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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[AMS–SC–21–0027; SC21–989–1]

Raisins Produced From Grapes Grown in California; Borrowing Authority Under Marketing Order 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: This rule amends Marketing Order 989 (referred to as the ''Order''), which regulates the handling of raisins produced from grapes grown in California. This action reinserts Order language that authorizes the Raisin Administrative Committee (RAC) to borrow from commercial lending institutions. The publication on October 26, 2018, of a final rule to amend the marketing order unintentionally removed this borrowing authority. This document is necessary to inform the public of this amendment.

DATES: This direct final rule is effective June 14, 2021, without further action or notice, unless significant adverse comments are received by June 1, 2021. If significant adverse comments are received, the Agricultural Marketing Service (AMS) will publish a timely withdrawal of the amendment in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments concerning this direct final rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist or Andrea Ricci, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 514–1275, Fax: (559) 487–5906, or Email: *kathie.notoro@usda.gov* or *Andrea.Ricci@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. In accordance with Executive Order 13175, AMS has not identified any tribal implications as a result of this rule. This rule falls within a category of regulatory actions that the Office of Management and Budget exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform.

Borrowing authority was originally added to the Order as a result of an amendatory rulemaking in a 2016 final rule (81 FR 44761, July 11, 2016) with unanimous support of RAC members and overwhelming support from industry members. This support is indicated by the results of the producer referendum (81 FR 11678) conducted March 9–16, 2016, with 93 percent of voters in support of this provision.

In 2018, a final rule amending the Order was published in the **Federal Register** (83 FR 53965). The 2018 amendments established and revised several provisions of the Order; however, AMS inadvertently omitted a provision in 7 CFR 989.80(c) that authorizes RAC to borrow money from financial institutions. AMS identified the missing provision during a routine file review of the Order and through this action will reinstate the omitted provision.

During the referendum on the 2018 amendments conducted by AMS December 4–15, 2017 (82 FR45517), voters did not notice the borrowing authority provision was missing from § 989.80(c). AMS reviewed administrative records from 2016–2018 and reaffirmed that no comments from industry or RAC members addressed the missing provision or expressed the desire to remove borrowing authority from the Order. As well, AMS confirmed that removal of borrowing authority was not discussed at the hearing for the 2018 rulemaking and did not appear as a question on the referendum ballot. RAC confirmed to AMS that having borrowing authority in the Order is in the best interest of the raisin industry and asked for this error to be rectified as soon as possible.

Accordingly, this action restores the borrowing authority provision, which provides the RAC operational flexibility to continue conducting business affairs in the event of interrupted cash flow due to circumstances affecting the collection of assessments.

This correction does not require action by any person or entity regulated by the Order.

Overview of Changes

Currently, as a result of the inadvertent omission, the Order does not authorize RAC to borrow from a commercial lending institution. This final rule reinserts the following language into § 989.80(c): ''In the event cash flow needs of the committee are above cash available generated by handler assessments, the committee may borrow from a commercial lending institution.'' This action restores RAC borrowing authority to the Order.

Classification

This final rule reflects an amendatory change to the Order following an unintentional error. This final rule restores language that was added in a 2016 rulemaking and that was inadvertently omitted in a subsequent rulemaking. AMS believes that this action is not controversial and will not generate adverse comments. However, if AMS does receive significant adverse comments during the comment period,

it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses that are subject to such actions so that small businesses will not be unduly or disproportionately burdened by the action. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought through group action of essentially small entities acting on their own behalf.

Presently, there are approximately 22 handlers of raisins subject to regulation under the Order and approximately 2,000 raisin producers in the regulated area.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

AMS multiplied RAC estimated shipments of 327,323 tons for the 2020 season by the average handler price of $2,000 per ton to derive total estimated annual handler receipts of $474,646,000. Dividing the total estimated handler receipts by the number of handlers (22) results in estimated average handler receipts of $21,574,818.

According to RAC estimates for the most recent year, the average raisin grower price was $1,300 per ton. Multiplying the average grower price by total 2020 production of 211,115 tons results in $274,449,500 estimated returns to growers. Dividing estimated grower returns by the total number of growers (2,000) provides an estimated return per grower of $137,225 for the 2020 season. Thus, the majority of raisin handlers and growers may be classified as small entities according to SBA definitions.

There are no known negative impacts or additional costs incurred by small handlers because of this action.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 989.80, revise paragraph (c) to read as follows:

§ 989.80 Assessments.

* * * * *

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. In the event cash flow needs of the committee are above cash available generated by handler assessments, the committee may borrow from a commercial lending institution. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–10148 Filed 5–13–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

[Docket No. RBS–20–BUSINESS–0044]

RIN 0570–AB02

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA,

ACTION: Final rule; request for comments.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA or the Department), is issuing a final rule with comment for the Rural Microentrepreneur Assistance Program (RMAP or the Program). This final rule modifies the interim rule published in the **Federal Register** on May 28, 2010, as amended by the correcting amendments published in the **Federal Register** on July 19, 2010, and incorporates amendments to the Consolidated Farm and Rural Development Act (ConAct) made by the Agriculture Improvement Act of 2018 (2018 Farm Bill). The Agency is implementing other changes to make the Program run more efficiently, be more user-friendly and be more consistent with other RBCS programs.

DATES:

Effective date: This final rule is effective May 14, 2021.

Comment date: Comments due on or before July 13, 2021.

ADDRESSES: You may submit comments, identified by docket number RBS–20–BUSINESS–0044 and Regulatory Information Number (RIN) number 0570–AB02 through *https://www.regulations.gov*.

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact David Chestnut, Program Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–3201;

telephone: (202) 692–5233; email: *david.chestnut@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is a mission area within USDA comprising the Rural Utilities Service, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, business, and infrastructure throughout rural America. The Rural Microentrepreneur Assistance Program, administered by the Rural Business-Cooperative Service, was authorized by Section 379E of the Consolidated Farm and Rural Development Act (ConAct). The ConAct established the RMAP to provide loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. The loans establish or augment a rural microentrepreneur revolving loan fund and the grants provide technical assistance and training to microenterprises.

II. Discussion of Public Comments From Interim Rule

On May 28, 2010, the Agency published an interim rule with comments in the **Federal Register** (75 FR 30114) implementing RMAP. The interim rule was amended by the correcting amendments published in the **Federal Register** on July 19, 2010 (75 FR 41695). Twenty-nine combined comments were received from one industry respondent, five sponsoring organizations and one individual. The Agency reviewed and considered all comments that were received. The following discusses each comment and the Agency's response:

Comment: The Loan Loss Reserve Fund (LLRF) usage and replenishment is too restrictive and a more workable approach is to utilize the Intermediary Relending Program (IRP) regulation 7 CFR 4274–D.

Agency response: The Agency agreed, and the regulation has been revised to be more in line with the Intermediary Relending Program (IRP).

Comment: Having a hard deadline of 90 days to close the loans was too difficult to meet in some cases.

Agency response: The Agency agreed, and the language was changed to permit the Agency, with justification and at its sole discretion, to extend the closing date deadline when circumstances warrant.

Comment: Concern was expressed for only being able to draw down funds to make loans every quarter as being unworkable. The 30-day micro borrower loan closing should be eliminated.

Agency response: The Agency agreed, and language was changed from 'must' to 'should' for the draw of funds which will allow the drawdown of funds as needed. The Agency disagrees with a change to the microborrower 30-day loan closing requirements as a Microenterprise Development Organization's (MDO) should only draw down funds for an identified project. This prevents an MDO from paying interest on unused funds in their account that are not generating revenue for the program loan repayment.

Comment: The Agency should make it clear that one of the Agency's remedies for loan default was to withhold all mandatory grant payments until the microlender comes back into compliance.

Agency response: The Agency agreed, and the information has been delineated in the loan servicing section.

Comment: Making the Agency responsible to approve all key personnel changes is intrusive. The Legislative Affairs notification is set forth in another Rural Development regulation and is not needed here.

Agency response: The Agency agreed but will still require notification of significant personnel changes as such changes may impact the MDO's ability to manage a revolving loan fund. The Legislative Notification has been removed from Section 4280.313.

Comment: The technical assistance only grant portion of the regulation is not authorized by the Farm Bill, but rather technical assistance training grants are authorized by the Farm Bill. Additionally, the current regulation ignores the training aspect of the law.

Agency response: The technical assistance only grant provisions are in the authorizing statute and were not eliminated in the 2018 Farm Bill language. Agency agreed with the training provisions comment and the regulation has been changed in Section 4280.313 to reflect that these grants should be for training type technical assistance to active and potential mircoborrowers as well as any microlenders who may wish to strengthen their technical skills through training.

Comment: Most commenters included comments on scoring: abandon the dual application system, scoring is subjective, scoring is overly complex, TA grant scoring does not reflect operating realities, scoring disfavors microlenders who specialize in servicing traditionally underserved populations, disfavors smaller MDOs who need to use the legally allowed 10 percent for administrative expenses, scoring uses vague definitions of current and delinquent borrowers, disfavors non-rural MDOs, and disfavors MDOs who provide training versus those MDOs who only make loans.

Agency response: The Agency considered each of the comments and reviewed the scoring system for possible revisions. Changes are described in Section III below.

Comment: Several comments were made concerning application processing. One of the commenters stated that a Loan Fund Work Plan or Scope of Work should be required of all applicants, and that some forms listed for the applicant to complete were internal forms and should be deleted.

Agency response: The Agency agreed, and the regulation has been revised to require a work plan from all applicants (§ 4280.316(c)(1)) and internal forms have been removed from the applicant's requirements.

Comment: One group of commenters cited several existing laws which define significant outmigration as a locality which has a loss of 10 percent or more in population in the past 20 years.

Agency response: The Agency agreed, and the definition was changed to conform with the definition used by the Economic Research Service.

Comment: The definition of full-time equivalent does not agree with other Rural Development definitions.

Agency response: The Agency agreed, and the definition was revised to be similar to other Agency regulations.

Comment: The definition of delinquency should be redefined to the dollars and number of loans behind more than 30 days in any one-year period.

Agency response: The Agency agreed in principle and included in the definition that the year be the federal fiscal year. Delinquency parameters were added to § 4280.311(e)(4) to better define satisfactory performance.

Comment: Non-profit organizations cannot have citizenship and the wording should be changed to state organized under the laws of the state.

Agency response: The Agency agrees that non-profit entities have no ownership but retain its requirement that non-profit entities must be controlled by a majority of US citizens. The provisions for state organization of a non-profit remains in § 4280.310(a)(2) and a tribal provision is now included in that section as well.

Comment: The limited 20-year loan term should include a restructure provision that would permit extending beyond the initial 20-year limit. The deferral period should be 3 years and annual payments rather than monthly be utilized.

Agency response: The Agency retains its monthly loan payment requirement as a change to annual payments would reduce the amount of program funding available. The 20-year loan limitation and the 2-year deferral period are statutory requirements and cannot be changed.

