FY 2022 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related relative importance from the 2016-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2016-based IRF labor-related share, see the FY 2020 IRF PPS final rule (84 FR 39087 through 39089).

The relative importance reflects the different rates of price change for these cost categories between the base year (2016) and FY 2022. Based on IGI's fourth quarter 2020 forecast of the 2016-based IRF market basket, the sum of the FY 2022 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services is 69.0 percent. We are proposing that the portion of Capital-Related costs that are influenced by the local labor market is 46 percent. Since the relative importance for Capital-Related costs is 8.4 percent of the 2016-based IRF market basket for FY 2022, we are proposing to take 46 percent of 8.4 percent to determine the labor-related share of Capital-Related costs for FY 2022 of 3.9 percent. Therefore, we are proposing a total labor-related share for FY 2022 of 72.9 percent (the sum of 69.0 percent for the labor-related share of operating costs and 3.9 percent for the labor-related share of Capital-Related costs). We are proposing that if more recent data become available after publication of this proposed rule and before the publication of the final rule

(for example, a more recent estimate of the labor-related share), we will use such data, if appropriate, to determine the FY 2022 IRF labor-related share in the final rule.

Table 4 shows the current estimate of the proposed FY 2022 labor-related share and the FY 2021 final labor-related share using the 2016-based IRF market basket relative importance.

TABLE 4: Proposed FY 2022 IRF Labor-Related Share and FY 2021 IRF Labor-Related Share

	Proposed FY 2022 Labor-Related Share [1]	FY 2021 Final Labor Related Share [2]
Wages and Salaries	48.4	48.6
Employee Benefits	11.5	11.4
Professional Fees: Labor-Related [3]	4.9	5.0
Administrative and Facilities Support Services	0.8	0.7
Installation, Maintenance, and Repair Services	1.6	1.6
All Other: Labor-Related Services	1.8	1.8
Subtotal	**69.0**	**69.1**
Labor-related portion of Capital-Related (46%)	3.9	3.9
Total Labor-Related Share	**72.9**	**73.0**

[1] Based on the 2016-based IRF market basket relative importance, IGI 4th quarter 2020 forecast.

[2] Based on the 2016-based IRF market basket relative importance as published in the **Federal Register** (85 FR 48434).

[3] Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

D. Proposed Wage Adjustment for FY 2022

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

For FY 2022, we propose to maintain the policies and methodologies described in the FY 2021 IRF PPS final rule (85 FR 48435) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we propose to use the core based statistical areas (CBSAs) labor market area definitions and the FY 2022 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2022 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2017, and before October 1, 2018 (that is, FY 2018 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We propose to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2022 IRF PPS wage index.

We invite public comment on our proposals.

2. Core-Based Statistical Areas (CBSAs) for the FY 2022 IRF Wage Index

a. Background

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). We refer readers to the FY 2016 IRF PPS final rule (80 FR 47068 through 47076) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another, or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are

based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014 and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*.

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the IRF PPS.

OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). However, we have determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, CMS is not proposing to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022.

4. Proposed Wage Adjustment

To calculate the wage-adjusted facility payment for the proposed payment rates set forth in this proposed rule, we would multiply the proposed unadjusted Federal payment rate for IRFs by the FY 2022 labor-related share based on the 2016-based IRF market basket relative importance (72.9 percent) to determine the labor-related portion of the standard payment amount. A full discussion of the calculation of the labor-related share is located in section V.C. of this proposed rule. We would then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html*.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We propose to calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689), codified at § 412.624(e)(1), as described in the steps below. We propose to use the listed steps to ensure that the FY 2022 IRF standard payment conversion factor reflects the proposed update to the wage indexes (based on the FY 2018 hospital cost report data) and the proposed update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2021 (as published in the FY 2021 IRF PPS final rule (85 FR 48424)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the proposed FY 2022 wage index values (based on updated hospital wage data) and the proposed FY 2022 labor-related share of 72.9 percent.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the proposed FY 2022 budget-neutral wage adjustment factor of 1.0027.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2022 IRF PPS standard payment amount after the application of the increase factor to determine the proposed FY 2022 standard payment conversion factor.

We discuss the calculation of the proposed standard payment conversion factor for FY 2022 in section V.E. of this proposed rule.

We invite public comment on the proposed IRF wage adjustment for FY 2022.

E. Description of the Proposed IRF Standard Payment Conversion Factor and Payment Rates for FY 2022

To calculate the proposed standard payment conversion factor for FY 2022, as illustrated in Table 5, we begin by applying the proposed increase factor for FY 2022, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2021 ($16,856). Applying the proposed 2.2 percent increase factor for FY 2022 to the standard payment conversion factor for FY 2021 of $16,856 yields a standard payment amount of $17,227. Then, we apply the proposed budget neutrality factor for the FY 2022 wage index, and labor-related share of 1.0027, which results in a standard payment amount of $17,273. We next apply the proposed budget neutrality factor for the CMG relative weights of 1.0000, which results in the standard payment conversion factor of $17,273 for FY 2022.

We invite public comment on the proposed FY 2022 standard payment conversion factor.

TABLE 5: Calculations to Determine the Proposed FY 2022 Standard Payment Conversion Factor

Explanation for Adjustment	Calculations	
Standard Payment Conversion Factor for FY 2021		$16,856
Proposed Market Basket Increase Factor for FY 2022 (2.4 %), reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act	x	1.022
Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	x	1.0027
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x	1.0000
Proposed FY 2022 Standard Payment Conversion Factor	=	$17,273

After the application of the proposed CMG relative weights described in section IV. of this proposed rule to the proposed FY 2022 standard payment conversion factor ($17,273), the resulting unadjusted IRF prospective payment rates for FY 2022 are shown in Table 6.

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TABLE 6: FY 2022 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$16,804.90	$14,922.14	$13,564.49	$12,930.57
0102	$21,845.16	$19,397.58	$17,634.01	$16,808.36
0103	$27,947.71	$24,814.39	$22,560.27	$21,503.16
0104	$35,903.66	$31,880.78	$28,982.37	$27,626.44
0105	$42,156.48	$37,432.32	$34,029.54	$32,436.97
0106	$49,386.96	$43,852.69	$39,866.08	$38,000.60
0201	$18,471.75	$15,195.06	$13,816.67	$12,991.02
0202	$24,068.20	$19,798.31	$18,001.92	$16,927.54
0203	$29,472.92	$24,244.38	$22,045.53	$20,727.60
0204	$35,321.56	$29,056.64	$26,420.78	$24,842.03
0205	$45,735.45	$37,622.32	$34,209.18	$32,165.78
0301	$21,311.43	$16,765.17	$15,516.34	$14,625.05
0302	$27,377.71	$21,537.70	$19,933.04	$18,789.57
0303	$32,813.52	$25,814.50	$23,890.29	$22,518.81
0304	$37,601.59	$29,580.01	$27,375.98	$25,804.13
0305	$41,463.84	$32,618.33	$30,189.75	$28,455.54
0401	$23,923.11	$19,159.21	$18,373.29	$16,606.26
0402	$32,048.32	$25,665.95	$24,615.75	$22,247.62
0403	$36,969.40	$29,607.65	$28,395.08	$25,664.22
0404	$57,332.54	$45,916.82	$44,035.79	$39,798.72
0405	$46,739.01	$37,430.59	$35,898.48	$32,445.60
0406	$62,510.99	$50,062.34	$48,012.03	$43,393.23
0407	$80,120.81	$64,165.74	$61,538.52	$55,619.06
0501	$22,734.72	$17,070.91	$15,994.80	$14,604.32
0502	$28,707.73	$21,556.70	$20,197.32	$18,442.38
0503	$32,910.25	$24,710.75	$23,154.46	$21,140.42
0504	$38,864.25	$29,182.73	$27,343.16	$24,964.67
0505	$54,385.77	$40,836.83	$38,263.15	$34,936.37
0601	$23,541.37	$17,832.65	$16,692.63	$14,913.51
0602	$28,801.00	$21,817.53	$20,421.87	$18,245.47
0603	$34,283.45	$25,971.68	$24,310.02	$21,717.34
0604	$41,703.93	$31,592.32	$29,571.38	$26,419.05
0701	$20,703.42	$16,518.17	$15,815.16	$14,419.50
0702	$26,336.14	$21,012.60	$20,119.59	$18,343.93
0703	$32,183.05	$25,676.31	$24,584.66	$22,415.17
0704	$38,845.25	$30,992.94	$29,675.01	$27,056.43
0801	$19,667.04	$15,257.24	$14,136.22	$13,172.39
0802	$22,954.09	$17,808.46	$16,497.44	$15,374.70
0803	$25,842.14	$20,047.04	$18,571.93	$17,307.55
0804	$29,148.19	$22,613.81	$20,950.42	$19,523.67
0805	$36,071.21	$27,983.99	$25,925.05	$24,159.75
0901	$21,548.07	$16,569.99	$15,526.70	$14,089.59
0902	$27,146.25	$20,876.15	$19,561.67	$17,749.73
0903	$31,922.23	$24,548.39	$23,002.45	$20,872.69
0904	$37,413.32	$28,769.91	$26,957.97	$24,462.02
1001	$21,542.89	$18,240.29	$16,217.62	$14,984.33
1002	$26,356.87	$22,314.99	$19,841.50	$18,331.83
1003	$31,486.95	$26,659.15	$23,703.74	$21,900.44
1004	$39,285.71	$33,262.62	$29,574.83	$27,325.89
1101	$23,387.64	$19,466.67	$18,114.20	$15,207.15
1102	$29,067.00	$24,192.56	$22,513.63	$18,898.39
1103	$33,005.25	$27,472.71	$25,564.04	$21,459.98
1201	$25,553.68	$15,782.34	$15,782.34	$14,146.59
1202	$33,207.34	$20,509.96	$20,509.96	$18,383.65
1203	$40,085.45	$24,757.39	$24,757.39	$22,192.35

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1204	$41,450.02	$25,600.31	$25,600.31	$22,947.18
1301	$20,936.60	$17,891.37	$15,286.61	$14,160.41
1302	$26,253.23	$22,435.90	$19,169.58	$17,756.64
1303	$31,664.86	$27,059.88	$23,119.91	$21,416.79
1304	$37,729.41	$32,243.51	$27,548.71	$25,519.13
1305	$38,470.43	$32,875.70	$28,089.35	$26,020.05
1401	$19,257.67	$15,518.06	$14,421.23	$13,148.21
1402	$24,550.11	$19,784.49	$18,385.38	$16,761.72
1403	$29,721.65	$23,950.74	$22,256.26	$20,292.32
1404	$36,275.03	$29,232.83	$27,165.25	$24,767.75
1501	$22,007.53	$18,264.47	$16,899.90	$15,885.98
1502	$26,883.70	$22,311.53	$20,642.96	$19,406.22
1503	$31,307.31	$25,983.77	$24,040.56	$22,599.99
1504	$36,739.67	$30,492.03	$28,211.99	$26,520.96
1601	$19,489.13	$14,880.69	$14,861.69	$13,333.03
1602	$23,138.91	$17,668.55	$17,646.10	$15,832.43
1603	$28,493.54	$21,757.07	$21,729.43	$19,494.31
1604	$33,544.17	$25,612.40	$25,579.59	$22,950.64
1701	$24,083.74	$18,126.29	$16,808.36	$15,530.15
1702	$29,573.10	$22,257.99	$20,639.51	$19,069.39
1703	$34,647.91	$26,078.78	$24,182.20	$22,342.63
1704	$40,209.82	$30,265.75	$28,065.17	$25,928.50
1705	$44,621.34	$33,583.89	$31,143.22	$28,773.36
1801	$21,598.16	$16,525.08	$15,328.06	$14,042.95
1802	$26,457.05	$20,242.23	$18,775.75	$17,202.18
1803	$32,576.88	$24,924.94	$23,118.18	$21,180.15
1804	$38,473.88	$29,436.65	$27,303.43	$25,014.76
1805	$46,355.55	$35,466.65	$32,898.16	$30,139.66
1806	$64,031.01	$48,989.68	$45,441.81	$41,631.38
1901	$18,958.84	$15,685.61	$14,517.96	$14,450.59
1902	$27,714.53	$22,928.18	$21,223.34	$21,123.15
1903	$39,891.99	$33,003.52	$30,549.03	$30,405.66
1904	$62,232.89	$51,485.63	$47,656.21	$47,433.39
2001	$20,798.42	$16,685.72	$15,435.15	$14,094.77
2002	$25,657.31	$20,582.51	$19,041.76	$17,387.00
2003	$30,286.48	$24,297.93	$22,477.35	$20,525.51
2004	$35,587.56	$28,550.54	$26,412.14	$24,118.29
2005	$38,313.24	$30,735.58	$28,434.81	$25,964.77
2101	$33,114.07	$23,007.64	$19,853.59	$19,173.03
2102	$48,037.94	$33,378.35	$28,802.73	$27,814.71
5001	$-	$-	$-	$2,865.59
5101	$-	$-	$-	$11,908.01
5102	$-	$-	$-	$35,326.74
5103	$-	$-	$-	$15,687.34
5104	$-	$-	$-	$38,558.52

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F. Example of the Methodology for Adjusting the Proposed Prospective Payment Rates

Table 7 illustrates the methodology for adjusting the proposed prospective payments (as described in section V. of this proposed rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0104 (without comorbidities). The proposed unadjusted prospective payment rate for CMG 0104 (without comorbidities) appears in Table 7.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8606, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.8686, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the proposed prospective payment, we begin by taking the unadjusted prospective payment rate for CMG 0104 (without comorbidities) from Table 7. Then, we multiply the proposed labor-related share for FY 2022 (72.9 percent) described in section V.C. of this proposed rule by the proposed unadjusted prospective payment rate. To determine the non-labor portion of the proposed prospective payment rate, we subtract the labor portion of the Federal payment from the proposed unadjusted prospective payment.