Comment: USDA should use its current Intermediary Relending Program and Rural Business Enterprise Grant regulations which have been very successful to manage technical assistance grants and the Intermediary relending of monies through a revolving fund for many years now.

Agency's response: The RMAP program does utilize the technical assistance models utilized by other programs and requires MDO reporting to ensure that the program requirements are being met.

Comment: USDA is placing too much funding in the loan portion of the RMAP and insufficient funding for the grant portion of the program to ensure its success.

Agency's response: The Agency did not agree with this comment. The Agency takes into account, on a year to year basis, the needs of the stakeholders of the RMAP program based on funds available for that fiscal year.

Comment: USDA should relinquish its first lien position on all funds in the Rural Microentrepreneur Revolving Fund (RMRF) except those derived from the Rural Microenterprise loan itself.

Agency response: The Agency did not agree with this comment. The Agency must adhere to prudent lending practices which would require a first lien position on all assets in the revolving loan fund. An MDO is prohibited from co-mingling other entity funds with funds on deposit in its RMAP revolving loan account (§ 4280.311(e)(1)).

Comment: It was Congress' intent to permit the 5 percent LLRF funding requirement to be met using loan funds.

Agency response: Agency disagreed. The LLRF is intended to protect the Microenterprise Development Organization's (MDO) fund by maintaining the value of the fund as required by the servicing regulation, 7 CFR. Part 1951 (Subpart R). If loan funds were used to capitalize the LLRF, and consequently were distributed to cover losses (either by loan payments to the Agency or to cover liquidation costs of the microloan), the longevity of the fund might be in question. This stress would be enhanced if multiple loans required liquidation before the interest earned could rebuild the LLRF.

Comment: The 2 percent interest rate was double the 1 percent minimum rate set by Congress.

Agency response: The Agency disagreed. The current cost to maintain the program requires an interest rate of 2 percent. Microlenders in the Program for more than 5 years have the opportunity to borrow Agency funds at 1 percent when making an application for additional loan funds. (Section 4280.311(e)(4)) It is the Agency's position that the interest rate (cost of funds to the MDO) should be incorporated into the structure of their microloans.

Comment: The loan making process is too restrictive for a microloan program.

Agency response: The loan application process is used to ensure that program funds are awarded to entities with experience in managing revolving loan funds and technical assistance programs.

Comment: The $2.5 million MDO debt limitation was arbitrary, not in the law, and may unduly restrict an MDO's ability to meet demand.

Agency response: The Agency disagrees that the limit restricts an MDO's ability to make microloans. The $50,000 limitation to one microborrower would allow an MDO to have 50 or more loans outstanding at any time. MDOs with significant loan activity are also eligible to apply for IRP program awards for their revolving loan funds.

Comment: All the mandatory grants should be funded at the authorized 25 percent of the loan balances.

Agency response: The 2018 Farm Bill amended Section 379E of the Con Act to require that grant amounts to MDOs be in an amount equal to not less than 20 percent and not more than 25 percent of the total outstanding balance of microloans made by MDOs.

Comment: The current methodology of calculating the annual MDO grant based on the amount of outstanding loan balances is inadequate.

Agency response: The Agency disagrees with this comment as technical assistance funds are to be used for existing and potential microborrowers and offers no alternative methodology to determining the amount of technical assistance provided.

Comment: The Agency should accept collaborative applications stating that MDOs often partner to leverage areas of expertise, expand service areas, and lower costs.

Agency response: The Agency understands that entities will use collaborative resources to administer their programs and does allow for such in the applicant's scope of work and program management, including microborrower application reviews.

Comment: There are many reasons for communities to be considered underserved including but not limited to loss of major employer, natural disasters, chronic low income, and they suggested that the TA training grants be targeted to underserved communities.

Agency response: The Agency agrees that there are many reasons for a community to be considered underserved and elected not to define or limit the requirements for an underserved community as this is best applied by local knowledge.

Comment: The definition of microentrepreneur needs to be clarified to include the number of employees, ability to obtain conventional financing, and the maximum dollars needed for the project.

Agency response: An eligible microentrepreneur must meet the definition of a microenterprise, which is defined as an entity with 10 or fewer employees. The definition of microenterprise provides that business types may also include agricultural producers provided they meet the stipulations in this definition. The microentrepreneur is subject to a credit elsewhere test in Section 4280.322(d). The maximum loan amount for a project is the lesser of $50,000 or 75 percent of the project cost as stated in the regulation.

Comment: Several comments on the cost structure of projects. One commenter suggested utilizing the IRP regulation; two groups suggested that a microborrower's equity in its business be allowed to be considered for the 25 percent non-federal portion of the project. And, finally two groups of commenters point out that the 75 percent federal fund limitations do not apply to a micro borrower's project.

Agency Response: The Agency did not agree. The 25 percent non-federal funds requirement is to meet project equity and also for program leverage to protect the MDO from credit losses. This generally cannot be met by allowing only balance sheet equity.

Comment: The value of matching funds serves no purpose.

Agency response: The Agency did not agree as program leverage is used as a credit enhancement to the microborrower's project costs and protects the MDO from increased credit losses.

Comment: Priority designations for race and ethnicity within populations is discriminatory.

Agency response: The Agency does not agree with the comment as there is not a priority designation based on race and ethnicity and the application scoring criteria is based on the diversity of the MDO's loan portfolio matching the diversity of their program service area. The race and ethnicity criteria is often used in the determination of an underserved community and such information is also obtained voluntarily from applicants for compliance with Federal civil rights requirements.

The Agency has carefully reviewed the above comments and is modifying the regulation based on an analysis of responsive comments received, program delivery experience, and changes required by Section 379E of the 2018 Farm Bill.

The modifications to the Program's regulations will allow the Agency to implement the requirements of the 2018 Farm Bill, address comments received after publication of the interim regulation in 2010 and implement the final regulation.

III. Summary of Changes to the Rule

This section presents the major changes to the existing RMAP interim rule.

The authority citation was updated from 7 U.S.C. 1989(a), 7 U.S.C. 2009s to accurately read as 7 U.S.C. 1989(a), 7 U.S.C. 2008s.

The definitions of ''close relative'', ''Indian tribe'' and ''rural or rural area'' were modified to match the definitions in other RD programs. These changes will provide consistency across RD programs as well as clarify the definitions for applicants.

The definitions of ''loan loss reserve fund (LLRF)'' and ''rural microloan revolving fund (RMRF)'' were modified to remove the requirement for the deposit accounts to be interest-bearing. Microenterprise Development Organizations have found it difficult to obtain interest-bearing accounts and when they are available, the monthly bank fees often exceed the interest earned.

At § 4280.310, ''Program requirements for MDOs,'' a requirement for all applicants to be registered in the System for Awards Management (SAM) prior to submitting an application was added. This requirement was added as a result of the Office of Management and Budget's publication of revisions to OMB Guidance for Grants and Agreements (2 CFR part 200) at 85 FR 49506, on August 13, 2020.

At § 4280.310(c), the minimum score required to be considered eligible to participate in the program was reduced from 70 to 60 points. The Agency's experience shows that 70 points was too restrictive and eliminated many small, rural MDOs from the program.

Section 4280.311(e) was revised to more closely align with the application and servicing process flows.

Clarification was provided, at § 4280.311(e)(3), that, in the event that the repayment terms of a loan are modified by the Agency, the term of the loan may not exceed a 20-year period from the loan origination date.

As a satisfactory participation designation impacts lending practices of the MDO after the first five years of participation in the program, additional information was added to § 4280.311(e)(4) to expand and clarify the performance metrics that must be met to be considered in ''satisfactory participation'' for the program.

Provisions were added to § 4280.311(e)(10) to allow for a greater than 25 percent disbursement of loan proceeds at closing to the extent that there are commitments to fund projects within 60 days of loan closing. This provision allows MDOs to promote their programs and provide funds needed by the small business community.

The frequency of fund distribution was changed at § 4280.311(e)(11) from ''not more often than quarterly'' to ''should be not more often than quarterly'' to allow some flexibility to the MDOs to request funds to more readily meet the needs of their customers.

At § 4280.311(e)(14), the Agency strengthened the penalties for using revolving microloan revolving funds for other than approved purposes to include default due to non-performance rather than just restricting access to future withdrawals. This provides the Agency with an additional option in the event of egregious or multiple instances of improper use of loan funds.

In order to meet the requirements of the 2018 Farm Bill, § 4280.313(a) was modified to allow for microlenders to receive up to 25 percent of their new loan amount as a technical assistance grant. Currently, the amount is limited to 25 percent of the first $400,000 of loans, then 5 percent of any amount over $400,000. The change will potentially increase the amount of technical assistance available to microborrowers.

The Agency clarified the annual grant process at § 4280.313(a)(1). The additional language provides information to applicants and grantees regarding grant awards, that are non-competitive and based on the microlender's loan balance as of June 30th of each year, as well as replenishment levels and the process used to distribute funds if full replenishment is not possible within available grant funds. This clarification provides details needed by grantees for planning and budgeting purposes.

Applicants are reminded at § 4280.315(a) to provide the documentation listed for a complete application and scoring purposes. Some applicants were confused as to what constituted a complete application. The Agency believes this reminder will reduce that confusion.

The scoring criteria at § 4280.316 was modified to clarify requirements for applicants and emphasize Agency priorities for the overall delivery of the program. While there are numerous changes, the total score possible has not changed. These changes include:

- Replacing ''within'' with ''between'' at § 4280.316.(b)(3)(iii)(A) and (B) to more accurately state that the calculated ratio must be within the intervals of the listed ratio in each priority level.
- Increased points from 1 to 2 for applicants that provide success stories to demonstrate the effect of technical assistance on their clients at § 4280.316(b)(4)(ii). This change allows the Agency to further prioritize this action.
- Removed § 4280.316(b)(4)(iv) ''Applicants that present their narrative clearly and concisely (five pages or less) and at a level expected by trainers and teachers will be awarded 1 point.'' This paragraph was removed as the Agency determined that it was vague and too subjective.
- At § 4280.316(b)(5)(iii), § 4280.316(c)(8)(iii) and § 4280.316(d)(4)(iii) the Agency removed, ''up to and including 10 percent''. This change made the criteria, ''8 percent or greater, 0 points will be awarded''. The Agency prioritizes maximizing the amount of actual technical assistance provided. This change serves to meet the goal of reducing the amount of grant funds that will be used for administrative expenses.
- Changed § 4280.316(c)(5) to remove subjective scoring for references and recommendations from other entities, to awarding one point for each support letter received from potential program beneficiaries or a local organization. The maximum points for this section is unchanged at five points.
- Merged the previous § 4280.316(d)(1)(i) and (ii) into one item at § 4280.316(d)(1)(i). The previous § 4280.316(d)(1)(i) was a data collection

request that was needed to support subsequent paragraphs and not a scoring priority in and of itself.

• Changed § 4280.316(d)(2)(iii) from subjective scoring of client evaluations to awarding 3 points if the Applicant conducts client evaluations. A scoring method for the evaluations is included with an additional 2 points awarded if the evaluation average is above 3.0 on a 5-point scale. The maximum total of 5 points for the criterion is unchanged.

• Changed § 4280.316(d)(4)(i) from ''less than 5 percent'' to ''up to and less than 5.0 percent'' so that 5.0 percent is included in this scoring criterion. Paragraph (ii) was changed to ''more than 5.0 percent but less than 8 percent'' from ''between 5 percent and 8 percent, . . .'' so that 5.0 percent is not included in this score and lastly § 4280.316(d)(4)(iii) was changed from ''Between 8 percent up to and including 10 percent'' to ''8 percent or greater'' so that all percentages greater than 8 are included.

• At § 4280.316(e)(3) information was added to provide information to applicants on how the Agency will handle unsuccessful applications under this section.

Application submission information at § 4280.317(a)(1) was updated to remove the requirement for the application package to be submitted in a three-ring binder.

Section 4280.317(a)(2) was modified to provide clarity to applicants on application submission and acceptance and funding cycles.

The Agency added clarifying language at § 4280.322(a) emphasizing that the total outstanding loan balance to any one microborrower may not exceed $50,000. The language was added as previous language limited individual loans to $50,000 not the total loans outstanding.

To comply with the provisions of Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), the Agency has added ''Loans supporting explicitly religious activities, such as worship, religious instruction or proselytization'' as an ineligible project type at § 4280.323(k). This addition provides additional guidance to applicants on activities that cannot be supported with Agency grant funds.

IV. Executive Orders/Acts

Executive Order 12866, Regulatory Impact Analysis

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the Rural Microentrepreneur Assistance Program is 10.870. All active CFDA programs and the CFDA Catalog can be found at the following website: *https://beta.sam.gov/*. The Government Printing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's on-line bookstore.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 2 CFR part 415, subpart C. Assistance to rural microenterprises will not require intergovernmental review.

Rural Development will conduct intergovernmental consultation using RD Instruction 1970–I ''Intergovernmental Review,'' available in any Rural Development office, on the internet at *http://www.rd.usda.gov/sites/default/files/1970i.pdf* and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/*.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570–0062 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. The APA exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Unfunded Mandates Reform Act

This final rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of § 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on

states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agency has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RBCS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

E-Government Act Compliance

Rural Development is committed to the E-Government Act of 2002, which generally requires government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development, a mission area for which RBCS is an agency, has reviewed this rule in accordance with USDA Departmental Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. Based on the analysis of the final rule, available data (including anecdotal), program purpose, application submission and eligibility criteria, issuance of this Final Rule is not likely to adversely or disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disabilities, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *OAC@usda.gov*.

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

List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs-business, Loan programs-business, Rural areas.

Accordingly, for the reasons discussed in the preamble, the Agency amends 7 CFR part 4280 as follows:

PART 4280—LOANS AND GRANTS

■ 1. The authority citation for part 4280 is revised to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2008s

■ 2. Revise subpart D to read as follows:

Subpart D—Rural Microentrepreneur Assistance Program

Sec.

4280.301 Purpose and scope.
4280.302 Definitions and abbreviations.
4280.303 Exception authority.
4280.304 Review or appeal rights and administrative concerns.
4280.305 Nondiscrimination and compliance with other Federal laws.
4280.306 Forms, regulations, and instructions.
4280.307–4280.309 [Reserved]
4280.310 Program requirements for MDOs.
4280.311 Loan provisions for Agency loans to microlenders.
4280.312 Loan approval and closing.
4280.313 Grant provisions.
4280.314 [Reserved]
4280.315 MDO application and submission information.
4280.316 Application scoring.
4280.317 Selection of applications for funding.
4280.318–4280.319 [Reserved]
4280.320 Grant administration.
4280.321 Grant and loan servicing.
4280.322 Loans from the microlenders to the microentrepreneurs.
4280.323 Ineligible microloan purposes and uses.
4280.324–4280.399 [Reserved]
4280.400 OMB control number.

Subpart D—Rural Microentrepreneur Assistance Program

§ 4280.301 Purpose and scope.

(a) This subpart contains the policies and procedures by which the Agency will administer the Rural Microentrepreneur Assistance Program (RMAP). The purpose of the Program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the Program will make direct loans and provide grants to selected Microenterprise Development Organizations. Selected Microenterprise Development Organization will use the funds to:

(1) Provide microloans to rural microentrepreneurs and microenterprises;

(2) Provide business-based training and technical assistance to rural microborrowers and potential microborrowers as an essential part of the microlending process;

(3) Perform other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for business startup and for growing microenterprises in compliance with §§ 4280.311 and 4280.312. Eligible microlenders will also be eligible to receive microlender technical assistance grants to provide technical assistance and training to microenterprises that

have received or are seeking a microloan under this program in compliance with § 4280.313.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to Microenterprise Development Organizations that have sources of funding other than program funds for making or facilitating microloans.

§ 4280.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by a Microenterprise Development Organization for the operation of services under this program. Not more than 10 percent of technical assistance grant funds may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agricultural production. The cultivation, growing, or harvesting of plants and crops (including farming), breeding, raising, feeding, or housing of livestock (including ranching).

Applicant. The legal entity, also referred to as a Microenterprise Development Organization, submitting an application to participate in the program.

Application. The required forms and documentation submitted by a Microenterprise Development Organization for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant, or both.

Business incubator. An organization that provides temporary premises at below market rates, technical assistance in developing business or marketing plans, technical services, use of equipment, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business. The business incubator may also provide access to capital through direct loans or referrals to loan programs.

Close relative. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan from the Agency or the Microenterprise Development Organization.

Delinquency. Failure by a Microenterprise Development Organization or microborrower to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project cost. The total cost of a microborrower's project for which a microloan is being sought from a microlender, less any costs identified as ineligible in § 4280.323.

Facilitation of access to capital. For purposes of this program, facilitation of access to capital means assisting a client of the technical assistance only grantee in obtaining a microloan, whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Federal fiscal year (FY). The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribe. Means the term as defined in 25 U.S.C. 5304(e).

Loan loss reserve fund (LLRF). A deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency. This account can be used to pay any shortage in the rural microloan revolving fund caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received loans or financial assistance from a microlender under this program in an amount of $50,000 or less.

Microenterprise. Microenterprise means:

(i) A sole proprietorship located in a rural area, as defined; or

(ii) A business entity located in a rural area, as defined, with not more than 10 full-time-equivalent employees. Such businesses may include any type of legal business that meets local standards of decency, though certain business types may be ineligible as defined in § 4280.323 Business types may also include agricultural producers provided they meet the stipulations in this definition.

Microenterprise development organization (MDO). A domestic organization that is a non-profit entity; an Indian tribe; or a public institution of higher education with loan or assistance programs for the benefit of rural microentrepreneurs and microenterprises. An MDO will:

(i) Provide training and technical assistance;

(ii) Make microloans or facilitate access to capital or other related services; and

(iii) Have a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a rural microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section. All microentrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than $50,000 for eligible purposes to a microborrower with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. An entity chartered as a nonprofit entity under State or Tribal Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural Microloan Revolving Fund (RMRF). An exclusive account on which the Agency will hold a first lien and from which microloans will be made by the MDO. All payments from microborrowers and reimbursements from the LLRF will be deposited into the RMRF account. Loan payments will be made to the Agency by the microlender from the RMRF.

Rural or rural area. Any area of a State not in a city or town, that has a population of more than 50,000 inhabitants, and which excludes certain

populations pursuant to 7 U.S.C. 1991(a)(13)(H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(i) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(ii) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be rural if they are ''not urban in character.''

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be rural if they are ''not urban in character.''

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance (TA) and training. A function performed for the benefit of a private business enterprise or a community which is a problem-solving activity such as market research, product and/or service improvement, feasibility study, worker training programs, etc., to assist in the economic development of a rural area.

Technical assistance grant. A grant from the Agency, the funds of which are used to provide TA and training.

(b) *Abbreviations.* The following abbreviations apply to the terms used in this subpart.

FTE—Full-time employee.

FY—Fiscal year.

LLRF—Loan loss reserve fund.

MDO—Microenterprise Development Organization.

RMAP—Rural Microentrepreneur Assistance Program.

RMRF—Rural microloan revolving fund.

TA—Technical assistance.

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government and may not conflict with applicable law. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the eligibility criteria; or

(b) To fund an interested party or applicant that has not successfully competed for funding in accordance with this subpart.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights.* An applicant MDO, a microlender, or grantee MDO may seek a review of an adverse Agency decision under this subpart from the appropriate Agency official that oversees the program in question, and/or appeal the Agency decision to the National Appeals Division in accordance with 7 CFR part 11.

(b) *Administrative concerns.* Any questions or concerns regarding the administration of the program, including any action of the microlender, may be sent to: USDA Rural Development, Rural Business-Cooperative Service, Program Management Division at 1400 Independence Avenue SW, Room 5160–S, Mail Stop 3226, Washington, DC 20250–3226 or its successor agency, or the local USDA Rural Development office.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Any entity receiving funds under this subpart must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application when the applicant completes or provides the Agency with sufficient demographic information to complete Form RD 400–8, ''Compliance Review''. Post-award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§ 4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's website at: *https://www.rd.usda.gov/page/regulations-and-guidance/* and for grants on the internet at *www.grants.gov*.

§ § 4280.307–4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO as provided in § 4280.302.

(2) *Citizenship.* Non-profit entities, to be eligible to apply for status as an MDO, must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the United States.

(3) *Legal authority and responsibility.* The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) *Other eligibility requirements.* The applicant must also provide evidence that it:

(i) Has demonstrated experience in the management of a revolving loan fund; or

(ii) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity so that the applicant has the capacity to manage such a revolving loan fund;

(iii) Is actively and successfully participating as an intermediary lender in good standing under similar loan programs; and

(iv) Provides an attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions at the time of initial entry into the program. Subsequent to acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the microlender have occurred.

(b) *System for Awards Management.* All applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Loan and grant recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure that they complete the Financial Assistance General Certifications and Representations in SAM.

(c) *Minimum score.* Once deemed eligible, an entity will be evaluated based on the scoring criteria in § 4280.316 for adequate qualification to participate in the program. Eligible MDOs must score a minimum of sixty (60) points in order to be considered to receive an award under this subpart.

(d) *Ineligible applicants.* An applicant will be considered ineligible if it:

(1) Does not meet the definition of an MDO as provided in § 4280.302;

(2) Is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs; or

(3) Has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court).