To compute the proposed wage-adjusted prospective payment, we multiply the labor portion of the proposed federal payment by the appropriate wage index located in the applicable wage index table. This table is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html*.

The resulting figure is the wage-adjusted labor amount. Next, we compute the proposed wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the proposed Federal payment.

Adjusting the proposed wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 7 illustrates the components of the adjusted payment calculation.

TABLE 7: Example of Computing the FY 2022 IRF Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Payment		$27,626.44		$27,626.44
2	Labor Share	X	0.729	X	0.729
3	Labor Portion of Payment	=	$20,139.67	=	$20,139.67
4	CBSA-Based Wage Index \	X	0.8606	X	0.8686
5	Wage-Adjusted Amount	=	$17,332.20	=	$17,493.32
6	Non-Labor Amount	+	$7,486.77	+	$7,486.77
7	Wage-Adjusted Payment	=	$24,818.97	=	$24,980.09
8	Rural Adjustment	X	1.149	X	1.000
9	Wage- and Rural-Adjusted Payment	=	$28,517.00	=	$24,980.09
10	LIP Adjustment	X	1.0156	X	1.0454
11	Wage-, Rural- and LIP-Adjusted Payment	=	$28,961.86	=	$26,114.18
12	Wage- and Rural-Adjusted Payment		$28,517.00		$24,980.09
13	Teaching Status Adjustment	X	0	X	0.0784
14	Teaching Status Adjustment Amount	=	$0.00	=	$1,958.44
15	Wage-, Rural-, and LIP-Adjusted Payment	+	$28,961.86	+	$26,114.18
16	Total Adjusted Payment	=	$28,961.86	=	$28,072.62

Thus, the proposed adjusted payment for Facility A would be $28,961.86, and the adjusted payment for Facility B would be $28,072.62.

VI. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS for FY 2022

A. Proposed Update to the Outlier Threshold Amount for FY 2022

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2021 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, and 85 FR 48444,

respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2022, we propose to use FY 2020 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41316 and 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2021. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2022, we estimate the amount of FY 2022 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2020) and the proposed FY 2022 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an analysis of the preliminary data used for the proposed rule, we estimate that IRF outlier payments as a percentage of total estimated payments would be approximately 3.3 percent in FY 2021. Therefore, we propose to update the outlier threshold amount from $7,906 for FY 2021 to $9,192 for FY 2022 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2022.

We invite public comment on the proposed update to the FY 2022 outlier threshold amount to maintain estimated outlier payments at approximately 3 percent of total estimated IRF payments.

B. Proposed Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages for FY 2022

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from MCRs. IRF specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we propose to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2022, based on analysis of the most recent data available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first MCR.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2022, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2022, we propose to estimate a national average CCR of 0.478 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we propose to estimate a national average CCR of 0.393 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this proposed rule, we have used the most recent available cost report data (FY 2019). This includes all IRFs whose cost reporting periods begin on or after October 1, 2018, and before October 1, 2019. If, for any IRF, the FY 2019 cost report was missing or had an ''as submitted'' status, we used data from a previous FY's (that is, FY 2004 through FY 2018) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2019 cost report data for this proposed rule, we estimate a national average CCR of 0.478 for rural IRFs, and a national average CCR of 0.393 for urban IRFs.

In accordance with past practice, we propose to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we propose a national CCR ceiling of 1.34 for FY 2022. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.34 for FY 2022, we will replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We are also proposing that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2022 national average rural and urban CCRs and the national CCR ceiling in the final rule.

We invite public comment on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2022.

VII. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Under the IRF QRP, the Secretary must reduce by 2 percentage points the annual increase factor for discharges occurring during a fiscal year for any IRF that does not submit data in accordance with the IRF QRP requirements established by the Secretary. For more information on the background and statutory authority for the IRF QRP, we refer readers to the FY 2012 IRF PPS final rule (76 FR 47873 through 47874), the CY 2013 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center (OPPS/ASC) Payment Systems and Quality Reporting Programs final rule (77 FR 68500 through 68503), the FY 2014 IRF PPS final rule (78 FR 47902), the FY 2015 IRF PPS final rule (79 FR 45908), the FY 2016 IRF PPS final rule (80 FR 47080 through 47083), the FY 2017 IRF PPS final rule (81 FR 52080 through 52081), the FY 2018 IRF PPS final rule (82 FR 36269 through 36270),

the FY 2019 IRF PPS final rule (83 FR 38555 through 38556), and the FY 2020 IRF PPS final rule (84 FR 39054 through 39165).

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

1. Quality Measures Currently Adopted for the FY 2022 IRF QRP

The IRF QRP currently has 17 measures for the FY 2022 program year, which are set out in Table 8.

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TABLE 8: Quality Measures Currently Adopted for the FY 2022 IRF QRP

Short Name	Measure Name & Data Source
IRF-PAI Assessment-Based Measures	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury.
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Change in Mobility	IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).
Change in Self-Care	IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues–Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP).
TOH-Provider*	Transfer of Health Information to the Provider–Post-Acute Care (PAC).
TOH-Patient*	Transfer of Health Information to the Patient Post-Acute Care (PAC).
NHSN	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure (NQF #0138).
CDI	National Healthcare Safety Network (NHSN Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure (NQF #1717).
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431).
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)–Post Acute Care (PAC) IRF QRP (NQF #3561).
DTC	Discharge to Community–PAC IRF QRP (NQF #3479).
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs.

*In response to the public health emergency (PHE) for the Coronavirus Disease 2019 (COVID-19), CMS released an interim final rule (85 FR 27595 through 27596) which delayed the compliance date for the collection and reporting of the Transfer of Health Information measures for at least 1 full fiscal year after the end of the PHE.

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C. IRF QRP Quality Measure Proposals Beginning With the FY 2023 IRF QRP

Section 1899B(h)(1) of the Act permits the Secretary to remove, suspend, or add quality measures or resource use or other measures described in sections 1899B(c)(1) and section 1899B(d)(1) of the Act respectively, so long as the Secretary publishes in the **Federal Register** (with a notice and comment period) a justification for such removal, suspension, or addition. We propose to adopt one new measure: The COVID–19 Vaccination Coverage among Healthcare Personnel (HCP)[4] measure as an ''other'' measure under the resource use or other measure domain under section

[4] The measure steward changed the name of the measure from SARS–CoV–2 Vaccination Coverage among Healthcare Personnel to COVID–19 Vaccination Coverage among Healthcare Personnel. There were no changes to the measure itself, other than the name change.

1899B(d)(1) of the Act beginning with the FY 2023 IRF QRP. In accordance with section 1899B(a)(1)(B) of the Act, the data used to calculate this measure is standardized and interoperable. The proposed measure supports the Meaningful Measures domain of Promote Effective Prevention and Treatment of Chronic Disease. CMS identified the measure's concept as a priority in response to the current public health crisis. This process measure was developed with the Centers for Disease Control and Prevention (CDC) to track COVID–19 vaccination coverage among HCP in the IRF setting. This measure is described in more detail below.

In addition, we propose to update the denominator for one measure, the Transfer of Health (TOH) Information to the Patient–Post-Acute Care (PAC) measure to exclude patients discharged home under the care of an organized home health service or hospice.

1. Proposed COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure Beginning With the FY 2023 IRF QRP

a. Background

On January 31, 2020, the Secretary of the U.S. Department Health and Human Services declared a public health emergency (PHE) for the United States in response to the global outbreak of SARS–CoV–2, a novel (new) coronavirus that causes a disease named ''coronavirus disease 2019'' (COVID–19).[5] COVID–19 is a contagious respiratory infection[6] that can cause serious illness and death. Older individuals, racial and ethnic minorities, and those with underlying medical conditions are considered to be at higher risk for more serious complications from COVID–19.[7 8] As of March 31, 2021, the U.S. reported over 30 million cases of COVID–19 and over 548,000 COVID–19 deaths.[9] Hospitals and health systems saw significant surges of COVID–19 patients as community infection levels increased.[10] In December 2020 and January 2021, media outlets reported that more than 100,000 Americans were in the hospital with COVID–19.[11]

Evidence indicates that COVID–19 primarily spreads when individuals are in close contact with one another.[12] The virus is typically transmitted through respiratory droplets or small particles created when someone who is infected with the virus coughs, sneezes, sings, talks or breathes.[13] Experts believe that COVID–19 spreads less commonly through contact with a contaminated surface[14] (although that is not thought to be a common way that COVID–19 spreads), and that in certain circumstances, infection can occur through airborne transmission.[15] According to the CDC, those at greatest risk of infection are persons who have had prolonged, unprotected close contact (that is, within 6 feet for 15 minutes or longer) with an individual with confirmed SARS–CoV–2 infection, regardless of whether the individual has symptoms.[16] Although personal protective equipment (PPE) and other infection-control precautions can reduce the likelihood of transmission in health care settings, COVID–19 can spread between health care personnel (HCP) and patients given the close contact that may occur during the provision of care.[17] The CDC has emphasized that health care settings, including IRFs, can be high-risk places for COVID–19 exposure and transmission.[18] Vaccination is a critical part of the nation's strategy to effectively counter the spread of COVID–19 and ultimately help restore societal functioning.[19]

On December 11, 2020, the Food and Drug Administration (FDA) issued the first Emergency Use Authorization (EUA) for a COVID–19 vaccine in the United States.[20] Subsequently, the FDA issued EUAs for additional COVID–19 vaccines. In issuing these EUAs, the FDA determined that it was reasonable to conclude that the known and potential benefits of each vaccine, when used as authorized to prevent COVID–19, outweighed its known and potential risks.[21 22 23]

As part of its national strategy to address COVID–19, the current administration stated that it would work with states and the private sector to execute an aggressive vaccination strategy and has outlined a goal of administering 200 million shots in 100 days.[24] Although the goal of the U.S. government is to ensure that every

[5] U.S. Dept of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response. (2020). Determination that a Public Health Emergency Exists. Available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx*.

[6] Centers for Disease Control and Prevention. (2020). Your Health: Symptoms of Coronavirus. Available at *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html*.

[7] Centers for Disease Control and Prevention. (2020). Your Health: Symptoms of Coronavirus. Available at *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html*.

[8] Centers for Disease Control and Prevention (2021). Health Equity Considerations and Racial and Ethnic Minority Groups. Available at *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html*.

[9] Centers for Disease Control and Prevention. (2020). CDC COVID Data Tracker. Available at *https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days*.

[10] Associated Press. Tired to the Bone. Hospitals Overwhelmed with Virus Cases. November 18, 2020. Accessed on December 16, 2020, at *https://apnews.com/article/hospitals-overwhelmed-coronavirus-cases-74a1f0dc3634917a5dc13408455cd895*. Also see: New York Times. Just how full are U.S. intensive care units? New data paints an alarming picture. November 18, 2020. Accessed on December 16, 2020, at *https://www.nytimes.com/2020/12/09/world/just-how-full-are-us-intensive-care-units-new-data-paints-an-alarming-picture.html*.

[11] NPR. U.S. Hits 100,000 COVID–19 Hospitalizations, Breaks Daily Death Record. Dec. 2, 2020. Accessed on December 17, 2020 at *https://www.npr.org/sections/coronavirus-live-updates/2020/12/02/941902471/u-s-hits-100-000-covid-19-hospitalizations-breaks-daily-death-record;* The Wall Street Journal. Coronavirus Live Updates: U.S. Hospitalizations, Newly Reported Cases, Deaths Edge Downward. Accessed on January 11 at *https://www.wsj.com/livecoverage/covid-2021-01-11*.

[12] Centers for Disease Control and Prevention. (2021). COVID–19. Your Health. Frequently Asked Questions. *Accessed on January 11, 2021 at https://www.cdc.gov/coronavirus/2019-ncov/faq.html*.

[13] Centers for Disease Control and Prevention (2021). COVID–19. Your Health. Frequently Asked Questions. *Accessed on January 11, 2021 at https://www.cdc.gov/coronavirus/2019-ncov/faq.html*.

[14] Centers for Disease Control and Prevention (2021). COVID–19. Your Health. Frequently Asked Questions. *Accessed on January 11, 2021 at https://www.cdc.gov/coronavirus/2019-ncov/faq.html*.

[15] Centers for Disease Control and Prevention. (2020). Centers for Disease Control Scientific Brief: SARS–CoV–2 and Potential Airborne Transmission. Available at *https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html*.

[16] Centers for Disease Control and Prevention. (2020). Clinical Questions about COVID–19: Questions and Answers. Accessed on December 2, 2020 at *https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html*.