(e) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

(f) *Application eligibility and qualification.* An application will only be considered eligible for funding if it is submitted by an eligible MDO. The applicant will qualify for funding based on the results of review, scoring, and other procedures as indicated in this subpart, and the applicant will further:

(1) Establish an RMRF, or add capital to an RMRF originally capitalized under this program, and establish or continue a training and TA program for its microborrowers and prospective microborrowers; or

(2) Fund a TA-only grant program to provide services to rural microentrepreneurs and microenterprises.

(g) *Business incubators.* Because the purpose of a business incubator is to provide business-based TA and an environment in which micro-level, very small, and small businesses may thrive, a microlender that meets all other eligibility requirements and owns and operates a small business incubator will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funds to lend to an eligible microenterprise tenant, without creating a conflict of interest under § 4280.323(c).

§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs that it will administer by making and servicing microloans in one or more rural areas.

(b) *Eligible activities.* Microlenders may make microloans for qualified business activities and use Agency loan funds only as provided in § 4280.322.

(c) *Ineligible activities.* Microlenders may not use RMRF funds for administrative costs or expenses and may not make microloans under this program for ineligible businesses or purposes as specified in § 4280.323.

(d) *Cost share.* The Federal share of the eligible project cost of a microborrower's project funded under this section shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) *Microborrower project level option.* The loan covenants between the Agency and the microlender and the microlender's lending policies and procedures shall limit the microlender's loan to the microborrower to no more than 75 percent of the eligible project costs and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the project may be provided in cash (including through fees, grants, and gifts) or in the form of in-kind contributions.

(2) *RMRF level option.* The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower's eligible project costs. All contributed funds shall be maintained in the RMRF.

(e) *Loan terms and conditions for microlenders.* Program loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an account that will be the RMRF account and shall not be mingled with other MDO funds. The Agency will hold first lien position on the RMRF account, the LLRF account, and all notes receivable from microloans using Agency funds.

(2) The RMRF account will be used to make fixed-rate microloans, accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency loan and, with the advance written approval of the Agency, to supplement the LLRF with interest or fee earnings from the RMRF.

(3) The term of an Agency loan made to a microlender will be 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency. If a repayment workout is required after loan closing, the term of the loan may not exceed a 20-year period from the loan origination date.

(4) Each RMAP loan made to a microlender during its first five years of

participation in the program will bear an interest rate of 2 percent for the life of the loan. After the fifth year of an MDO's continuous and satisfactory participation in the program, each new loan made to the microlender will bear interest at a rate of 1 percent. The interest rate on previous loans will remain unchanged. Satisfactory participation requires a loan default rate of 5 percent or less, a pattern of delinquencies of 10 percent or less in the MDO's RMRF account(s), and timely submission of reports to the Agency as required by § 4280.311(h).

(5) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. The deferral period will begin on the day the Agency's loan to the microlender is closed. During the initial 2-year deferral period, each loan to a microlender will accrue interest only on funds disbursed by the Agency. Interest accrued during the 2-year deferral period will be capitalized to the loan's principal balance during the 24th month of the loan unless the microlender chooses to make a voluntary payment of the accrued interest. The required monthly payments to amortize the loan after the 2-year deferral period will be based on the full loan amount plus capitalized interest, not just the amount disbursed to the microlender, even in cases where the Agency's loan has not been fully advanced to the microlender.

(6) Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.

(7) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio. Partial or full repayment of debt to the Agency under the program may be made at any time, including during the deferral period, without any pre-payment penalties being assessed.

(8) The Agency may call the entire loan due and payable prior to the end of the full term due to any non-performance, delinquency, or default on the loan.

(9) The loan closing between the microlender and the Agency should take place within 90 days from the execution of Form RD 1940–1, ''Request for Obligation of Funds.'' Microlenders that are unable to close the loan within 90 days of obligation must provide justification for the delay or loan funds will be forfeited through a de-obligation of funds.

(10) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Funds disbursed at loan closing exceeding 25 percent of the loan amount will only be made if and to the extent that the MDO has made a funding commitment to an eligible microborrower that will be closed within 60 days from the Agency loan date. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(11) Microlenders may request in writing and receive additional loan disbursements until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement should be made not more often than quarterly and must be accompanied by a description of the microlender's anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the loan disbursement.

(12) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated and no longer available for disbursement to the MDO. In such cases where loan funds are deobligated, the Agency will establish a revised payment schedule to fully amortize the loan balance by its maturity date.

(13) In the event a microlender fails to meet its payment or reporting obligations to the Agency, the Agency may pursue any combination of the following:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF;

(ii) Call the loan due and payable in full; and/or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under the program) deemed acceptable to the Agency.

(14) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may take actions including the restriction of further access to withdrawals from the account by the microlender or declaring the loan in default due to improper use of loan funds.

(f) *Loan funding limitations*—(1) *Minimum and maximum loan amounts.* The minimum loan amount that a microlender may borrow under this program will be $50,000. The maximum amount any microlender may borrow on a single loan under this program, or in any given Federal FY, will be $500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(2) *Use of funds.* Agency loan funds must be used only to establish or recapitalize an existing Agency funded RMRF account out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made.

(g) *Loan loss reserve fund (LLRF).* Each microlender that receives one or more loans under the program will be required to establish an LLRF account.

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more microborrowers to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender under the program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The Agency will hold a security interest in the account and all funds therein until the MDO has repaid its debt to the Agency under this program.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in a Federally insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as any loans owed to the Agency by the microlender under the program related to such LLRF are paid in full.

(3) *Use of LLRF.* The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan;

(ii) Accept Non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under the program; and

(iii) Prepay or repay the Agency program loan.

(4) *LLRF funded at time of closing.* The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender and funds equal to

5 percent of the initial loan disbursement, if made at loan closing, must be made to the LLRF by the microlender. The amount in the LLRF can be built over time and must be maintained in an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under the program. After the first disbursement is made to a microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made to a microlender, subsequent loan closings may require a deposit of additional funds to the LLRF to maintain an amount equal to 5 percent of the total loan balance owed to the Agency under the program. Federal funds, except where specifically permitted by other laws, may not be used to fund the LLRF.

(5) *Additional LLRF funding.* In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio or a microborrower delinquency rate in excess of 10 percent, the Agency may require the microlender to deposit additional funds into the LLRF; however, the Agency may never require an LLRF balance of more than 10 percent of the total amount owed to the Agency by the microlender.

(h) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender or grantee does not have the capability to submit or accept such reports electronically.

(1) *Periodic reports.* On a quarterly basis, within 30 days of the end of each Federal FY calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) An Agency-approved form containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made;

(ii) Listing of each microborrower under this program, their loan balance and payment status; and

(iii) A discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package.

(2) *Minimum retention.* Microlenders must provide evidence in their quarterly reports that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency, unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) *Combining accounts and reports.* If a microlender has more than one loan from the Agency, a separate report must be made for each loan except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when the Agency approves the combining of accounts and reports in writing before such accounts are combined and reports are submitted, and:

(i) The underlying loans have the same rates, terms and conditions, including the method of determining matching funds for a microborrower's project; and

(ii) The combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate RMRF and LLRF reports had been prepared.

(4) *Delinquency.* In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the steps being taken to cure the delinquency.

(5) *Other reports.* Other reports may be required by the Agency from time to time in the event of poor performance, one or more work-out agreements, or other such occurrences that require more than the usual set of program servicing.

(6) *Access to microlender's records.* Upon request by the Agency, the microlender will permit representatives of the Agency to inspect and make copies of any records pertaining to operation and administration of the program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(7) *Changes in key personnel.* Before any additions or changes are made to key personnel, the microlender must notify, and the Agency must approve, such changes. Such approval shall not be unreasonably withheld by the Agency.

§ 4280.312 Loan approval and closing.

(a) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is executed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency after the microlender has signed the document, provided that the microlender has the legal authority to contract for a loan and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements.

(b) *Letter of conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions and may approve only minor changes that do not materially affect the microlender and remain within the program requirements. Changes in legal entities prior to loan closing will not be approved.

(c) *Loan closing.* (1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been or will be funded as described in § 4280.311(g)(4). Such evidence shall consist of:

(i) A pre-authorized debit form allowing the Agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form, from the depository institution providing the Agency with the RMRF account number, into which funds may be deposited at time of disbursement to the microlender;

(iii) A statement from the depository institution as to the amount of cash in the LLRF account;

(iv) An Agency-approved promissory note and a loan agreement for each loan to the MDO must be executed at loan closing. The loan agreement will be prepared by the Agency using Form RD 4274–4, ''Intermediary Relending Program/Rural Microentrepreneur Assistance Program Loan Agreement,'' and reviewed by the MDO prior to loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts must be executed at loan closing.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met; and

(ii) There has been no material adverse change in the microlender, its key personnel, or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the changes and the Agency must determine that the microlender remains eligible and qualified to participate as an MDO.

(3) The microlender will provide sufficient evidence that no lawsuits or other legal issues are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

Grants offered under this program will be made to eligible MDOs in such amounts and requirements for microlenders with a loan(s) from the Agency, and for MDOs that seek only a TA grant from the Agency. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender or grant recipient. No entity will receive grant funding as both a microlender and a TA-only provider. RMAP microlenders are not eligible for TA-only grant funding and an MDO receiving TA-only grant funding is not eligible for microlender grant funding. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, TA grant funds will be made available annually based on the MDO's lending balances and the availability of funds.

(a) *Microlender grants.* The Agency shall make microlender TA grants to microlenders to assist them in providing marketing, management, and other TA to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender. The capacity of a microlender to provide an integrated program of microlending and TA will be evaluated during the scoring process with their loan application and then annually in determining the amount of annual grant funds. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program. Microlender applicants for loan funding to establish or replenish a revolving loan fund originally capitalized under this program, may simultaneously apply for TA grant funds in an amount not to exceed 25 percent of the requested loan amount.

(1) Technical assistance grants to microlenders will be awarded annually on a non-competitive basis in an amount based on the MDO's outstanding loan balance as of June 30, subject to satisfactory program performance of the microlender and the availability of funds. Satisfactory performance includes the timely payment of program loan(s) and the submission of periodic reports to the Agency. Annual TA grants to a microlender, subject to the availability of funds, will be made in an amount to replenish the microlender's TA fund to an amount equal to 20 percent of the outstanding principal balance of loans made by the microlender to ultimate recipients unless otherwise published in an annual program funding notice. If available grant funds are not sufficient to fully replenish each microlender's TA funds to 20 percent of their outstanding loan balance, the available funds will be distributed proportionately based on the percentage of available funds to the total amount of annual TA grant funds requested.

(2) Any grant dollars obligated but not spent by the microlender from their initial or subsequent grants will be subtracted from the subsequent year's grant eligibility calculation to ensure that obligations cover only microloans made and active and that the MDO's total grant funds available for TA do not exceed the established 20 percent threshold.

(3) The microlender will agree to use TA grant funds exclusively for providing TA assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be used to cover the microlender's administrative expenses. Grant funds may not be used to make loan payments.

(b) *Technical assistance only grants.* Grants will be competitively made to MDOs for the purpose of providing TA and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based TA and training to eligible microentrepreneurs and microenterprises, but do not seek funding as a microlender for an RMRF.

(1) The amount of a TA-only grant under this program will not exceed 10 percent of the amount of authorized appropriations available in any Federal FY for TA-only grants.

(2) Technical assistance only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(3) Technical assistance only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of $50,000 or less, and

(ii) Collect data regarding such clients. Technical assistance-only grantees will be considered successful if a minimum of 1-in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving TA from the MDO.

(c) *Matching requirement.* The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funds.

(d) *Administrative expenses.* Not more than 10 percent of a grant received by an MDO for a Federal FY may be used to pay administrative expenses. Microlenders must annually submit a budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the requested amount, even if it is at 10 percent or less, and to fund administrative expenses at a lower level.

(1) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required in the application materials to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the grant funds for administrative purposes being scored higher than those using 10 percent of the grant funds for administrative purposes.

(2) While operating the program, the selected grantee will be expected to adhere to the estimates it provides in its application and annual budget. If for any reason the MDO cannot meet those expectations, it must contact the Agency in writing with justification to request a budget adjustment. Budget adjustments will be considered only if the adjustment result for administrative expenses is within the 10 percent limitation.

(3) Microlenders that exceed 10 percent for administrative expenses will be considered in performance default and may be subject to Agency actions including the forfeiting of funds.

(e) *Ineligible grant purposes.* Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(1) Grant application preparation costs;

(2) Costs incurred prior to the obligation date of the grant;

(3) Capital improvements;

(4) Political or lobbying activities;

(5) Assistance to any ineligible entity;

(6) Payment of any judgment or debt owed; or

(7) Payment of any loan.

(f) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and TA services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that these clients may take advantage of available financing programs.

(g) *Grant agreement.* For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement, setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Agency regulations are complied with.

§ 4280.314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual **Federal Register** document. The information required in §§ 4280.315 and 4280.316 is necessary for an application to be considered complete. Only those applicants that meet the basic eligibility requirements in § 4280.310 will have their applications fully scored and considered for participation in the program under this section. When preparing applications, applicants are strongly encouraged to review the application requirements and scoring criteria in § 4280.316 and provide documentation that will support a competitive score.

(b) *Content and form of submission.* All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) *Application information for all applicants.* All applicants must provide the following information and forms fully completed and with all attachments:

(1) Standard Form–424, ''Application for Federal Assistance'' for grants.

(2) Standard Form–424A, ''Budget Information—Non-Construction Programs.''

(3) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910–11, ''Certification of No Federal Debt.''

(4) Form RD 400–8, ''Compliance Review'' or sufficient demographic information for Agency completion of Form RD 400–8.

(5) Demonstration that the applicant is eligible to apply to participate in the program by submission of documentation as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements and a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(ii) If an Indian tribe, evidence that the applicant is a federally recognized Indian tribe, and that the Indian tribe neither operates nor is currently served by an existing MDO;

(iii) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(iv) For nonprofit applicants only, a Certificate of Good Standing, not more than six (6) months old, from the Office of the Secretary of State in the State, or tribal equivalent, in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(6) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under the program with similar rates and terms.

(d) *Type of application specific information.* In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) An applicant with more than 3 years of experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide sufficient documentation to validate its years of experience.

(2) An applicant with 3 years or less experience as an MDO outside of the program seeking to participate as an RMAP microlender must provide the additional information specified in § 4280.316(c).

(3) An applicant seeking status as a microlender must identify in its application which cost-share option(s) the applicant will utilize, as described in § 4280.311(d), to meet the Federal cost-share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(4) An applicant seeking TA-only grant funds must provide the additional information specified in § 4280.316(d).

(e) *Application limits.* Microenterprise Development Organizations may only submit and have pending for consideration one application at any given time, which is for either microlender funds or TA-only funds.

(f) *Completed applications.* Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of § 4280.316.

§ 4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using only the information submitted in the application. The total available points per application are 100 as shown in paragraphs (a) through (e) of this section. Awards will be based on the points ranking, with the highest scoring applications being funded first from the available funding.

(a) *Application requirements for all applicants.* All applicants must submit the eligibility and application information described in § 4280.315. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will submit:

(1) An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded based on the completeness of the organizational chart and management experience.

(2) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under the program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. Points will be awarded based on the quality of the resumes and on the ability of the key personnel to administer the program. Up to 5 points will be awarded.

(3) A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant's RMAP activities. Up to 5 points will be awarded.

(4) Information indicating an understanding of microenterprise development concepts. Provide those

parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of TA. Up to 5 points will be awarded.

(5) The applicant's most recent, and two-year's previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, including restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development and may or may not be a part of a larger statement. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served, which must be rural as defined, and include the number of counties or other jurisdictions to be served. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) *Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience.* In addition to the information required under paragraph (a) of this section, applicants with more than three (3) years of experience as a microlender, including non-RMAP microloans, must also provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this section (in addition to the up to 45 points available in paragraph (a) of this section) is 55.

(1) *History of provision of microloans.* The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (v) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Up to a maximum of 20 points may be awarded under this criterion.

(i) Number and amount of microloans made during each of the three previous years.

(ii) Number and amount of microloans made in rural areas, as defined, in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows at least one loan made in:

(A) Three or more consecutive years immediately prior to the application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.

(iii) Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three years. If the percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Enter the dollar amount of microloans made in rural areas as a percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three years. If the percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the state) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in the Americans with Disabilities Act). Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 5 points will be awarded.

(A) If at least one loan has been made to each of the three demographic groups and if the percentage of loans made to each demographic group is 5 percent or less of their demographic makeup, 5 points will be awarded.

(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each between 5 to 10 percent or less of the demographic makeup, 3 points will be awarded.

(C) If at least one loan has been made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percent of the demographic makeup, 1 point will be awarded.

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(2) *Portfolio management.* The applicant's ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

(i) Enter the total number of the applicant's microloans paying on time for the three previous years. If the total number of microloans paying on time at the end of each year over the prior three years is:

(A) 95 percent or more, 5 points will be awarded;

(B) At least 85 percent but less than 95 percent, 3 points will be awarded;

(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans currently 30 to 90 days in arrears, or that have been written off over the three previous years. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 5 points will be awarded;

(B) More than 5 percent, 0 points will be awarded.

(3) *History of provision of technical assistance.* The Applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iii) of this section. Applicants may use a chart to provide this information as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three years. If the provision of both microloans and TA services to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three years. If the demonstrated provision of microloans and TA services to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the ratio of TA clients that also received microloans, rounding to the nearest whole number, during each of the previous three years. If the ratio of clients receiving TA services to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) A ratio of either 1:9 or 1:10, 1 point will be awarded.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such TA and discussing the outcomes of their endeavors. Technical assistance is defined in § 4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iii) of this section. Points may be awarded for each of the categories. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and TA (*e.g.,* classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of TA on their clients will be awarded 2 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the average level of evaluation scores is ''good'' or higher will be awarded 1 point.

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funds, 5 points will be awarded;

(ii) Equal to 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(c) *Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience.* In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the maximum of 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funds. Provide goals and milestones for planned microlending and TA activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than five pages in length. Up to a maximum of 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business by the Secretary of State, or tribal equivalent, in which it is registered and engaged regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 3 points will be awarded;

(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded. (If more than 3 full years, the applicant must apply under the provisions for MDOs with more than 3 years of experience as specified in paragraph (b) of this section.)

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization's strategic plan. The applicant should not submit training brochures or conference announcements. Up to a maximum of 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant's ability to perform the services described in the work plan. Discuss how Agency grant funds will be used to assist with TA program delivery and how funding of the program loan application will affect the portfolio. Up to 5 points will be awarded.

(5) Applicants may submit a maximum of five (5) letters of support with one point awarded for each letter. Support letters should be signed and dated and come from potential beneficiaries and other local organizations. Letters received from Congressional members and technical assistance providers will not be included in the count of support letters received. Additionally, identical form letters signed by multiple potential beneficiaries and/or local organizations will not be included in the count of support letters received. The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant's capacity to perform the work in the plan provided. Up to a maximum of five (5) points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for the same. Up to 5 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(d) *Application requirements for MDOs seeking TA-only grants.* Technical assistance-only grants may be provided to MDOs that are not RMAP microlenders seeking to provide training and technical assistance to rural microentrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) *History of provision of TA.* Each applicant's history of provision of TA to microentrepreneurs and microenterprises, and its ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iii) of this section. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both TA services and resultant microloans for each of the previous three years. Of this total number, provide the percentage of rural microentrepreneurs and rural microenterprises that received both TA services and resultant microloans for each of the previous three years. If the provision of both TA services and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(ii) Provide the percentage of the total number of rural microentrepreneurs by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three years. If the demonstrated provision of TA and resultant microloans to these rural microentrepreneurs when compared to the total number of microentrepreneurs assisted, is at a rate of:

(A) 75 percent or more, 10 points will be awarded;

(B) At least 50 percent but less than 75 percent, 7 points will be awarded;

(C) At least 25 percent but less than 50 percent, 5 points will be awarded.

(iii) Provide the ratio of TA clients that also received microloans during each of the last three years, rounded to the nearest whole number. If the ratio of clients receiving TA to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) *Ability to provide TA.* In addition to providing a statistical history of their provision of TA to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide TA and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and TA (*e.g.,* classroom training, peer-to-peer discussion groups, individual assistance, and distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of TA on their clients will be awarded points under either of the following paragraphs, but not both:

(A) News stories that highlight businesses made successful as a result of the applicant's TA; 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of TA, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs will be awarded 3 points. Applicants will provide the total number of evaluations received and the average score from the evaluations received. An additional two points will be awarded if the total evaluation scores are above an average of 3.0 on a five-point scale, with points determined by the client ratings on a declining scale as follows:

(A) Extremely Satisfied, 5 points.

(B) Satisfied, 4 points.

(C) Average, 3 points.

(D) Dissatisfied, 2 points.

(E) Very Unsatisfied, 1 point.

(iv) Applicants that present well-written narrative information regarding their programs and services to be delivered and their outreach efforts within the service area that is clearly and concisely written and is five pages or less will be awarded up to a maximum of 5 points.

(3) *Technical assistance plan.* Submit a concise plan for the provision of TA explaining how the funds will benefit the current program and how it will allow the applicant to expand its non-program microlending activities. Up to 10 points will be awarded.

(4) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than or equal to 5 percent of the TA grant funds, 5 points will be awarded;

(ii) More than 5 percent but less than 8 percent, 3 points will be awarded;

(iii) Equal to 8 percent or greater, 0 points will be awarded.