[17] Centers for Disease Control and Prevention. (2020). Interim U.S. Guidance for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential Exposure to COVID–19. Accessed on December 2 at *https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html*.

[18] Dooling, K, McClung, M, et al. ''The Advisory Committee on Immunization Practices' Interim Recommendations for Allocating Initial Supplies of COVID–19 Vaccine—United States, 2020.'' Morb Mortal Wkly Rep. 2020; 69(49): 1857–1859.

[19] Centers for Disease Control and Prevention. (2020). COVID–19 Vaccination Program Interim Playbook for Jurisdiction Operations. Accessed on December 18 at *https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf*.

[20] U.S. Food and Drug Administration. (2020). Pfizer-BioNTech COVID–19 Vaccine EUA Letter of Authorization. *Available* at *https://www.fda.gov/media/144412/download*.

[21] Ibid.

[22] U.S. Food and Drug Administration. (2021). ModernaTX, Inc. COVID–19 Vaccine EUA Letter of Authorization. Available at *https://www.fda.gov/media/144636/download*.

[23] U.S. Food and Drug Administration (2020). Janssen Biotech, Inc. COVID–19 Vaccine EUA Letter of Authorization. Available at *https://www.fda.gov/media/146303/download*.

[24] The White House. Remarks by President Biden on the COVID–19 Response and the State of Vaccinations. March 29, 2021. Accessed at *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/29/remarks-by-president-biden-on-the-covid-19-response-and-the-state-of-vaccinations/*.

American who wants to receive a COVID–19 vaccine can receive one, federal agencies recommended that early vaccination efforts focus on those critical to the PHE response, including healthcare personnel (HCP),[25] and individuals at highest risk for developing severe illness from COVID–19.[26] For example, the CDC's Advisory Committee on Immunization Practices (ACIP) recommended that HCP should be among those individuals prioritized to receive the initial, limited supply of the COVID–19 vaccination, given the potential for transmission in health care settings and the need to preserve health care system capacity.[27] Research suggests most states followed this recommendation,[28] and HCP began receiving the vaccine in mid-December of 2020.[29]

HCP are at risk of carrying COVID–19 infection to patients, experiencing illness or death as a result of COVID–19 themselves, and transmitting it to their families, friends, and the general public. We believe it is important to require that IRFs report COVID–19 HCP vaccination in order to assess whether they are taking steps to limit the spread of COVID–19 among their HCP, reduce the risk of transmission of COVID–19 within their facilities, and to help sustain the ability of IRFs to continue serving their communities throughout the PHE and beyond.

We also believe that publishing facility level COVID–19 HCP vaccination rates on Care Compare would be helpful to many patients, including those who are at high-risk for developing serious complications from COVID–19, as they choose facilities from which to seek treatment. Under CMS' Meaningful Measures framework, the COVID–19 Vaccination Coverage among Healthcare Personnel measure addresses the quality priority of ''Promote Effective Prevention & Treatment of Chronic Disease'' through the Meaningful Measures Area of ''Preventive Care.''

Therefore, this rule proposes a new measure, COVID–19 Vaccination Coverage among HCP to assess the proportion of an IRF's healthcare workforce that has been vaccinated against COVID–19.

b. Stakeholder Input

In the development and specification of the measure, a transparent process was employed to seek input from stakeholders and national experts and engage in a process that allows for pre-rulemaking input on each measure, under section 1890A of the Act.[30] To meet this requirement, the following opportunity was provided for stakeholder input.

The pre-rule making process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List that the Secretary is considering adopting, through federal rulemaking process, for use in Medicare program(s). This allows multi-stakeholder groups to provide recommendations to the Secretary on the measures included on the list. The COVID–19 Vaccination Coverage among Healthcare Personnel measure was included on the publicly available ''List of Measures under Consideration for December 21, 2020''.[31] Five comments were received from industry stakeholders during the pre-rulemaking process on the COVID–19 Vaccination Coverage among HCP measure, and support was mixed. Commenters generally supported the concept of the measure. However, there was concern about the availability of the vaccine and measure definition for HCP, and some commenters encouraged CMS to continue to update the measure as new evidence comes in.

c. Measure Applications Partnership (MAP) Review

When the Measure Applications Partnership (MAP) Post-Acute Care/Long-Term Care (PAC–LTC) Workgroup convened on January 11, 2021, it reviewed the MUC List and the COVID–19 Vaccination Coverage among HCP measure. The MAP recognized that the proposed measure represents a promising effort to advance measurement for an evolving national pandemic and that it would bring value to the IRF QRP measure set by providing transparency about an important COVID–19 intervention to help limit COVID–19 infections.[32] The MAP also stated that collecting information on COVID–19 vaccination coverage among healthcare personnel and providing feedback to facilities would allow facilities to benchmark coverage rates and improve coverage in their facility, and that reducing rates of COVID–19 in healthcare personnel may reduce transmission among patients and reduce instances of staff shortages due to illness.[33]

In its preliminary recommendations, the MAP PAC–LTC Workgroup did not support this measure for rulemaking, subject to potential for mitigation.[34] To mitigate its concerns, the MAP believed that the measure needed well-documented evidence, finalized specifications, testing, and NQF endorsement prior to implementation.[35] Subsequently, the MAP Coordinating Committee met on January 25, 2021, and reviewed the COVID–19 Vaccination Coverage among Healthcare Personnel measure. In the 2020–2021 MAP Final Recommendations, the MAP offered conditional support for rulemaking contingent on CMS bringing the measures back to the MAP once the specifications are further clarified. The final MAP report is available at *http://www.qualityforum.org/Publications/2021/03/MAP_2020-2021_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx*.

In response to the MAP request for CMS to bring the measure back once the specifications were further clarified, CMS met with the MAP Coordinating Committee on March 15, 2021. First,

[25] Centers for Disease Control and Prevention. Glossary of Terms. *https://cdc.gov/infectioncontrol/guidelines/healthcare-personnel/appendix/terminology.html*.

[26] Health and Human Services, Department of Defense. (2020) From the Factory to the Frontlines: The Operation Warp Speed Strategy for Distributing a COVID–19 Vaccine. Accessed December 18 at *https://www.hhs.gov/sites/default/files/strategy-for-distributing-covid-19-vaccine.pdf;* Centers for Disease Control (2020). COVID–19 Vaccination Program Interim Playbook for Jurisdiction Operations. Accessed December 18 at *https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf*.

[27] Dooling, K, McClung, M, et al. ''The Advisory Committee on Immunization Practices' Interim Recommendations for Allocating Initial Supplies of COVID–19 Vaccine—United States, 2020.'' Morb. Mortal Wkly Rep. 2020; 69(49): 1857–1859. ACIP also recommended that long-term care residents be prioritized to receive the vaccine, given their age, high levels of underlying medical conditions, and congregate living situations make them high risk for severe illness from COVID–19.

[28] Kates, J, Michaud, J, Tolbert, J. ''How Are States Prioritizing Who Will Get the COVID–19 Vaccine First?'' Kaiser Family Foundation. December 14, 2020. Accessed on December 16 at *https://www.kff.org/policy-watch/how-are-states-prioritizing-who-will-get-the-covid-19-vaccine-first/*.

[29] Associated Press. 'Healing is Coming:' U.S. Health Workers Start Getting Vaccine. December 15, 2020. Accessed on December 16 at *https://apnews.com/article/us-health-workers-coronavirus-vaccine-56df745388a9fc12ae93c6f9a0d0e81f*.

[30] Centers for Medicare & Medicaid Services. Pre-rulemaking. Accessed at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityMeasures/Pre-Rulemaking*.

[31] National Quality Forum. List of Measures Under Consideration for December 21, 2020. Accessed at *https://www.cms.gov/files/document/measures-under-consideration-list-2020-report.pdf* on January 12, 2021.

[32] Measure Applications Partnership. MAP Preliminary Recommendations 2020–2021. Accessed on February 3, 2021 at *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=94650*.

[33] Ibid.

[34] Ibid.

[35] Ibid.

CMS and CDC clarified the alignment of the COVID–19 Vaccination Coverage among HCP with the Influenza Vaccination Coverage among HCP (NQF #0431), an NQF-endorsed measure since 2012. The COVID–19 Vaccination Coverage among HCP measure is calculated using the same approach as the Influenza Vaccination Coverage among HCP measure.[36] The approach to identifying HCPs eligible for the COVID–19 vaccination is analogous to those used in the NQF endorsed flu measure which underwent rigorous review from technical experts about the validity of that approach and for which ultimately received NQF endorsement. More recently, prospective cohorts of health care personnel, first responders, and other essential and frontline workers over 13 weeks in eight U.S. locations confirmed that authorized COVID–19 vaccines are highly effective in real-world conditions. Vaccine effectiveness of full immunization with two doses of vaccines was 90 percent.[37]

Additionally, to support the measure's data element validity, CDC conducted testing of the COVID–19 vaccination numerator using data collected through the NHSN and independently reported through the Federal Pharmacy Partnership for Long-term Care Program for delivering vaccines to long-term care facilities. These are two completely independent data collection systems. In initial analyses of the first month of vaccination, the number of HCP vaccinated in approximately 1,200 facilities, which had data from both systems, the number of HCP vaccinated was highly correlated between these two systems with a correlation coefficient of nearly 90 percent in the second 2 weeks of reporting. Of note, assessment of data element reliability may not be required by NQF if data element validity is demonstrated.[38] In addition, for assessing the validity of new performance measure score (in this case, percentage COVID–19 vaccination coverage), NQF allows assessment by face validity (subjective determination by experts that the measure appears to reflect quality of care, done through a systematic and transparent process)[39] and the MAP concurred with face validity of the measure of COVID–19 vaccination coverage. Materials from the March 15, 2021 MAP Coordinating Committee meeting are on the NQF website at *https://www.qualityforum.org/ProjectMaterials.aspx?projectID=75367*.

This measure is not NQF endorsed, but CMS, in collaboration with the CDC, plans to submit the measure for NQF endorsement in the future.

d. Competing and Related Measures

Section 1886(j)(7)(D)(i) of the Act requires that, absent an exception under section 1886(j)(7)(D)(ii) of the Act, measures specified by the Secretary under section 1886(j)(7)(D) of the Act be endorsed by the entity with a contract under section 1890(a) of the Act, currently the National Quality Forum (NQF). In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1886(j)(7)(D)(ii) of the Act permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to the measures that have been endorsed or adopted by a consensus organization identified by the Secretary. Section 1899B(e)(2)(A) of the Act requires that, subject to section 1899B(e)(2)(B) of the Act, each measure specified by the Secretary under section 1899B of the Act be endorsed by the entity with a contract under section 1890(a) of the Act. However, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

The proposed COVID–19 Vaccination Coverage among HCP measure is not currently NQF endorsed and has not been submitted to the NQF for consideration, so we considered whether there are other available measures that assess COVID–19 vaccinations among HCP. After review of the NQF's consensus-endorsed measures, we were unable to identify any NQF endorsed measures for IRFs focused on capturing COVID–19 vaccination coverage of HCP and we found no other feasible and practical measure on the topic of COVID–19 vaccination coverage among HCP, and we found no other feasible and practical measure on the topic of COVID–19 vaccination coverage among HCP. The only other vaccination coverage of HCP measure found was the Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measure which is NQF endorsed and was adopted in the IRF QRP in the FY 2014 IRF PPS Final Rule (78 FR 47905 through 47906).

Given the novel nature of the SARS–CoV–2 virus, and the significant and immediate risk it poses in IRFs, we believe it is necessary to propose the measure as soon as possible. Therefore, after consideration of other available measures that assess COVID–19 vaccination rates among HCP, we believe the exception under section 1899B(e)(2)(B) of the Act applies. This proposed measure has the potential to generate actionable data on vaccination rates that can be used to target quality improvement among IRF providers.

e. Quality Measure Calculation

The COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure is a process measure developed by the CDC to track COVID–19 vaccination coverage among HCP in facilities such as IRFs. Since this proposed measure is a process measure, rather than an outcome measure, it does not require risk-adjustment.

The denominator would be the number of HCP eligible to work in the IRF for at least one day during the reporting period, excluding persons with contraindications to COVID–19 vaccination, that are described by the CDC.[40]

The numerator would be the cumulative number of HCP eligible to work in the IRF for at least one day during the reporting period and who received a complete vaccination course against SARS–CoV–2. A complete vaccination course may require one or more doses depending on the specific vaccine used. The finalized measure specifications are available on the CDC website at *https://www.cdc.gov/nhsn/nqf/index.html.*

We propose that IRFs would submit data for the measure through the CDC/NHSN data collection and submission

[36] The Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measure which is NQF endorsed and was adopted in the IRF QRP in the FY 2014 IRF PPS Final Rule (78 FR 47905 through 47906), and in the LTCH QRP in the FY 2013 IPPS/LTCH PPS Final Rule (77 FR 53630 through 53631).

[37] Centers for Disease Control and Preventions. Morbidity and Mortality Weekly Report. March 29, 2021. Available at *https://www.cdc.gov/mmwr/volumes/70/wr/mm7013e3.htm?s_cid=mm7013e3_w.*

[38] National Quality Form. Key Points for Evaluating Scientific Acceptability. Revised January 3, 2020. *https://www.qualityforum.org/Measuring_Performance/Scientific_Methods_Panel/Docs/Evaluation_Guidance.aspx#:~:text=NQF%20is%20not%20prescriptive%20about,reliability%20or%20validity%20testing%20results.&text=Reliability%20and%20validity%20must%20be,source%20and%20level%20of%20analysis*).

[39] Ibid.

[40] Centers for Disease Control and Prevention. Interim Clinical Considerations for Use of COVID–19 Vaccines Currently Authorized in the United Sates, Appendix B. Accessed at *https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html#Appendix-B.*

framework.[41] This framework is currently used for reporting the CAUTI (NQF #0138) and Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measures. IRFs would use the COVID–19 vaccination data reporting module in the NHSN Healthcare Personnel Safety (HPS) Component to report the number of HCP eligible who have worked at the facility that week (denominator) and the number of those HCP who have received a completed COVID–19 vaccination course (numerator). IRFs would submit COVID–19 vaccination data for at least one week each month. If IRFs submit more than one week of data in a month, the most recent week's data would be used for measure calculation purposes. Each quarter, the CDC would calculate a summary measure of COVID–19 vaccination coverage from the three monthly modules reported for the quarter. This quarterly rate would be publicly reported on the Care Compare website. Subsequent to the first refresh, one additional quarter of data would be added to the measure calculation during each advancing refresh, until the point four full quarters of data is reached. Thereafter, the measure would be reported using four rolling quarters of data on Care Compare.

For purposes of submitting data to CMS for the FY 2023 IRF QRP, IRFs would be required to submit data for the period October 1, 2021 through December 31, 2021. Following the data submission quarter for the FY 2023 IRF QRP, subsequent compliance for the IRF QRP would be based on four quarters of such data submission. For more information on the measure's proposed public reporting period, we refer readers to section VII.G.2 of this proposed rule.

We invite public comment on our proposal to add a new measure, COVID–19 Vaccination Coverage among Healthcare Personnel measure, to the IRF QRP beginning with the FY 2023 IRF QRP.

2. Proposed Update to the Transfer of Health (TOH) Information to the Patient—Post-Acute Care (PAC) Measure Beginning With the FY 2023 IRF QRP

This rule proposes to update the Transfer of Health Information to the Patient—Post-Acute Care (PAC) measure denominator to exclude patients discharged home under the care of an organized home health service or hospice. This measure assesses for and reports on the timely transfer of health information, specifically transfer of a medication list. We adopted this measure in the FY 2020 IRF PPS final rule (84 FR 39099 through 39107) beginning with the FY 2022 IRF QRP. It is a process-based measure that evaluates for the transfer of information when a patient is discharged from his or her current PAC setting to a private home/apartment, board and care home, assisted living, group home, transitional living, or home under the care of an organized home health service organization or hospice.

This measure, adopted under section 1899B(c)(1)(E) of the Act, was developed to be a standardized measure for the IRF QRP, LTCH QRP, SNF QRP, and Home Health (HH) QRP. The measure is calculated by one standardized data element that asks, ''At the time of discharge, did the facility provide the patient's current reconciled medication list to the patient, family, and/or caregiver?'' The discharge location is captured by items on the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI).

Specifically, this rule proposes to update the measure denominator. Currently the measure denominators for both the TOH-Patient and the TOH-Provider measure assess the number of patients discharged home under the care of an organized home health service organization or hospice. In order to align the measure with the SNF QRP, LTCH QRP and HH QRP and avoid counting the patient in both TOH measures in the IRF QRP, this rule proposes to remove this location from the definition of the denominator for the TOH-Patient measure. Therefore, we are proposing to update the denominator for the TOH-Patient measure to only discharges to a private home/apartment, board and care home, assisted living, group home, or transitional living. For additional technical information regarding the TOH-Patient measure, we refer readers to the document titled ''Final Specifications for IRF QRP Quality Measures and Standardized Patient Assessment Data Elements (SPADEs)'' available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/Final-Specifications-for-IRF-QRP-Quality-Measures-and-SPADEs.pdf.*

We are inviting public comment on our proposal to update the denominator of the Transfer of Health (TOH) Information to the Patient—Post-Acute Care (PAC) measure beginning with the FY 2023 IRF QRP.

D. IRF QRP Quality Measures Under Consideration for Future Years: Request for Information

We are seeking input on the importance, relevance, appropriateness, and applicability of each of the measures and concepts under consideration listed in Table 9 for future years in the IRF QRP.

TABLE 9: Future Measures and Measure Concepts Under Consideration for the IRF QRP

Assessment-Based Quality Measures and Measure Concepts
Frailty
Opioid use and frequency
Patient reported outcomes
Shared decision making process
Appropriate pain assessment and pain management processes
Health equity

While we will not be responding to specific comments submitted in response to this Request for Information in the FY 2022 IRF PPS final rule, we intend to use this input to inform our future measure development efforts.

[41] Centers for Disease Control and Prevention. Surveillance for Weekly HCP COVID–19 Vaccination. Accessed at *https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html* on February 10, 2021.

E. Fast Healthcare Interoperability Resources (FHIR) in Support of Digital Quality Measurement in Quality Programs—Request for Information

1. Background

The IRF QRP is authorized by section 1886(j)(7) of the Act and furthers our mission to improve the quality of health care for beneficiaries through measurement, transparency, and public reporting of data. The IRF QRP and CMS's other quality programs are foundational for contributing to improvements in health care, enhancing patient outcomes, and informing consumer choice.

In October 2017, we launched the Meaningful Measures Framework. This framework captures our vision to address health care quality priorities and gaps, including emphasizing digital quality measurement (dQM), reducing measurement burden, and promoting patient perspectives, while also focusing on modernization and innovation. The scope of the Meaningful Measures Framework has evolved to accommodate the changes in the health care environment, initially focusing on measure and burden reduction to include the promotion of innovation and modernization of all aspects of quality.[42] There is a need to streamline our approach to data collection, calculation, and reporting to fully leverage clinical and patient-centered information for measurement, improvement, and learning.

In alignment with Meaningful Measures 2.0, we are seeking feedback on our future plans to define digital quality measures (dQMs) for the IRF QRP. We also are seeking feedback on the potential use of Fast Healthcare Interoperable Resources (FHIR) for dQMs within the IRF QRP aligning where possible with other quality programs. FHIR is a free and open source standards framework (in both commercial and government settings) created by Health Level Seven International (HL7®) that establishes a common language and process for all health information technology.

2. Definition of Digital Quality Measures

We are considering adopting a standardized definition of Digital Quality Measures (dQMs) in alignment across quality programs, including the IRF QRP. We are considering in the future to propose the adoption within the IRF QRP the following definition: Digital Quality Measures (dQMs) are quality measures that use one or more sources of health information that are captured and can be transmitted electronically via interoperable systems.[43] A dQM includes a calculation that processes digital data to produce a measure score or measure scores. Data sources for dQMs may include administrative systems, electronically submitted clinical assessment data, case management systems, EHRs, instruments (for example, medical devices and wearable devices), patient portals or applications (for example, for collection of patient-generated health data), health information exchanges (HIEs) or registries, and other sources. As an example, the quality measures calculated from patient assessment data submitted electronically to CMS would be considered digital quality measures.

3. Use of FHIR for Future dQMs in the IRF QRP

One of the first areas CMS has identified relative to improving our digital strategy is through the use of Fast Healthcare Interoperability Resources (FHIR)-based standards to exchange clinical information through application programming interfaces (APIs), aligning with other programs where possible, to allow clinicians to digitally submit quality information one time that can then be used in many ways. We believe that in the future proposing such a standard within the IRF QRP could potentially enable collaboration and information sharing, which is essential for delivering high-quality care and better outcomes at a lower cost.

We are currently evaluating the use of FHIR based APIs to access assessment data collected and maintained through the Quality Improvement and Evaluation System (QIES) and internet QIES (iQIES) health information systems and are working with healthcare standards organizations to assure that their evolving standards fully support our assessment instrument content. Further, as more IRFs are adopting EHRs, we are evaluating using the FHIR interfaces for accessing patient data (including standard assessments) directly from IRF EHRs. Accessing data in this manner could also enable the exchange of data for purposes beyond data reporting to CMS, such as care coordination further increasing the value of EHR investments across the healthcare continuum. Once providers map their EHR data to a FHIR API in standard FHIR formats it could be possible to *send/receive* the data needed for measures and other uses from their EHRs through FHIR APIs.

4. Future Alignment of Measures Across Reporting Programs, Federal and State Agencies, and the Private Sector

We are committed to using policy levers and working with stakeholders to achieve interoperable data exchange and to transition to full digital quality measurement in our quality programs. We are considering the future potential development and staged implementation of a cohesive portfolio of dQMs across our quality programs (including the IRF QRP), agencies, and private payers. This cohesive portfolio would require, where possible, alignment of: (1) Measure concepts and specifications including narrative statements, measure logic, and value sets, and (2) the individual data elements used to build these measure specifications and calculate the measures. Further, the required data elements would be limited to standardized, interoperable elements to the fullest extent possible; hence, part of the alignment strategy will be the consideration and advancement of data standards and implementation guides for key data elements. We would coordinate closely with quality measure developers, federal and state agencies, and private payers to develop and to maintain a cohesive dQM portfolio that meets our programmatic requirements and that fully aligns across federal and state agencies and payers to the extent possible.

We intend this coordination to be ongoing and allow for continuous refinement to ensure quality measures remain aligned with evolving healthcare practices and priorities (for example, patient reported outcomes (PROs), disparities, care coordination), and track with the transformation of data collection. This includes conformance with standards and health IT module updates, future adoption of technologies incorporated within the ONC Health IT Certification Program and may also include standards adopted by ONC (for example, to enable standards-based APIs). The coordination would build on the principles outlined in HHS' National Health Quality Roadmap.[44] It would focus on the quality domains of safety, timeliness, efficiency, effectiveness, equitability, and patient-centeredness. It would leverage several existing federal and public-private efforts including our Meaningful

[42] Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[43] Definition taken from the CMS Quality Conference 2021.

[44] Department of Health and Human Services. National Health Quality Roadmap. May 15, 2020. Available at *https://www.hhs.gov/sites/default/files/national-health-quality-roadmap.pdf.*

Measures 2.0 Framework; the Federal Electronic Health Record Modernization (DoD/VA); the Core Quality Measure Collaborative, which convenes stakeholders from America's Health Insurance Plans (AHIP), CMS, NQF, provider organizations, private payers, and consumers and develops consensus on quality measures for provider specialties; and the NQF-convened Measure Applications Partnership (MAP), which recommends measures for use in public payment and reporting programs. We would coordinate with HL7's ongoing work to advance FHIR resources in critical areas to support patient care and measurement such as social determinants of health. Through this coordination, we would identify which existing measures could be used or evolved to be used as dQMs, in recognition of current healthcare practice and priorities.

This multi-stakeholder, joint federal, state, and industry effort, made possible and enabled by the pending advances towards true interoperability, would yield a significantly improved quality measurement enterprise. The success of the dQM portfolio would be enhanced by the degree to which the measures achieve our programmatic requirements as well as the requirements of other agencies and payers.

5. Solicitation of Comments

We seek input on the following steps that would enable transformation of CMS' quality measurement enterprise to be fully digital:

- What EHR/IT systems do you use and do you participate in a health information exchange (HIE)?
- How do you currently share information with other providers?
- In what ways could we incentivize or reward innovative uses of health information technology (IT) that could reduce burden for post-acute care settings, including but not limited to IRFs?
- What additional resources or tools would post-acute care settings, including but not limited to IRFs, and health IT vendors find helpful to support the testing, implementation, collection, and reporting of all measures using FHIR standards via secure APIs to reinforce the sharing of patient health information between care settings?
- Would vendors, including those that service post-acute care settings, such as IRFs, be interested in or willing to participate in pilots or models of alternative approaches to quality measurement that would align standards for quality measure data collection across care settings to improve care coordination, such as sharing patient data via secure FHIR API as the basis for calculating and reporting digital measures?

We plan to continue working with other agencies and stakeholders to coordinate and to inform our transformation to dQMs leveraging health IT standards. While we will not be responding to specific comments submitted in response to this Request for Information in the FY 2022 IRF PPS final rule, we will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice- and-comment rulemaking, as necessary.

F. Closing the Health Equity Gap in Post-Acute Care Quality Reporting Programs—Request for Information

1. Background

Significant and persistent inequities in health outcomes exist in the United States. In recognition of persistent health disparities and the importance of closing the health equity gap, we request information on revising several CMS programs to make reporting of health disparities based on social risk factors and race and ethnicity more comprehensive and actionable for providers and patients. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; or being near or below the poverty level is often associated with worse health outcomes.[45 46 47 48] We are committed to achieving health equity by improving data collection to better measure and analyze disparities across programs and policies.[49 50 51 52 53 54] Such disparities in health outcomes are the result of a number of factors, but importantly for CMS programs, although not the sole determinant, poor access and provision of lower quality health care contribute to health disparities. For instance, numerous studies have shown that among Medicare beneficiaries, racial and ethnic minority individuals often receive lower quality of care, report lower experiences of care, and experience more frequent hospital readmissions and operative complications.[55 56 57 58 59 60] Readmission rates for common conditions in the Hospital Readmissions Reduction Program are higher for black Medicare beneficiaries and higher for Hispanic Medicare beneficiaries with Congestive Heart Failure and Acute Myocardial Infarction.[61 62 63 64 65] Studies have also

[45] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011; 305(7):675–681.