(e) *Re-application requirements for participating microlenders with more than 5 years of experience as a microlender under this program.* (1) Microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application that includes the following:

(i) A letter of request for funding stating the amount of loan and/or grant funds being requested;

(ii) An indication of the loan and/or grant amounts being requested accompanied by a completed Form SF 424 and any pertinent attachments;

(iii) An indication of the number and percent of the MDO's microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement from program funds; and

(iv) A recent resolution of the applicant's Board of Directors approving the application for debt.

(2) The Agency, using this request and data available in the reports submitted under previous funding(s), will review the overall program performance of the applicant over the life of its participation in the program to determine its continued qualification for subsequent funds. Requirements include:

(i) A loan default rate of 5 percent or less;

(ii) A pattern of delinquencies during the period of participation in this program of 10 percent or less;

(iii) A pattern of use of TA dollars that indicates at least one in ten TA clients receive a microloan;

(iv) A statement discussing the need for more funding, accompanied by account documentation showing the amounts in each of the RMRF and LLRF accounts established to date; and

(v) A pattern of compliance with program reporting requirements.

(3) Shortened applications under this section will be rated on a pass or fail basis. Passing applications will be assigned a score of 90 points and will

be ranked accordingly in the quarterly competitions. Failing applications under this section will be scored 0 and experienced MDOs may be required to complete the application requirements of paragraph (b) of this section.

§ 4280.317 Selection of applications for funding.

All eligible applications received will be scored using the scoring criteria specified in § 4280.316 and funded in descending order from the highest total score to applications receiving 60 points, subject to the authorization of appropriations for the Federal FY. If two or more applications have the same score and available funds cannot fund the individual projects, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) *Timing and submission of applications.* (1) All applications must be submitted as a complete application in one package of materials. Packages must be in the order of appearance in § 4280.315. Applications that are disorganized or otherwise not ready for evaluation will be returned to the applicant and not considered for funding.

(2) Applications will be accepted on a continuing basis at any Rural Development State Office and will compete nationally for available funds on a quarterly basis using Federal fiscal quarters.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 60 points or more for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after competing for funds in four quarters will be returned to the applicant.

(b) *Availability of funds.* If an Application is received, scored, and ranked, but insufficient funds remain to fully fund the project, the Agency may elect to fund an Application requesting a smaller amount that has a lower score. Before this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the project is financially feasible at the lower amount.

(c) *Applicant notification.* The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and provide closing procedures for the loan and/or grant awardees.

(d) *Closing.* Awardees unable to complete closing for an approved obligation within 90 days or an extended date approved by the Agency will forfeit their funding award in accordance with § 4280.311(e)(9).

§ § 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including:

(i) Narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This narrative will include information on the MDO's TA, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) If requesting grant funds at the time of reporting, an executed SF–270 form and a brief description of the proposed activity-based expenditures are required.

(2) If a microlender has more than one grant from the Agency, a separate report must be made for each grant.

(3) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(b) *Payments.* The Agency will make grant payments not more often than quarterly. The first grant payment may be made in advance and will equal no more than one fourth of the grant award. Other payment requests must be submitted on Standard Form 270 and will only be paid if the MDO's reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs, all grants will be serviced in accordance with applicable regulations, including 7 CFR part 1951, subparts E and O, 7 CFR part 3, and the Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 200, 215, 220, 230, and OMB Circulars A–110 and A–133. Loans to microlenders will be serviced in accordance with 7 CFR part 1951, subparts E, O, and R, and OMB Circular A–129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a program loan to a microlender is to enable that microlender to make microloans to rural microenterprises and microentrepreneurs. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay its loan from the Agency. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. The microlender is responsible for full repayment to the Agency of its loan regardless of the performance of its microloan portfolio.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be $50,000. The total outstanding balance of microloans to any microborrower may not exceed $50,000.

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated between the prospective microborrower and the microlender, with the following limitations:

(1) No microloan may have a term of more than 10 years;

(2) The interest rate charged to the microborrower will be established at or before the microloan closing and at such a rate that the microloan is affordable to the microborrower and provides a reasonable margin of earnings to the microlender.

(c) *Microloan insurance requirements.* The microlender has full discretion to require reasonable hazard, key person, and other insurance coverage from the microborrower as part of the loan transaction.

(d) *Credit elsewhere test.* Microborrowers will be subject to a ''credit elsewhere'' test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable repayment terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower's affordability. Evidence may include a comparison of rates, loan

limitations, terms, or other requirements from other funding sources. Denial letters from other lenders are not required.

(e) *Fair credit requirements.* To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending practices and Federal nondiscrimination requirements as stated in § 4280.305.

(f) *Eligible microloan purposes.* Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

(1) Working capital;

(2) The purchase of furniture, fixtures, supplies, inventory or equipment;

(3) Debt refinancing;

(4) Business acquisitions; and

(5) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funds. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings are considered to be demolition or construction.

(g) *Military personnel.* Military personnel who are or seek to be a microentrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or TA and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

Agency loan funds will not be used for the payment of microlender administrative costs or expenses and microlenders may not make microloans under the program for any of the purposes and uses identified as ineligible in paragraphs (a) through (n) of this section.

(a) Construction costs including property demolition, renovation, elimination of walls, or property additions.

(b) The financing of timeshares, apartments, duplexes, or other residential housing.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives, as defined; or

(2) Financial assistance to any entity which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than business purposes.

(e) Microloans to a charitable institution not gaining sufficient revenue from business sales or services to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(g) Any microloan to an applicant that has an RMAP-funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe a combined amount of more than $50,000 to one or more microlenders under the program.

(h) Assistance to USDA Rural Development employees, or their close relatives, as defined.

(i) Microloans for any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(k) Loans supporting explicitly religious activities, such as worship, religious instruction or proselytization.

(l) Golf courses, race tracks, or gambling facilities.

(m) Funding of any political or lobbying activities.

(n) Lines of credit.

§ § 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0062. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021–10146 Filed 5–13–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0127; Project Identifier MCAI–2020–00829–R; Amendment 39–21557; AD 2021–10–24]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. (Type Certificate Previously Held by Agusta S.p.A.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2015–25–04 for Agusta S.p.A (now Leonardo S.p.a.) Model A109A and A109A II helicopters. AD 2015–25–04 required inspecting the slider assembly pitch control (slider) for play and replacing the slider if the play exceeds certain limits. This AD was prompted by further investigation that led to the determination that the play was caused by a manufacturing issue. This AD retains certain requirements of AD 2015–25–04, requires replacing certain part-numbered sliders as a terminating action for the inspections, and prohibits installing the affected part on any helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 18, 2021.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0127; 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, the European Union Aviation Safety Agency (EASA) AD, 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: Matthew Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–25–04, Amendment 39–18342 (80 FR 76381, December 9, 2015), (AD 2015–25–04). AD 2015–25–04 applied to Agusta S.p.A (now Leonardo S.p.a.) Model A109A and A109A II helicopters. The NPRM published in the **Federal Register** on March 8, 2021 (86 FR 13232). In the NPRM, the FAA proposed to retain the initial and repetitive 25 hours time-in-service (TIS) inspections required by AD 2015–25–04 and depending on the inspection results, continue to require replacing the slider with an airworthy slider. Additionally, the NPRM proposed to require, within 800 hours TIS, removing slider part number (P/N) 109–0130–11–7 from service and replacing it with a modified slider P/N 109–0130–11–7 marked with an ''R'' after the serial number, which would provide a terminating action for the repetitive inspections. Finally, the NPRM proposed to prohibit installing certain sliders on any helicopter. The NPRM was prompted by EASA AD 2020–0142, dated June 25, 2020 (EASA AD 2020–0142), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Leonardo S.p.a. Model A109A and A109A II helicopters with a certain part-numbered slider. EASA AD 2020–0142 supersedes EASA AD 2015–0097, dated June 1, 2015 (EASA AD 2015–0097). EASA AD 2015–0097 was issued after unusual play was detected on a certain part-numbered slider. EASA advised in EASA AD 2015–0097 that investigation revealed excessive wear of the slider broaching at the point of contact with the tail rotor shaft but that the cause of the excessive play had not been determined. EASA AD 2015–25–04 prompted the FAA to issue AD 2015–25–04. EASA now advises that further investigation results identified the reason for the excessive play was a manufacturing issue. Accordingly, EASA AD 2020–0142 retains the repetitive inspections for a certain part-numbered slider, requires replacing a certain part-numbered slider with a modified slider, and provides a terminating action for the repetitive inspections.

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data 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 helicopters as proposed in the NPRM; however, the paragraphs have been restructured to meet current formatting requirements, and the responsible office for approving Alternative Methods of Compliance has been revised. These changes will neither increase the scope of the AD nor increase the economic burden on any operator.

Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 109–149, Revision A, dated May 18, 2020, which specifies procedures for repetitively inspecting the slider for play. This service information also references procedures for replacing the affected slider with a modified slider.

Differences Between This AD and the EASA AD

The EASA AD requires replacing the affected part-numbered slider within 60 months, while this AD requires replacing the affected slider within 800 hours TIS.

Costs of Compliance

The FAA estimates that this AD affects 147 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Inspecting the slider for play takes about 1 work-hour for an estimated cost of $85 per helicopter and $12,495 for the U.S. fleet per inspection cycle. Replacing a slider takes about 10 work-hours and parts cost about $4,068 for an estimated cost of $4,918 per helicopter and $722,946 for the U.S. fleet.

According to Leonardo Helicopters' service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected persons. The FAA does not control warranty coverage by Leonardo Helicopters. Accordingly, the FAA has included all costs in this cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) 2015–25–04, Amendment 39–18342 (80 FR 76381, December 9, 2015); and

■ b. Adding the following new AD:

2021–10–24 Leonardo S.p.a (Type Certificate Previously Held by Agusta S.p.A.): Amendment 39–21557; Docket No. FAA–2021–0127; Project Identifier MCAI–2020–00829–R.

(a) Effective Date

This airworthiness directive (AD) is effective June 18, 2021.

(b) Affected ADs

This AD replaces AD 2015–25–04, Amendment 39–18342 (80 FR 76381, December 9, 2015).

(c) Applicability

This AD applies to Leonardo S.p.a. (Type Certificate previously held by Agusta S.p.A.) Model A109A and A109A II helicopters, certificated in any category, with a slider assembly pitch control (slider) part number (P/N) 109–0130–11–7 installed, except those sliders marked with an ''R'' after the serial number.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail Rotor Control System.

(e) Unsafe Condition

This AD defines the unsafe condition as play on a slider. This condition could result in loss of tail rotor pitch control and consequently loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 25 hours TIS, inspect the slider for play. If there is play greater than 2.3 millimeters (0.09 inch), before further flight, replace the slider with a slider P/N 109–0130–11–7 with suffix ''R'' marked after the serial number.

(2) Within 800 hours TIS after the effective date of this AD, if not previously required per paragraph (g)(1) of this AD, replace slider P/N 109–0130–11–7 with slider P/N 109–0130–11–7 with suffix ''R'' marked after the serial number.