[46] Lindenauer PK, Lagu T, Rothberg MB, et al. Income Inequality and 30 Day Outcomes After Acute Myocardial Infarction, Heart Failure, and Pneumonia: Retrospective Cohort Study. British Medical Journal. 2013; 346.

[47] Trivedi AN, Nsa W, Hausmann LRM, et al. Quality and Equity of Care in U.S. Hospitals. New England Journal of Medicine. 2014; 371(24):2298–2308.

[48] Polyakova, M., et al. Racial Disparities In Excess All-Cause Mortality During The Early COVID–19 Pandemic Varied Substantially Across States. Health Affairs. 2021; 40(2): 307–316.

[49] Centers for Medicare & Medicaid Services. CMS Quality Strategy. 2016. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[50] Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

[51] Rural Health Research Gateway. Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. November 2018.

[52] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[53] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[54] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. Preprint. *medRxiv.* 2020;2020.07.21.20159327. Published 2020 Jul 24. doi:10.1101/2020.07.21.20159327.

[55] Martino, SC, Elliott, MN, Dembosky, JW, Hambarsoomian, K, Burkhart, Q, Klein, DJ, Gildner, J, and Haviland, AM. Racial, Ethnic, and Gender Disparities in Health Care in Medicare Advantage. Baltimore, MD: CMS Office of Minority Health. 2020.

[56] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

[57] Singh JA, Lu X, Rosenthal GE, Ibrahim S, Cram P. Racial disparities in knee and hip total joint arthroplasty: An 18-year analysis of national Medicare data. Ann Rheum Dis. 2014 Dec;73(12):2107–15.

[58] Rivera-Hernandez M, Rahman M, Mor V, Trivedi AN. Racial Disparities in Readmission Rates among Patients Discharged to Skilled Nursing Facilities. J Am Geriatr Soc. 2019 Aug;67(8):1672–1679.

[59] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[60] Tsai TC, Orav EJ, Joynt KE. Disparities in surgical 30-day readmission rates for Medicare beneficiaries by race and site of care. Ann Surg. Jun 2014;259(6):1086–1090.

[61] Rodriguez F, Joynt KE, Lopez L, Saldana F, Jha AK. Readmission rates for Hispanic Medicare beneficiaries with heart failure and acute myocardial infarction. Am Heart J. Aug 2011;162(2):254–261 e253.

[62] Centers for Medicare and Medicaid Services. Medicare Hospital Quality Chartbook: Performance Report on Outcome Measures; 2014.

[63] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at *https://www.cms.gov/About-*

shown that African Americans are significantly more likely than white Americans to die prematurely from heart disease and stroke.[66] The COVID–19 pandemic has further illustrated many of these longstanding health inequities with higher rates of infection, hospitalization, and mortality among black, Latino, and Indigenous and Native American persons relative to white persons.[67] [68] As noted by the Centers for Disease Control ''long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID–19''.[69] One important strategy for addressing these important inequities is by improving data collection to allow for better measurement and reporting on equity across post-acute care programs and policies.

We are also committed to achieving equity in health care outcomes for our beneficiaries by supporting providers in quality improvement activities to reduce health inequities, enabling them to make more informed decisions, and promoting provider accountability for health care disparities.[70] [71] For the purposes of this rule, we are using a definition of equity established in Executive Order 13985, as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, 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.'' [72] We note that this definition was recently established by the current administration, and provides a useful, common definition for equity across different areas of government, although numerous other definitions of equity exist.

Our ongoing commitment to closing the equity gap in CMS quality programs is demonstrated by a portfolio of programs aimed at making information on the quality of health care providers and services, including disparities, more transparent to consumers and providers. The CMS Equity Plan for Improving Quality in Medicare outlines a path to equity which aims to support Quality Improvement Networks and Quality Improvement Organizations (QIN–QIOs); federal, state, local, and tribal organizations; providers; researchers; policymakers; beneficiaries and their families; and other stakeholders in activities to achieve health equity. The CMS Equity Plan includes three core elements: (1) Increasing understanding and awareness of disparities; (2) developing and disseminating solutions to achieve health equity; and (3) implementing sustainable actions to achieve health equity.[73] The CMS Quality Strategy and Meaningful Measures Framework [74] include elimination of racial and ethnic disparities as a central principle. Our ongoing commitment to closing the health equity gap in the IRF QRP is demonstrated by the adoption of standardized patient assessment data elements (SPADEs) which include several social determinants of health (SDOH) that were finalized in the FY 2020 IRF PPS final rule for the IRF QRP (84 FR 39149 through 39161).

We continue to work with federal and private partners to better leverage data on social risk to improve our understanding of how these factors can be better measured in order to close the health equity gap. Among other things, we have developed an Inventory of Resources for Standardized Demographic and Language Data Collection [75] and supported collection of specialized International Classification of Disease, 10th Edition, Clinical Modification (ICD–10–CM) codes for describing the socioeconomic, cultural, and environmental determinants of health. We continue to work to improve our understanding of this important issue and to identify policy solutions that achieve the goals of attaining health equity for all patients.

2. Solicitation of Public Comment

Under authority of the IMPACT Act and section 1886(j)(7) of the Act, we are seeking comment on the possibility of revising measure development, and the collection of other SPADEs that address gaps in health equity in the IRF QRP. Any potential health equity data collection or measure reporting within a CMS program that might result from public comments received in response to this solicitation would be addressed through a separate notice-and-comment rulemaking in the future.

Specifically, we are inviting public comment on the following:

- Recommendations for quality measures or measurement domains that address health equity, for use in the IRF QRP.
- As finalized in the FY 2020 IRF PPS Final Rule (84 FR 39149 through 39161), IRFs must report certain standardized patient assessment data (SPADEs) on SDOH, including race, ethnicity, preferred language, interpreter services, health literacy, transportation and social isolation.[76] CMS is seeking guidance on any additional items, including SPADEs that could be used to assess health equity in the care of IRF patients, for use in the IRF QRP.
- Recommendations for how CMS can promote health equity in outcomes among IRF patients. For example, we are interested in feedback regarding whether including facility-level quality measure results stratified by social risk

CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.

[64] Prieto-Centurion V, Gussin HA, Rolle AJ, Krishnan JA. Chronic obstructive pulmonary disease readmissions at minority-serving institutions. Ann Am Thorac Soc. Dec 2013;10(6):680–684.

[65] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[66] HHS. Heart disease and African Americans. (March 29, 2021). *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=19.*

[67] *https://www.cms.gov/files/document/medicare-covid-19-data-snapshot-fact-sheet.pdf.*

[68] Ochieng N, Cubanski J, Neuman T, Artiga S, and Damico A. Racial and Ethnic Health Inequities and Medicare. Kaiser Family Foundation. February 2021. Available at *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.*

[69] *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.*

[70] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[71] Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

[72] *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

[73] Centers for Medicare & Medicaid Services Office of Minority Health. The CMS Equity Plan for Improving Quality in Medicare. *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMS_EquityPlanforMedicare_090615.pdf.*

[74] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/MMF/General-info-Sub-Page.*

[75] Centers for Medicare and Medicaid Services. Building an Organizational Response to Health Disparities Inventory of Resources for Standardized Demographic and Language Data Collection. 2020. *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Collection-Resources.pdf.*

[76] In response to the COVID–19 PHE, CMS released an Interim Final Rule (85 FR 27595 through 27597) which delayed the compliance date for the collection and reporting of the SDOH for at least one full fiscal year after the end of the PHE.

factors and social determinants of health (for example, dual eligibility for Medicare and Medicaid, race) in confidential feedback reports could allow facilities to identify gaps in the quality of care they provide. (For example, methods similar or analogous to the CMS Disparity Methods [77] which provide hospital-level confidential results stratified by dual eligibility for condition-specific readmission measures which are currently included in the Hospital Readmission Reduction Program (see 84 FR 42496 through 42500)).

- Methods that commenters or their organizations use in employing data to reduce disparities and improve patient outcomes, including the source(s) of data used, as appropriate.
- Given the importance of structured data and health IT standards for the capture, use, and exchange of relevant health data for improving health equity, the existing challenges providers encounter for effective capture, use, and exchange of health information, such as data on race, ethnicity, and other social determinants of health, to support care delivery and decision making.

While we will not be responding to specific comments submitted in response to this Request for Information in the FY 2022 IRF PPS final rule, we intend to use this input to inform future policy development. We look forward to receiving feedback on these topics, and note for readers that responses to the RFI should focus on how they could be applied to the quality reporting program requirements. Please note that any responses provided will not impact payment decisions.

G. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at 42 CFR 412.634(b) for information regarding the current policies for reporting IRF QRP data.

2. Proposed Schedule for Data Submission of the COVID–19 Vaccination Coverage Among Healthcare Personnel Measure With the FY 2023 IRF QRP

As discussed in section VII.C.1 of this proposed rule, we are proposing to adopt the COVID–19 Vaccination Coverage among HCP measure beginning with the FY 2023 IRF QRP. Given the time-sensitive nature of this measure in light of the PHE, this rule proposes an initial data submission period from October 1, 2021 through December 31, 2021. Starting in CY 2022, IRFs would be required to submit data for the entire calendar year beginning with the FY 2024 IRF QRP.

IRFs would submit data for the measure through the CDC/NHSN web-based surveillance system. IRFs currently utilize the NHSN for purposes of meeting other IRF QRP requirements.[78] IRFs would use the COVID–19 vaccination data reporting module in the NHSN Healthcare Personnel Safety (HPS) Component to report the cumulative number of HCP eligible to work in the healthcare facility for at least 1 day during the reporting period, excluding persons with contraindications to COVID–19 vaccination (denominator) and the cumulative number of HCP eligible to work in the IRF for at least 1 day during the reporting period and who received a complete vaccination course against COVID–19 (numerator). IRFs would submit COVID–19 vaccination data through the NHSN for at least one week each month and the CDC would report to CMS quarterly.

We invite public comment on this proposal.

H. Proposed Policies Regarding Public Display of Measure Data for the IRF QRP

1. Background

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF QRP data available to the public after ensuring that IRFs have the opportunity to review their data prior to public display. IRF QRP measure data are currently displayed on the *Inpatient Rehabilitation Facilities* website within Care Compare and the Provider Data Catalog. Both Care Compare and the Provider Data Catalog replaced IRF Compare and *Data.Medicare.gov*, which were both retired in December 2020. For a more detailed discussion about our policies regarding public display of IRF QRP measure data and procedures for the opportunity to review and correct data and information, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52125 through 52131).

2. Proposal for Public Reporting of the COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure Beginning With the FY 2023 IRF QRP

We propose to publicly report the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure beginning with the September 2022 Care Compare refresh or as soon as technically feasible based on data collected for Q4 2021 (October 1, 2021 through December 31, 2021). If finalized as proposed, an IRF's HCP COVID–19 vaccination coverage rates would be displayed based on one quarter of data updated quarterly. Subsequent to this, one additional quarter of data would be added to the measure calculation during each advancing refresh, until the point four full quarters of data is reached. Thereafter, the measure would be reported using four rolling quarters of data.

We invite public comment on the proposal for the public display of the measure, COVID–19 Vaccination Coverage among HCP.

3. Proposals for Public Reporting of Quality Measures in the IRF QRP With Fewer Quarters Due to COVID–19 Public Health Emergency (PHE) Exemptions

a. COVID–19 Public Health Emergency Temporary Exemptions

Under the authority of section 319 of the Public Health Service Act, the Secretary of Health and Human Services declared a public health emergency (PHE) effective as of January 27, 2020. On March 13, 2020, subsequent to a presidential declaration of national emergency under the Stafford Act, the Secretary invoked section 1135(b) of the Act (42 U.S.C. 1320b–5) to waive or modify the requirements of titles XVIII, XIX, and XXI of the Act and regulations related to the PHE for COVID–19, effective as of March 1, 2020.[79] On March 27, 2020, we sent a guidance memorandum under the subject title, ''Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID–19'' to the Medicare Learning Network (MLN) Connects

[77] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods/methodology.*

[78] Centers for Disease Control and Prevention. Surveillance for Weekly HCP COVID–19 Vaccination. Accessed at *https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html* on February 10, 2021.

[79] *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

Newsletter and Other Program-Specific Listserv Recipients,[80] hereafter referred to as the March 27, 2020 CMS Guidance Memo. In that memo we granted an exception to the IRF QRP reporting requirements from Q4 2019 (October 1, 2019–December 31, 2019), Q1 2020 (January 1, 2020–March 31, 2020), and Q2 2020 (April 1, 2020–June 30, 2020). We also stated that we would not publicly report any IRF QRP data that might be greatly impacted by the exceptions from Q1 and Q2 of 2020. This exception impacted the schedule for public reporting that would have included those two quarters of data.

IRF quality measures are publicly reported on Care Compare. Care Compare uses four quarters of data for IRF–PAI assessment-based measures and eight quarters for claims-based measures. Table 10 displays the original schedule for public reporting of IRF QRP measures.[81]

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TABLE 10: IRF Quarters in Care Compare Original Schedule for Refreshes Affected by COVID-19 PHE Exemptions - Assessment and Claims Based Measures

Quarter Refresh	IRF Quarters in Original Schedule for Care Compare
Actual December 2020 (on Care Compare)	IRF-PAI: Q1 2019 – Q4 2019 (4 quarters)* Claims: Q4 2017 – Q3 2019 (8 quarters)
Original December 2020	IRF-PAI: Q2 2019 – Q1 2020 (4 quarters) Claims: Q4 2017 – Q3 2019 (8 quarters)
March 2021	IRF-PAI: Q3 2019 – Q2 2020 (4 quarters) Claims: Q4 2017 – Q3 2019 (8 quarters)
June 2021	IRF-PAI: Q4 2019 – Q3 2020 (4 quarters) Claims: Q4 2017 – Q3 2019 (8 quarters)
September 2021	IRF-PAI: Q1 2020 – Q4 2020 (4 quarters) Claims: Q4 2018 – Q3 2020 (8 quarters)
December 2021	IRF-PAI: Q2 2020 – Q1 2021 (4 quarters) Claims: Q4 2018 – Q3 2020 (8 quarters)
March 2022	IRF-PAI: Q3 2020 – Q2 2021 (4 quarters) Claims: Q4 2018 – Q3 2020 (8 quarters)
June 2022	IRF-PAI: Q4 2020 – Q3 2021 (4 quarters) Claims: Q4 2018 – Q3 2020 (8 quarters)
September 2022	IRF-PAI: Q1 2021 – Q4 2021 (4 quarters) Claims: Q4 2019 – Q3 2021 (8 quarters)
December 2022	IRF-PAI: Q2 2021 – Q1 2022 (4 quarters) Claims: Q4 2019 – Q3 2021 (8 quarters)
March 2023	IRF-PAI: Q3 2021 – Q2 2022 (4 quarters) Claims: Q4 2019 – Q3 2021 (8 quarters)
June 2023	IRF-PAI: Q4 2021 – Q3 2022 (4 quarters) Claims: Q4 2019 – Q3 2021 (8 quarters)

* The September 2020 refresh was postponed to December 2020 for technical reasons. The period of performance listed here reflects the data that was originally scheduled to be used to calculate provider performance for the December 2020 refresh.

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During 2020, we conducted testing to inform decisions about publicly reporting data for those refreshes, which include partially and/or fully exempt data (discussed below). The testing helped us develop a plan for posting data that are as up-to-date as possible and that also meet acceptable standards for public reporting. We believe that the plan allows us to provide consumers with helpful information on the quality of IRF care, while also making the necessary adjustments to accommodate the exemption provided IRFs. The following sections provide the results of our testing, and explains how we used the results to develop plans for accommodating exempt and partially-exempt data in public reporting.

b. Exempted Quarters

In the March 27, 2020, Medicare Learning Network (MLN) Newsletter on Exceptions and Extensions for Quality Reporting Program (QRP) Requirements, we stated that we would not report any PAC quality data that might be greatly impacted by the exemptions granted for Quarter 1 and Quarter 2 of 2020. Given the timing of the PHE onset, we determined that we would not use IRF–PAI assessments or IRF claims from Quarter 1 and Quarter 2 of 2020 for public reporting, but that we would assess the COVID–19 PHE impact on data from Quarter 4 2019. Before proceeding with the December 2020 refresh, we conducted testing to ensure that, despite the voluntary nature of reporting for that quarter, public reporting would still meet our public reporting standards. We found the level of reporting, measured in the number of eligible stays and providers, and the reported outcomes, to be in line with

[80] *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

[81] More information about the IRF QRP Public Reporting schedule can be found on the IRF QRP Public Reporting website at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Public-Reporting.*

levels and trends observed in FY 2018 and FY 2019. We note that Quarter 4 2019 ended before the onset of the COVID–19 pandemic in the United States. Thus, we proceeded with including these data in IRF QRP measure calculations for the December 2020 refresh.

c. Update on Data Freeze and Proposal for December 2021 Public Reporting Methodology for IRF Claims-Based and IRF–PAI Assessment-Based Measures

In addition to the March 2021 refresh, there are several other forthcoming refreshes for which the original public reporting schedules included exempted quarters of IRF QRP data. The impacted refreshes for IRF–PAI assessment and claims based measures are outlined above (Table 10). We determined that freezing the data displayed on the website with the December 2020 refresh values—that is, hold data constant after the December 2020 refresh data on the website without subsequent update—would be the most straightforward, efficient, and equitable approach for IRFs. Thus, we decided that, for as many refreshes as necessary, we would hold data constant on the website with the December 2020 data, and communicate this decision to the public.

Because December 2020 refresh data will become increasingly out-of-date and thus less useful for consumers, we analyzed whether it would be possible to use fewer quarters of data for one or more refreshes and thus reduce the number of refreshes that continue to display December 2020 data. Using fewer quarters of more up-to-date data requires that: (1) A sufficient percentage of IRFs would still likely have enough assessment data to report quality measures (reportability); and (2) fewer quarters would likely produce similar measure scores for providers, with similar reliability, and thus not unfairly represent the quality of care IRFs provide during the period reported in a given refresh (reliability).

To assess these criteria, we conducted reportability and reliability analysis using 3 quarters of data in a refresh, instead of the standard 4 quarters of data for reporting assessment-based measures and using 6 quarters instead of 8 for claims-based measures. Specifically, we used historical data to calculate IRF–PAI assessment-based and IRF claims-based measures under two scenarios:

(1) *Standard Public Reporting (SPR) Base Scenario:* We used four quarters of CY 2019 data as a proxy alternative for the exempted quarters in CY 2020 in order to compare results. For assessment-based measures, the quarters used in this scenario are Q1 through Q4 2019. For claims-based measures, the quarters used in this scenario are Q1 2018 through Q4 2019.

(2) *COVID–19 Affected Reporting (CAR) Scenario:* We calculated IRF QRP measures using 3 quarters (Q2 2019 through Q4 2019) of IRF QRP data for assessment-based measures, and 6 quarters (Q1 2018 through Q4 2018 and Q3 2019 through Q4 2019) for claims-based measures. The CAR scenario uses the most recently available data to simulate the public health emergency reality where quarters 1 and 2 of a calendar year must be excluded from calculation. Quarterly trends in IRF–PAI assessment-based and IRF claims-based measures indicate that these measures do not exhibit substantial seasonal variation.

To assess performance in these scenarios, we calculated the reportability as the percent of IRFs meeting the case minimum for public reporting (the public reporting threshold). To test the reliability of restricting the IRFs included in the SPR Base Scenario to those included in the CAR Scenario, we performed three tests on the set of IRFs included in both scenarios. First, we evaluated measure correlation using the Pearson and Spearman correlation coefficients, which assess the alignment of IRFs' provider scores. Second, for each scenario, we conducted a split-half reliability analysis and estimated intraclass correlation (ICC) scores, where higher scores imply better internal reliability. Modest differences in ICC scores between both scenarios would suggest that using fewer quarters of data does not impact the internal reliability of the results. Third, we estimated reliability scores where a higher value indicates that measure scores are relatively consistent for patients admitted to the same IRF and variation in the measure reflects true differences across providers. To calculate the reliability results, we restricted the IRFs included in the SPR scenario included in the CAR scenario.

Our testing indicated that the expected impact of using fewer quarters of data on reportability and reliability of IRF–PAI assessment-based measures and IRF claims-based measures is acceptable.

We are proposing to use the CAR scenario as the approach for the following affected refreshes: For IRF–PAI assessment-based measures, the affected refresh is the December 2021 refresh; for claims-based measures, the affected refreshes occur from December 2021 through June 2023. For the earlier three affected refreshes (March, June, and September 2021), we decided to hold constant the Care Compare website with December 2020 data. We communicated this decision in a Public Reporting Tip Sheet, which is located at *https://www.cms.gov/files/document/irfqrp-covid19prtipsheet-october-2020.pdf*.

Our proposal of the CAR approach for the affected refreshes would allow us to begin displaying more recent data in December 2021, rather than continue displaying December 2020 data (Q1 2019 through Q4 2019 for assessment-based measures, Q4 2017 through Q3 2019 for claims-based measures). We believe that resuming public reporting refreshes starting in December 2021 with fewer quarters of data can assist consumers by providing more recent quality data as well as more actionable data for IRF providers. Our testing results indicate we can achieve these positive impacts with acceptable changes in reportability and reliability. Table 11 summarizes the revised schedule (that is, frozen data) and the proposed schedule (that is, using fewer quarters in the affected refreshes) for assessment-based measures. Table 12 summarizes the revised schedule (that is, frozen data) and the proposed schedule (that is, using fewer quarters in the affected refreshes) for claims-based measures.

We invite public comments on the proposal to use the CAR scenario to publicly report IRF measures for the December 2021–June 2023 refreshes.

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TABLE 11: Revised and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exemptions for IRF-PAI Assessment--based QMs

Quarter Refresh	IRF-PAI Assessment Quarters in Revised/Proposed Schedule for Care Compare (number of quarters)
December 2020	Q1 2019 – Q4 2019 (4)
March 2021	Q1 2019 – Q4 2019 (4)
June 2021	Q1 2019 – Q4 2019 (4)
September 2021	Q1 2019 – Q4 2019 (4)
December 2021	Q3 2020 – Q1 2021 (3)
March 2022	Q3 2020 – Q2 2021 (4)* *Normal reporting resumes with 4 quarters of data.

Note: The shaded cells represent data held constant due to PHE related to COVID-19.

TABLE 12: Revised and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exemptions for IRF Claims--based QMs

Quarter Refresh	Claims-based Quarters in Revised/Proposed Schedule for Care Compare (number of quarters)
December 2020	Q4 2017 – Q3 2019 (8)
March 2021	Q4 2017 – Q3 2019 (8)
June 2021	Q4 2017 – Q3 2019 (8)
September 2021	Q4 2017 – Q3 2019 (8)
December 2021	Q4 2018 – Q4 2019, Q3 2020 (6)
March 2022	Q4 2018 – Q4 2019, Q3 2020 (6)
June 2022	Q4 2018 – Q4 2019, Q3 2020 (6)
September 2022	Q4 2019, Q3 2020 – Q3 2021 (6)
December 2022	Q4 2019, Q3 2020 – Q3 2021 (6)
March 2023	Q4 2019, Q3 2020 – Q3 2021 (6)
June 2023	Q4 2019, Q3 2020 – Q3 2021 (6)
September 2023	Q4 2020 – Q3 2022 (8)* *Normal reporting resumes with 8 quarters of data.

Note: The shaded cells represent data held constant due to PHE related to COVID-19.

d. Update on Data Freeze and Proposal for December 2021 Public Reporting Methodology for NHSN-Based Measures

CDC recommends using the four most recent non-contiguous non-exempted quarters of data for NHSN reporting in the IRF QRP. This non-contiguous compilation of quarterly reporting would continue until the time when four contiguous quarters of reporting resumes (based on CDC's review, this would occur in July 2022). Tables 13 and 14 display the original schedules for public reporting of IRF CDI NHSN and CAUTI NHSN measures and the HCP Influenza NHSN measure, respectively. Tables 15 and 16 summarize the revised schedule and the proposed schedules for IRF CDI and CAUTI NHSN measures and the HCP Influenza measure, respectively.

TABLE 13: IRF Quarters in Care Compare Original Schedule for Refreshes Affected by COVID-19 PHE Exemptions – CDI and CAUTI NHSN Measures

Quarter Refresh	CDI and CAUTI Quarters in Original Schedule for Care Compare (number of quarters)
Actual December 2020 (on Care Compare)	Q4 2018 – Q3 2019 (4)*
Original December 2020	Q1 2019 – Q4 2019 (4)
March 2021	Q2 2019 – Q1 2020 (4)
June 2021	Q3 2019 – Q2 2020 (4)
September 2021	Q4 2019 – Q3 2020 (4)
December 2021	Q1 2020 – Q4 2020 (4)
March 2022	Q2 2020 – Q1 2021 (4)
June 2022	Q3 2020 – Q2 2021 (4)

*The September 2020 refresh was postponed to December 2020 for technical reasons.

TABLE 14: IRF Quarters in Care Compare Original Schedule for Refreshes Affected by COVID-19 PHE Exemptions – HCP Influenza Measure

Quarter Refresh	HCP Influenza Quarters in Original Schedule for Care Compare (number of quarters)
Actual December 2020 (on Care Compare)	Q4 2017 – Q1 2018 (2)*
Original December 2020	Q4 2018 – Q1 2019 (2)
March 2021	Q4 2018 – Q1 2019 (2)
June 2021	Q4 2018 – Q1 2019 (2)
September 2021	Q4 2018 – Q1 2019 (2)
December 2021	Q4 2019 – Q1 2020 (2)
March 2022	Q4 2019 – Q1 2020 (2)
June 2022	Q4 2019 – Q1 2020 (2)
September 2022	Q4 2019 – Q1 2020 (2)
December 2022	Q4 2020 – Q1 2021 (2)

*The September 2020 refresh was postponed to December 2020 for technical reasons.