(3) Installing slider P/N 109–0130–11–7 with suffix ''R'' marked after the serial number is a terminating action for the repetitive inspections required by paragraph (g)(1) of this AD.

(4) As of the effective date of this AD, do not install slider P/N 109–0130–11–7 on any helicopter unless the slider is marked with suffix ''R'' after the serial number.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*.

(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.

(i) Related Information

(1) For more information about this AD, contact Matthew Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

(2) Leonardo Helicopters Alert Service Bulletin No. 109–149, Revision A, dated May 18, 2020, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2020–0142, dated June 25, 2020. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0127.

Issued on May 6, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10191 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0342; Project Identifier MCAI–2020–01547–T; Amendment 39–21530; AD 2021–09–16]

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–100–1A10 airplanes. This AD was prompted by a report of a number of low altitude engine surge incidents during takeoff. This AD requires revising the existing airplane flight manual and applicable corresponding operational procedures to provide the flightcrew with procedures to require the engine bleeds to be ''ON'' during takeoff. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective June 1, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 1, 2021.

The FAA must receive comments on this AD by June 28, 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., 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 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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0342.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0342; 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: Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA) which is the aviation authority for Canada, has issued TCCA AD CF–2020–47, dated November 18, 2020 (TCCA AD CF–2020–47) (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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0342.

This AD was prompted by a report of a number of low altitude engine surge incidents during takeoff. Under certain environmental conditions (*e.g.,* temperature/thermal inversion), the existing engine control features can lead to engine surge. The FAA is issuing this AD to address engine surges during takeoff, which can result in significant loss of engine thrust or even engine shutdown and can occur on both engines at the same time. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Section 02–04, ''Systems Limitations,'' of Chapter 02, ''LIMITATIONS''; and Section 04–03 of Chapter 04, ''NORMAL PROCEDURES''; of Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 63, dated April 1, 2021. Section 02–04, ''Systems Limitations,'' of Chapter 02, ''LIMITATIONS'' provides a procedure for ''Air Conditioning and Pressurization''; and Section 04–03 of Chapter 04, ''NORMAL PROCEDURES'' provides a procedure for ''Taxi and Before Takeoff.'' The procedures require the left and right engine bleeds to be ''ON'' during takeoff. (For obtaining the procedures for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.) 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 airplane flight manual and applicable corresponding operational procedures to provide the flightcrew with procedures that require the engine bleeds to be ''ON'' during takeoff.

Explanation of Incorporating Information Specified in an AFM Revision

This AD requires including the information that is provided in the referenced AFM revision in paragraph (g) of this AD. The language in paragraph (g) of this AD is designed to allow incorporating the specific information, regardless of the revision level of the AFM in use, provided the language is identical to the referenced AFM revisions specified in paragraph (g) of this AD. The language in a later revision of the Challenger 300 Airplane Flight Manual, Publication No. CSP 100–1 that is the same as the language in Challenger 300 Airplane Flight Manual, Publication No. CSP 100–1, Revision 63, dated April 1, 2021, may be incorporated.

FAA's Justification and Determination of the Effective Date

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 waiving notice and comment prior to adoption of this rule because engine surges during takeoff can result in significant loss of engine thrust or even engine shutdown and can occur on both engines at the same time. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

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–2021–0342; Project Identifier MCAI–2020–01547–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 Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Interim Action

The FAA considers this AD interim action. The engine manufacturer is in the process of developing new engine control software to address the problem of low altitude engine surges occurring under certain environmental conditions. Once this software is developed, approved, and available, the FAA might consider additional 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 356 airplanes of U.S. registry. The FAA estimates the following costs to comply with this 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	$30,260

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:

2021–09–16 Bombardier, Inc.: Amendment 39–21530; Docket No. FAA–2021–0342; Project Identifier MCAI–2020–01547–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 1, 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 20457 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic; 73, Engine Fuel and Control.

(e) Reason

This AD was prompted by a report of a number of low altitude engine surge incidents during takeoff. The FAA is issuing this AD to address engine surges during takeoff, which can result in significant loss of engine thrust or even engine shutdown and can occur on both engines at the same time.

(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 include the information in the ''Air Conditioning and Pressurization'' procedure in Section 02–04, ''Systems Limitations,'' of Chapter 02, ''LIMITATIONS''; and the ''Taxi and Before Takeoff'' procedure in Section 04–03 of Chapter 04, ''NORMAL PROCEDURES''; of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 63, dated April 1, 2021.

Note 1 to paragraph (g): For obtaining the procedures for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the information in Section 02–04, ''Systems Limitations,'' of Chapter 02, ''LIMITATIONS''; and Section 04–03 of Chapter 04, ''NORMAL PROCEDURES''; of any airplane flight manual specified in paragraphs (h)(1) through (3) of this AD.

(1) Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 60, dated July 1, 2020.

Note 2 to paragraph (h)(1): For obtaining the procedures for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(2) Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 61, dated September 25, 2020.

(3) Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 62, dated December 22, 2020.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your 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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–47, dated November 18, 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–2021–0342.

(2) For more information about this AD, contact Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

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

(k) 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) Section 02–04, ''Systems Limitations,'' of Chapter 02, ''LIMITATIONS,'' of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 63, dated April 1, 2021.

(ii) Section 04–03 of Chapter 04, ''NORMAL PROCEDURES,'' of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 63, dated April 1, 2021.

(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.*

Note 2 to paragraph (j)(3): For obtaining the procedures for Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(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 23, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10259 Filed 5–11–21; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0341; Project Identifier AD–2021–00325–T; Amendment 39–21529; AD 2021–09–15]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, type certificated in any category; and Model C–130A, C–130B, C–130BL, C–130E, C–130H, C–130H–30, C–130J, C–130J–30, EC–130Q, HC–130H, KC–130H, NC–130B, NC–130, and WC–130H airplanes, type certificated in the restricted or amateur category. This AD was prompted by a crack found on the web attachment flange of the center wing upper forward corner fitting. This AD requires an eddy current surface scan for cracks of the center wing upper and lower forward corner fittings and fasteners, a torque check of the left and right outer-wing-to-center-wing front-beam-web-joint-splice-angle fasteners, and repair, retorqueing, or replacement if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 1, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 1, 2021.

The FAA must receive comments on this AD by June 28, 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 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Customer Support Center, Dept. 3E1M, Zone 0591, 86 S Cobb Drive, Marietta, GA 30063; telephone 770–494–9131; email *hercules.support@lmco.com;* internet *https://www.lockheedmartin.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. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0341.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0341; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Fred Caplan, Aerospace Engineer, Airframe Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5507; fax: 404–474–5606; email: *Frederick.N.Caplan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA has received a report indicating that a crack was found on the web attachment flange of the center wing upper forward corner fitting. Loose fasteners in the wing station 220 wing joint at the front beam web can cause internal load redistribution and consequent cracked center wing upper and lower corner fittings and failed fasteners in those fittings. This condition, if not addressed, could result in reduced structural integrity of the airplane and loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021. This service information specifies procedures for an eddy current surface scan for cracks of the center wing upper and lower forward corner fittings and fasteners (including the exterior of the vertical flange of the corner fitting common to the front beam web and interior surfaces of the corner fitting horizontal and vertical flanges common to the beam cap), a torque check of left and right outer-wing-to-center-wing front-beam-web-joint-splice-angle fasteners (including checking for any loose, sheared, broken, or missing fasteners), retorqueing the outer-wing-to-center-wing front-beam-web-joint-splice-angle fasteners, and repair or replacement. 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.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the Service Information.''

Differences Between This AD and the Service Information

Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021, applies to Model 382, 382B, 382E, 382F, and 382G airplanes. This AD applies to Model C–130A, C–130B, C–130BL, C–130E, C–130H, C–130H–30, C–130J, C–130J–30, EC–130Q, HC–130H, KC–130H, NC–130B, NC–130, and WC–130H airplanes as well as the airplanes specified in Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021. The FAA has confirmed that all airplanes identified in paragraph (c) of this AD can comply with the actions specified in Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA has fully considered the effects of this AD (including costs to be borne by affected operators) from the earliest possible stages of AD development. This AD is based on those considerations, and was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this AD. In any event, the Federal Aviation Regulations require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined in this case that the requirements are necessary and the indirect costs would be outweighed by the safety benefits of the AD.

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 loose fasteners in the wing station 220 wing joint at the front beam web can cause internal load redistribution, and consequent cracked center wing upper and lower corner fittings and failed fasteners in those fittings, resulting in reduced structural integrity of the airplane and 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 data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2021–0341 and Project Identifier AD–2021–00325–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 Fred Caplan, Aerospace Engineer, Airframe Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5507; fax: 404–474–5606; email: *Frederick.N.Caplan@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because 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 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection, torque check, and retorque	40 work-hours × $85 per hour = $3,400	$0	$3,400	$68,000

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 120 work-hours × $85 per hour = Up to $10,200	Up to $100	Up to $10,300.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

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:

Is not a ''significant regulatory action'' under Executive Order 12866.

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:

2021–09–15 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–21529; Docket No. FAA–2021–0341; Project Identifier AD–2021–00325–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 1, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, type certificated in any category; and Model C–130A, C–130B, C–130BL, C–130E, C–130H, C–130H–30, C–130J, C–130J–30, EC–130Q, HC–130H, KC–130H, NC–130B, NC–130, and WC–130H airplanes, type certificated in the restricted or amateur category. The restricted and amateur category airplanes were originally manufactured by Lockheed Martin Corporation/Lockheed Martin Aeronautics Company; current type certificate holders include, but are not limited to, those specified in paragraphs (c)(1) through (9) of this AD.

(1) LeSEA Model C–130A airplanes, Type Certificate Data Sheet (TCDS) A34SO, Revision 1.

(2) T.B.M, Inc. (transferred from Central Air Services, Inc.), Model C–130A airplanes, TCDS A39CE, Revision 3.

(3) Western International Aviation, Inc., Model C–130A airplanes, TCDS A33NM.

(4) USDA Forest Service Model C–130A airplanes, TCDS A15NM, Revision 4.

(5) Snow Aviation International, Inc., Model C–130A airplanes, TCDS TQ3CH, Revision 1.

(6) Heavylift Helicopter, Inc. (transferred from Hemet Valley Flying Service), Model C–130A, TCDS A31NM airplanes, Revision 1.

(7) Heavylift Helicopters, Inc., Model C–130B airplanes, TCDS A35NM, Revision 1.

(8) Hawkins & Powers Aviation, Inc., Model HP–C–130A airplanes, TCDS A30NM, Revision 1.

(9) Coulson Aviation (USA), Inc., Model EC–130Q airplanes, TCDS T00019LA, Revision 2.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a crack found on the web attachment flange of the center wing upper forward corner fitting. The FAA is issuing this AD to address loose fasteners in a certain wing joint at the front beam web, which can cause internal load redistribution, and consequent cracked center wing upper and lower corner fittings and failed fasteners in those fittings, resulting in reduced structural integrity of the airplane and loss of control of the airplane.