TABLE 15: Revised and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exemptions for the CDI and CAUTI NHSN Measures

Quarter Refresh	CDI and CAUTI Quarters in Revised/Proposed Schedule for Care Compare (number of quarters)
December 2020	Q4 2018 – Q3 2019 (4)
March 2021	Q4 2018 – Q3 2019 (4)
June 2021	Q4 2018 – Q3 2019 (4)
September 2021	Q4 2018 – Q3 2019 (4)
December 2021	Q1 2019 – Q4 2019 (4)
March 2022	Q2 2019 – Q4 2019, Q3 2020 (4)
June 2022*	Q3 2020 – Q2 2021 * Normal reporting resumes with 4 contiguous quarters of data.

Note: The shaded cells represent data held constant due to PHE related to COVID-19.

TABLE 16: Revised and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exemptions for the HCP Influenza NHSN Measure

Quarter Refresh	HCP Influenza Quarters in Revised/Proposed Schedule for Care Compare (number of quarters)
December 2020	Q4 2017 – Q1 2018 (2)
March 2021	Q4 2017 – Q1 2018 (2)
June 2021	Q4 2017 – Q1 2018 (2)
September 2021	Q4 2017 – Q1 2018 (2)
December 2021	Q4 2018 – Q1 2019 (2)
March 2022	Q4 2018 – Q1 2019 (2)
June 2022	Q4 2018 – Q1 2019 (2)
September 2022	Q4 2018 – Q1 2019 (2)
December 2022	Q4 2020 – Q1 2021 (2)* * Normal reporting resumes.

Note: The shaded cells represent data held constant due to PHE related to COVID-19.

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VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule does not impose any new information collection requirements as outlined in the regulation. However, this proposed rule does make reference to an associated information collection that is not discussed in the regulation text contained in this document. The following is a discussion of this information collection, which has already received OMB approval.

As stated in section VII.C. of this proposed rule, for purposes of calculating the IRF Annual Increase Factor (AIF), we propose that IRFs submit data on one new quality measure: COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) beginning with the FY 2023 IRF QRP. The aforementioned measure will be collected via the following means.

A. COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure

The data source for this quality measure is the Centers for Disease Control and Prevention (CDC)/National Healthcare Safety Network (NHSN). Data collection by the NHSN occurs via a web-based tool hosted by the CDC. This reporting service is provided free of charge to healthcare facilities, including IRFs. IRFs currently utilize the NHSN for purposes of meeting other IRF QRP requirements.

We note that the CDC would account for the burden associated with the COVID–19 Vaccination Coverage among HCP measure collection under OMB control number 0920–1317 (expiration 1/31/2024). Currently, the CDC does not estimate burden for COVID–19 vaccination reporting under the CDC PRA package currently approved under OMB control number 0920–1317 because the agency has been granted a waiver under section 321 of the National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660, enacted on November 14, 1986 (NCVIA).[82] However, we refer readers to section X.C.7. of this proposed rule, where CMS has provided an estimate of the burden and cost to IRFs, and the CDC will include it in a revised information collection request for 0920–1317.

In section VII.C.2. of this proposed rule, we are proposing to update the Transfer of Health (TOH) Information to the Patient—Post-Acute Care (PAC) measure to exclude residents discharged home under the care of an organized home health service or hospice. This measure was adopted in the FY 2020 IRF PPS final rule (84 FR 39099 through 39107) and burden accounted for in OMB control number 0938–0842 (expiration December 31, 2022). The proposed update would not affect the information collection burden already established.

If you comment on these information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received on/by June 7, 2021.

IX. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the IRF prospective payment rates for FY 2022 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such

[82] Section 321 of the NCVIA provides the PRA waiver for activities that come under the NCVIA, including those in the NCVIA at section 2102 of the Public Health Service Act (42 U.S.C. 300aa–2). Section 321 is not codified in the U.S. Code, but can be found in a note at 42 U.S.C. 300aa–1.

FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This proposed rule would also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a MFP adjustment to the market basket increase factor for FY 2012 and subsequent years.

Furthermore, this proposed rule would adopt policy changes under the statutory discretion afforded to the Secretary under section 1886(j) of the Act.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Section (6)(a) of Executive Order 12866 provides that a regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate the total impact of the policy updates described in this proposed rule by comparing the estimated payments in FY 2022 with those in FY 2021. This analysis results in an estimated $160 million increase for FY 2022 IRF PPS payments. Additionally, we estimate that costs associated with the proposal to update the reporting requirements under the IRF QRP result in an estimated $487,338.96 addition to costs in FY 2022 for IRFs. We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Also, the rule has been reviewed by OMB. Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Anticipated Effects

1. Effects on IRFs

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by having revenues of $8.0 million to $41.5 million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432 at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf,* effective January 1, 2017 and updated on August 19, 2019.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,109 IRFs, of which approximately 54 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 17, we estimate that the net revenue impact of this proposed rule on all IRFs is to increase estimated payments by approximately 1.8 percent. The rates and policies set forth in this proposed rule will not have a significant impact (not greater than 3 percent) on a substantial number of small entities. The estimated impact on small entities is shown in Table 17. MACs are not considered to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 17, we estimate that the net revenue impact of this proposed rule on rural IRFs is to increase estimated payments by approximately 1.9 percent based on the data of the 133 rural units and 12 rural hospitals in our database of 1,109 IRFs for which data were available. We estimate an overall impact for rural IRFs in all areas between 0.4 percent and 3.4 percent. As a result, we anticipate this proposed rule would have a positive impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted on March 22, 1995) (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately $158 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. As stated, this proposed rule would not have a substantial effect on state and local governments, preempt state law, or otherwise have a federalism implication.

2. Detailed Economic Analysis

This proposed rule would update the IRF PPS rates contained in the FY 2021 IRF PPS final rule (85 FR 48424). Specifically, this proposed rule would update the CMG relative weights and average length of stay values, the wage

index, and the outlier threshold for high-cost cases. This proposed rule would apply a MFP adjustment to the FY 2022 IRF market basket increase factor in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.

We estimate that the impact of the changes and updates described in this proposed rule would be a net estimated increase of $160 million in payments to IRF providers. The impact analysis in Table 17 of this proposed rule represents the projected effects of the updates to IRF PPS payments for FY 2022 compared with the estimated IRF PPS payments in FY 2021. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2022, we are proposing standard annual revisions described in this proposed rule (for example, the update to the wage index and market basket increase factor used to adjust the Federal rates). We are also implementing a productivity adjustment to the FY 2022 IRF market basket increase factor in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We estimate the total increase in payments to IRFs in FY 2022, relative to FY 2021, would be approximately $160 million.

This estimate is derived from the application of the FY 2022 IRF market basket increase factor, as reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of $190 million. However, there is an estimated $30 million decrease in aggregate payments to IRFs due to the proposed update to the outlier threshold amount. Therefore, we estimate that these updates would result in a net increase in estimated payments of $160 million from FY 2021 to FY 2022.

The effects of the proposed updates that impact IRF PPS payment rates are shown in Table 17. The following proposed updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the proposed update to the outlier threshold amount, from approximately 3.3 percent to 3.0 percent of total estimated payments for FY 2022, consistent with section 1886(j)(4) of the Act.
- The effects of the proposed annual market basket update (using the IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(i)(I) of the Act.
- The effects of applying the proposed budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.
- The effects of the proposed budget-neutral changes to the CMG relative weights and average LOS values under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in estimated payments based on the FY 2022 payment changes relative to the estimated FY 2021 payments.

3. Description of Table 17

Table 17 shows the overall impact on the 1,109 IRFs included in the analysis.

The next 12 rows of Table 17 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 964 IRFs located in urban areas included in our analysis. Among these, there are 662 IRF units of hospitals located in urban areas and 302 freestanding IRF hospitals located in urban areas. There are 145 IRFs located in rural areas included in our analysis. Among these, there are 133 IRF units of hospitals located in rural areas and 12 freestanding IRF hospitals located in rural areas. There are 404 for-profit IRFs. Among these, there are 370 IRFs in urban areas and 34 IRFs in rural areas. There are 597 non-profit IRFs. Among these, there are 507 urban IRFs and 90 rural IRFs. There are 108 government-owned IRFs. Among these, there are 87 urban IRFs and 21 rural IRFs.

The remaining four parts of Table 17 show IRFs grouped by their geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Second, IRFs located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this rule to the facility categories listed are shown in the columns of Table 17. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2022 analysis file.
- Column (3) shows the number of cases in each category in our FY 2022 analysis file.
- Column (4) shows the estimated effect of the proposed adjustment to the outlier threshold amount.
- Column (5) shows the estimated effect of the proposed update to the IRF labor-related share and wage index, in a budget-neutral manner.
- Column (6) shows the estimated effect of the proposed update to the CMG relative weights and average LOS values, in a budget-neutral manner.
- Column (7) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this proposed rule for FY 2022 to our estimates of payments per discharge in FY 2021.

The average estimated increase for all IRFs is approximately 1.8 percent. This estimated net increase includes the effects of the proposed IRF market basket increase factor for FY 2022 of 2.2 percent update based on a IRF-specific

market basket estimate of 2.4 percent, less a 0.2 percentage point MFP adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.3 percent overall decrease in estimated IRF outlier payments from the proposed update to the outlier threshold amount. Since we are making the updates to the IRF wage index, labor-related share and the CMG relative weights in a budget-neutral manner, they will not be expected to affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they will be expected to affect the estimated distribution of payments among providers.

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TABLE 17: IRF Impact Table for FY 2022 (Columns 4 through 7 in percentage)

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 22 Wage Index and Labor Share	CMG Weights	Total Percent Change [1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	1,109	381,299	-0.3	0.0	0.0	1.8
Urban unit	662	149,681	-0.5	0.1	-0.2	1.5
Rural unit	133	19,509	-0.6	0.3	-0.3	1.7
Urban hospital	302	207,250	-0.2	-0.1	0.2	2.1
Rural hospital	12	4,859	-0.1	0.5	0.2	2.7
Urban For-Profit	370	200,085	-0.2	0.0	0.2	2.2
Rural For-Profit	34	7,994	-0.2	0.3	0.0	2.3
Urban Non-Profit	507	137,112	-0.5	-0.1	-0.2	1.4
Rural Non-Profit	90	13,614	-0.6	0.4	-0.3	1.6
Urban Government	87	19,734	-0.6	0.5	-0.3	1.9
Rural Government	21	2,760	-0.3	0.3	-0.3	1.9
Urban	964	356,931	-0.3	0.0	0.0	1.8
Rural	145	24,368	-0.5	0.4	-0.2	1.9
Urban by region						
Urban New England	31	14,505	-0.2	-0.6	-0.2	1.1
Urban Middle Atlantic	124	43,245	-0.4	-0.9	0.0	0.9
Urban South Atlantic	154	74,081	-0.3	0.6	0.0	2.5
Urban East North Central	157	45,869	-0.4	0.1	-0.1	1.8
Urban East South Central	54	25,568	-0.2	-0.1	0.1	2.0
Urban West North Central	74	20,284	-0.4	0.8	-0.2	2.4
Urban West South Central	190	80,343	-0.2	-0.4	0.2	1.7
Urban Mountain	81	28,221	-0.3	-0.1	0.0	1.8
Urban Pacific	99	24,815	-0.7	0.6	-0.2	1.9
Rural by region						
Rural New England	5	1,264	-0.5	-0.2	-0.3	1.1
Rural Middle Atlantic	10	981	-0.8	1.1	-0.4	2.0
Rural South Atlantic	16	3,973	-0.2	1.2	0.2	3.4
Rural East North Central	23	3,902	-0.4	0.6	-0.2	2.2
Rural East South Central	21	3,832	-0.3	0.0	-0.3	1.6
Rural West North Central	20	2,837	-0.6	0.0	-0.4	1.2
Rural West South Central	42	6,740	-0.4	0.0	-0.2	1.6
Rural Mountain	5	481	-1.1	0.5	-0.5	1.1
Rural Pacific	3	358	-1.4	0.3	-0.6	0.4
Teaching status						
Non-teaching	1,004	337,797	-0.3	0.0	0.0	1.9
Resident to ADC less than 10%	57	28,282	-0.3	0.0	0.0	1.9
Resident to ADC 10%-19%	37	13,884	-0.7	-0.2	-0.2	1.1
Resident to ADC greater than 19%	11	1,336	-0.4	0.0	-0.4	1.5
Disproportionate share patient percentage (DSH PP)						
DSH PP = 0%	46	9,327	-0.4	-0.8	0.0	1.0
DSH PP <5%	144	55,019	-0.3	-0.1	0.1	1.9
DSH PP 5%-10%	285	116,111	-0.2	0.1	0.1	2.1
DSH PP 10%-20%	387	137,544	-0.4	-0.2	0.0	1.6
DSH PP greater than 20%	247	63,298	-0.5	0.3	-0.1	1.9

[1] This column includes the impact of the updates in columns (4), (5), and (6) above, and of the IRF market basket update for FY 2022 (2.4 percent), reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

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4. Impact of the Proposed Update to the Outlier Threshold Amount

The estimated effects of the proposed update to the outlier threshold adjustment are presented in column 4 of Table 17.

For this proposed rule, we are using preliminary FY 2020 IRF claims data, and, based on that preliminary analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF payments would be 3.3 percent in FY 2022. Thus, we propose to adjust the outlier threshold amount in this

proposed rule to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2022. The estimated change in total IRF payments for FY 2022, therefore, includes an approximate 0.3 percentage point decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.3 percent to 3 percent.

The impact of this proposed outlier adjustment update (as shown in column 4 of Table 17) is to decrease estimated overall payments to IRFs by a 0.3 percentage point.

5. Impact of the Proposed Wage Index and Labor-Related Share

In column 5 of Table 17, we present the effects of the proposed budget-neutral update of the wage index and labor-related share. The proposed changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the proposed changes in the two have a combined effect on payments to providers. As discussed in section V.C. of this proposed rule, we are proposing to update the labor-related share from 73.0 percent in FY 2021 to 72.9 percent in FY 2022.

6. Impact of the Proposed Update to the CMG Relative Weights and Average LOS Values

In column 7 of Table 17, we present the effects of the proposed budget-neutral update of the CMG relative weights and average LOS values. In the aggregate, we do not estimate that these proposed updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects.

7. Effects of Proposed Requirements for the IRF QRP for FY 2022

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section VII.A of this proposed rule, we discuss the method for applying the 2 percentage point reduction to IRFs that fail to meet the IRF QRP requirements. As discussed in section VII.C. of this proposed rule, we are proposing to add one measure to the IRF QRP beginning with the FY 2023 IRF QRP: COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure.

We believe that the burden associated with the IRF QRP is the time and effort associated with complying with the requirements of the IRF QRP. The proposed IRF QRP requirements add no additional burden to the active collection under OMB control number 0938–0842 (expiration 12/31/2022). Currently, the CDC does not estimate burden for COVID–19 vaccination reporting under the CDC PRA package currently approved under OMB control number 0920–1317 because the agency has been granted a waiver under section 321 of the NCVIA. However, CMS has provided an estimate of burden and cost for IRFs here, and the CDC will include it in a revised information collection request for 0920–1317. Consistent with the CDC's experience of collecting data using the NHSN, we estimate that it would take each IRF an average of 1 hour per month to collect data for the COVID–19 Vaccination Coverage among HCP measure and enter it into NHSN. We have estimated the time to complete this entire activity, since it could vary based on provider systems and staff availability. We believe it would take an administrative assistant from 45 minutes up to 1 hour and 15 minutes to enter this data into NHSN. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages from the U.S. Bureau of Labor Statistics' May 2019 National Occupational Employment and Wage Estimates.[83] To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 18.

TABLE 18: U.S. Bureau of Labor and Statistics' May 2019 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Mean Hourly Wage ($/hr)	Overhead and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Administrative Assistant	43-6013	$18.31	$18.31	$36.62

Based on the time range, it would cost each IRF between $27.47 and $45.78 each month or an average cost of $36.62 each month, and between $329.64 and $549.36 each year. We believe the data submission for the COVID–19 Vaccination Coverage among HCP measure would cause IRFs to incur additional average burden of 12 hours per year for each IRF and a total annual burden of 13,308 hours across all IRFs. The estimated annual cost across all 1,109 IRFs in the U.S. for the submission of the COVID–19 Vaccination Coverage among HCP measure would range from $365,570.76 and $609,240.24 with an average of $487,338.96.

We recognize that many IRFs may also be reporting other COVID–19 data to HHS. However, we believe the benefits of reporting data on the COVID–19 Vaccination Coverage among HCP measure to assess whether IRFs are taking steps to limit the spread of COVID–19 among their HCP, reduce the risk of transmission of COVID–19 within their facilities, and to help sustain the ability of IRFs to continue serving their communities throughout the PHE and beyond outweigh the costs of reporting. We welcome comments on the estimated time to collect data and enter it into NHSN.

D. Alternatives Considered

The following is a discussion of the alternatives considered for the IRF PPS updates contained in this proposed rule.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods

[83] *https://www.bls.gov/oes/current/oes_nat.htm. Accessed on March 30, 2021.*

and services included in the covered IRF services.

As noted previously in this proposed rule, section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket increase factor for FY 2022. Thus, in accordance with section 1886(j)(3)(C) of the Act, we propose to update the IRF prospective payments in this proposed rule by 2.2 percent (which equals the 2.4 percent estimated IRF market basket increase factor for FY 2022 reduced by a 0.2 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act)).

We considered utilizing FY 2019 claims data to update the prospective payment rates for FY 2022 due to the potential effects of the PHE on the FY 2020 IRF claims data. However, it has been our long-standing practice to utilize the most recent full fiscal year of data to update the prospective payment rates, as this data is generally considered to be the best overall predictor of experience in the upcoming fiscal year. Additionally, the FY 2019 data does not reflect any of the changes to the CMG definitions or the data used to classify IRF patients into CMGs that became effective in FY 2020 and will continue to be used in FY 2022. As such, we believe it would be appropriate to utilize FY 2020 data to update the prospective payment rates for FY 2022 at this time. While we believe maintaining our existing methodology of utilizing the most recent available IRF data to update the prospective payment rates for FY 2022 is appropriate, we are soliciting comment on the use of FY 2019 data to update the prospective payment rates for FY 2022.

Table 19 shows the estimated effects of the use of FY 2019 data on particular aspects of the proposed FY 2022 IRF PPS compared to those utilizing FY 2020 data.

TABLE 19: Comparison of Proposed FY 2022 Impacts Using FY 2019 Claims and FY 2020 Claims

	FY 2022 Proposed	FY 2022 Proposed
	FY 2019 Claims	FY 2020 Claims
Standard Payment Conversion Factor	17,273	17,273
Outlier Threshold	7,580	9,192
Wage Index Budget Neutrality Factor	1.0029	1.0027
CMG Relative Weights Budget Neutrality Factor	0.9998	1.0000
Market Basket Update	190 million	190 million
Outlier Threshold Adjustment Update	10 million	-30 million
Total Impacts	200 million	160 million

A comparison of the estimated impacts, using FY 2019 data, as shown in Table 20, or FY 2020 data, as shown in Table 17, indicates that overall IRF PPS payments and payments to all subgroups of IRF providers would increase if either data set is used. However, there will be distributional payment effects across providers due to the difference in estimated outlier payments under both scenarios. For more information on the estimated effects of utilizing FY 2019 to update the prospective payment rates for FY 2022, we refer readers to Table 20.

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TABLE 20: Estimated Impacts for FY 2022 Utilizing FY 2019 Claims Data

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 22 Wage Index and Labor Share	CMG Weights	Total Percent Change [1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	1,118	411,582	0.2	0.0	0.0	2.4
Urban unit	684	162,105	0.3	0.1	0.0	2.6
Rural unit	132	20,806	0.2	0.4	0.0	2.8
Urban hospital	291	223,606	0.1	-0.2	0.0	2.1
Rural hospital	11	5,065	0.0	0.2	0.0	2.4
Urban For-Profit	358	214,659	0.1	-0.1	0.0	2.2
Rural For-Profit	32	8,373	0.1	0.2	0.0	2.4
Urban Non-Profit	524	149,687	0.2	-0.1	0.0	2.4
Rural Non-Profit	90	14,332	0.3	0.4	0.0	2.9
Urban Government	93	21,365	0.3	0.5	0.0	3.0
Rural Government	21	3,166	0.1	0.3	0.0	2.6
Urban	975	385,711	0.1	0.0	0.0	2.3
Rural	143	25,871	0.2	0.3	0.0	2.7
Urban by region						
Urban New England	29	16,126	0.1	-0.6	0.0	1.7
Urban Middle Atlantic	132	48,915	0.2	-0.9	0.0	1.4
Urban South Atlantic	153	78,549	0.1	0.5	0.0	2.9
Urban East North Central	159	50,291	0.2	0.1	0.0	2.5
Urban East South Central	56	28,452	0.1	-0.1	0.0	2.2
Urban West North Central	73	21,183	0.2	0.9	0.0	3.3
Urban West South Central	188	85,415	0.1	-0.4	0.0	1.9
Urban Mountain	87	30,712	0.1	-0.1	0.0	2.3
Urban Pacific	98	26,068	0.3	0.6	0.0	3.2
Rural by region						
Rural New England	5	1,347	0.2	-0.2	0.0	2.1
Rural Middle Atlantic	11	1,189	0.4	0.9	0.0	3.6
Rural South Atlantic	16	3,799	0.1	0.9	0.0	3.2
Rural East North Central	23	4,077	0.2	0.7	0.0	3.1
Rural East South Central	21	4,466	0.1	0.1	0.0	2.3
Rural West North Central	20	3,053	0.3	0.0	0.0	2.5
Rural West South Central	39	7,013	0.2	0.1	0.0	2.5
Rural Mountain	5	564	0.5	0.5	0.0	3.2
Rural Pacific	3	363	0.7	0.3	0.0	3.1
Teaching status						
Non-teaching	1,010	363,470	0.1	0.0	0.0	2.4
Resident to ADC less than 10%	59	31,882	0.2	0.0	0.0	2.4
Resident to ADC 10%-19%	37	14,796	0.3	-0.3	0.0	2.3
Resident to ADC greater than 19%	12	1,434	0.2	0.1	0.0	2.5
Disproportionate share patient percentage (DSH PP)						
DSH PP = 0%	14	1,931	0.1	0.0	0.0	2.2
DSH PP <5%	147	58,245	0.1	-0.3	0.0	2.0
DSH PP 5%-10%	295	128,479	0.1	0.1	0.0	2.4
DSH PP 10%-20%	405	151,645	0.2	-0.2	0.0	2.2
DSH PP greater than 20%	257	71,282	0.2	0.3	0.0	2.8

[1]This column includes the impact of the updates in columns (4), (5), and (6) above, and of the IRF market basket update for FY 2022 (2.4 percent), reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

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We welcome comments from stakeholders regarding the use of FY 2019 claims data to update the prospective payment rates for FY 2022.

We considered maintaining the existing CMG relative weights and average length of stay values for FY

2022. However, in light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, at this time we believe that it is appropriate to propose to update the CMG relative weights and average length of stay values using FY 2020 claims data to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We also considered maintaining the existing outlier threshold amount for FY 2022. As outlier payments are a redistribution of payment, it is important to adjust the outlier threshold amount to maintain the targeted 3 percent outlier pool as closely as possible. Maintaining an outlier threshold that would yield estimated outlier payments greater than 3 percent would leave less payment available to cover the costs of non-outlier cases. Therefore, analysis of updated FY 2020 data indicates that estimated outlier payments would be greater than 3 percent of total estimated payments for FY 2022, by approximately 0.3 percent. Consequently, we propose adjusting the outlier threshold amount in this proposed rule to reflect a 0.3 percent decrease thereby setting the total outlier payments equal to 3 percent, instead of 3.3 percent, of aggregate estimated payments in FY 2022.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the FY 2021 IRF PPS proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2021 IRF PPS proposed rule in detail, and it is also possible that some reviewers chose not to comment on the FY 2021 proposed rule. For these reasons, we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We sought comments on this assumption.

Using the national mean hourly wage data from the May 2019 BLS for Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is $110.74 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it would take approximately 2 hours for the staff to review half of this proposed rule. For each IRF that reviews the rule, the estimated cost is $221.48 (2 hours × $110.74). Therefore, we estimate that the total cost of reviewing this regulation is $590,908.64 ($221.48 × 2,668 reviewers).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 21, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 21 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed updates presented in this proposed rule based on the data for 1,109 IRFs in our database.

TABLE 21: Accounting Statement: Classification of Estimated Expenditure

	Category	Transfers
Change in Estimated Transfers from FY 2021 IRF PPS to FY 2022 IRF PPS	Annualized Monetized Transfers	$160 million
	From Whom to Whom?	Federal Government to IRF Medicare Providers
Change in Estimated Costs from FY2021 IRF QRP to FY 2022 IRF QRP	Annualized monetized cost in FY 2022 for IRFs due to new quality reporting program requirements	$487,338.96
Estimated Costs Associated with Review Cost for FY 2022 IRF PPS	Cost associated with regulatory review cost	$590,908.64
	Total	$1,078,248

G. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2022 are projected to increase by 1.8 percent, compared with the estimated payments in FY 2021, as reflected in column 7 of Table 17.

IRF payments per discharge are estimated to increase by 1.8 percent in urban areas and 1.9 percent in rural areas, compared with estimated FY 2021 payments. Payments per discharge to rehabilitation units are estimated to increase 1.5 percent in urban areas and 1.7 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 2.1 percent in urban areas and increase 2.7 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the proposed policies in this proposed rule. The largest payment increase is estimated to be a 3.4 percent increase for rural IRFs located in the rural South Atlantic region. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

Dated: March 29, 2021.

Elizabeth Richter,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: April 6, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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