(f) Compliance

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

(g) Inspection, Torque Check, and Corrective Actions

At the applicable compliance time specified in paragraph (g)(1) or (2) of this AD, do an eddy current surface scan for cracks of the center wing upper and lower forward corner fittings and fasteners, and do a torque check of the left and right outer-wing-to-center-wing front-beam-web-joint-splice-angle fasteners (including checking for any loose, sheared, broken, or missing fasteners), in accordance with the Accomplishment Instructions of Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021. If any cracking is found during the inspection, repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD. If any loose fastener is found during the torque check, retorque the fastener before further flight, in accordance with the Accomplishment Instructions of Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021. If any sheared, broken, or missing fastener is found during the torque check, replace the fastener before further flight.

(1) For airplanes that have accumulated 2,500 or more flight hours as of the effective date of this AD: Within 90 days after the effective date of this AD.

(2) For airplanes that have accumulated less than 2,500 flight hours as of the effective date of this AD: Within 270 days after the effective date of this AD.

(h) No Reporting

Although Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021, specifies to report inspection findings, this AD does not require any report.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 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 responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by a Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Designated Engineering Representative (DER) that has been authorized by the Manager, Atlanta ACO Branch, FAA, to make those findings. To be approved, the repair, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Fred Caplan, Aerospace Engineer, Airframe Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5507; fax: 404–474–5606; email: *Frederick.N.Caplan@faa.gov.*

(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 the AD specifies otherwise.

(i) Lockheed Martin Aeronautics Company Alert Service Bulletin A382–57–99, Revision 1, dated February 17, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Customer Support Center, Dept. 3E1M, Zone 0591, 86 S Cobb Drive, Marietta, GA 30063; telephone 770–494–9131; email *hercules.support@lmco.com;* internet *https://www.lockheedmartin.com.*

(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 23, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10262 Filed 5–11–21; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0365; Project Identifier MCAI–2021–00527–T; Amendment 39–21553; AD 2021–10–20]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional 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 ATR—GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. This AD was prompted by reports of temporary loss of all display units and the integrated electronic standby instrument (IESI). This AD requires revising the existing aircraft flight manual (AFM) and applicable corresponding operational procedures to update a systems limitation, limiting dispatch with certain equipment inoperative, performing an operational test of a certain contactor and an electrical test of a certain battery toggle switch, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective May 14, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 14, 2021.

The FAA must receive comments on this AD by June 28, 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 material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0365.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0365; 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 AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0120–E, dated May 3, 2021 (EASA Emergency AD 2021–0120–E) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain ATR—GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes.

This AD was prompted by reports of temporary loss of all display units and the IESI. The investigation is ongoing and the root cause is not yet known, but the initial investigation revealed that the battery toggle switch functional item number (FIN) 7PA and the contactor FIN 1PA were two potential contributors to the reported cases. The FAA is issuing this AD to address temporary loss of all display units and the IESI, which could result in loss of control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2021–0120–E describes procedures for revising the existing AFM to update a systems limitation for the transformer rectifier unit (TRU), limiting dispatch with certain equipment inoperative (which can be done by amending the operator's minimum equipment list (MEL)), performing an operational test of the contactor FIN 1PA for discrepancies (*i.e.,* a lack of power supply to DU 4 or a static inverter 1 INV FAULT not being displayed on 29VU), performing an electrical test of the battery toggle switch FIN 7PA, and corrective actions. Corrective actions include replacement of the contactor FIN 1PA and restoring wiring. EASA Emergency AD 2021–0120–E also describes procedures for reporting test results to ATR–GIE Avions de Transport Régional.

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

FAA's Determination

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 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 accomplishing the actions specified in EASA Emergency AD 2021–0120–E described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

EASA Emergency AD 2021–0120–E requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA Emergency AD 2021–0120–E is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA Emergency AD 2021–0120–E in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA Emergency AD 2021–0120–E that is required for compliance with EASA Emergency AD 2021–0120–E is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0365.

FAA's Justification and Determination of the Effective Date

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 waiving notice and comment prior to adoption of this rule because temporary loss of all display units and the IESI could result in loss of control of the airplane. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

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–2021–0365; Project Identifier MCAI–2021–00527–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 Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@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.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	$3,825

* Table does not include estimated costs for reporting or incorporating operational limitations.

Operators that have certain equipment affected by this AD are required to incorporate certain operational limitations. One way of doing so is revising the operator's existing FAA-approved MEL to include those operational limitations. If an operator chooses to revise their existing FAA-approved MEL, the FAA has determined that this revision takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. Since operators incorporate MEL changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the test results on U.S. operators to be $1,275, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$1,700	$1,870

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid

OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

2021–10–20 ATR—GIE Avions de Transport Régional: Amendment 39–21553; Docket No. FAA–2021–0365; Project Identifier MCAI–2021–00527–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 14, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) Emergency AD 2021–0120–E, dated May 3, 2021 (EASA Emergency AD 2021–0120–E).

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by reports of temporary loss of all display units and the integrated electronic standby instrument (IESI). The FAA is issuing this AD to address temporary loss of all display units and the IESI, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA Emergency AD 2021–0120–E.

(h) Exceptions to EASA Emergency AD 2021–0120–E

(1) Where EASA Emergency AD 2021–0120–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (1) of EASA Emergency AD 2021–0120–E specifies amending ''the applicable AFM [aircraft flight manual],'' but this AD requires amending ''the applicable existing AFM and applicable corresponding operational procedures.''

(3) Where paragraphs (1) and (2) of EASA Emergency AD 2021–0120–E specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(4) Where paragraph (5) of EASA Emergency AD 2021–0120–E specifies actions if ''discrepancies are detected,'' for this AD a ''discrepancy'' is defined as a lack of power supply to DU 4 or a static inverter 1 INV FAULT not being displayed on 29VU.

(5) The ''Remarks'' section of EASA Emergency AD 2021–0120–E does not apply to this AD.

(6) Paragraph(s) (6) and (7) of EASA Emergency AD 2021–0120–E specify to report test results to ATR within a certain compliance time. For this AD, report test results at the applicable time specified in paragraph (h)(6)(i) or (ii) of this AD.

(i) If the test was done on or after the effective date of this AD: Submit the report within 10 days after the test.

(ii) If the test was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the 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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour 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. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

(k) 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) European Union Aviation Safety Agency (EASA) Emergency AD 2021–0120–E, dated May 3, 2021.

(ii) [Reserved]

(3) For EASA Emergency AD 2021–0120–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0365.

(5) You may view this material 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 May 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10257 Filed 5–11–21; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0033; Airspace Docket No. 21–AEA–1]

RIN 2120–AA66

Amendment of Class E Airspace; Wellsville, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Wellsville Municipal Airport/Tarantine Field, Wellsville, NY. This action is the result of an airspace review caused by the decommissioning of the Wellsville VHF omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operational Network (MON) Program. The name and geographical coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, August 12, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Wellsville Municipal Airport/Tarantine Field, Wellsville, NY, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10892; February 23, 2021) for Docket No. FAA–2021–0033 to amend the Class E airspace extending upward from 700 feet above the surface at Wellsville Municipal Airport/Tarantine Field, Wellsville, NY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 8.6-mile (increased from a 7.9-mile) radius of Wellsville Municipal Airport/Tarantine Field, Wellsville, NY; removes the Wellsville VORTAC and associated extension from the airspace legal description; removes the HALOS NDB and extension east of the airport from the airspace legal description as

they are no longer required; adds an extension 2 miles each side of the 269° bearing from the airport extending from the 8.6 mile radius to 8.9 miles west of the airport; updates the name (previously Wellsville Municipal/Tarantine Field Airport, Wellsville, NY) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters.

This action is the result of an airspace review caused by the decommissioning of the Wellsville VOR, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA NY E5 Wellsville, NY [Amended]

Wellsville Municipal Airport/Tarantine Field, NY
(Lat. 42°06′34″ N, long. 77°59′24″ W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Wellsville Municipal Airport/Tarantine Field, and within 2 miles each side of the 269° bearing from the airport extending from the 8.6-mile radius to 8.9 miles west of the airport.

Issued in Fort Worth, Texas, on May 11, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–10208 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0055; Airspace Docket No. 21–ASW–4]

RIN 2120–AA66

Amendment of Class E Airspace; Hebbronville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Jim Hogg County Airport, Hebbronville, TX. This action is the result of an airspace review due to the decommissioning of the Hebbronville non-directional beacon (NDB).

DATES: Effective 0901 UTC, August 12, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Jim Hogg County Airport, Hebbronville, TX, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10891; February 23, 2021) for Docket No. FAA–2021–0055 to amend the Class E airspace extending upward from 700 feet above the surface at Jim Hogg County Airport,

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

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface at Jim Hogg County Airport, Hebbronville, TX, by removing the Hebbronville NDB and associated extension from the airspace legal description; and removes the cities associated with the airports to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters.

This action is the result of an airspace review due to the decommissioning of the Hebbronville NDB which provided navigation information for the instrument procedures at this airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Hebbronville, TX [Amended]

Jim Hogg County Airport, TX
(Lat. 27°20′58″ N, long. 98°44′13″ W)
O.S. Wyatt Airport, TX
(Lat. 27°25′18″ N, long. 98°36′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Hogg County Airport, and within a 6.5-mile radius of O.S. Wyatt Airport.

Issued in Fort Worth, Texas, on May 11, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–10209 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0008; Airspace Docket No. 20–AWP–50]

RIN 2120–AA66

Amendment of Class D and Revocation of Class E Airspace; Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace and revokes the Class E airspace extending upward from 700 feet or more above the surface at Gila Bend AF Aux Airport, Gila Bend, AZ. This action is the result of a biennial review of the airspace. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, August 12, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace and revokes the Class E airspace extending upward from 700 feet or more above the surface at Gila Bend AF Aux Airport, Gila Bend, AZ, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10880; February 23, 2021) for Docket No. FAA–2021–0008 to amend the Class D airspace and revoke the Class E airspace extending upward from 700 feet above the surface at Gila Bend AF Aux Airport, Gila Bend, AZ. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71:

Amends the Class D airspace at Gila Bend AF Aux Airport, Gila Bend, AZ, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

And revokes the Class E airspace extending upward from 700 feet or more above the surface to at Gila Bend AF Aux airport as it is no longer required.

This action is the result of a biennial review of the airspace.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Gila Bend, AZ [Amended]

Gila Bend AF Aux Airport, AZ
(Lat. 32°53′16″ N, long. 112°43′11″ W)

That airspace extending upward from the surface up to and including 3,900 feet MSL within a 4.2-mile radius of Gila Bend AF Aux Airport, excluding that airspace within Restricted Area R–2305. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP AZ E5 Gila Bend, AZ [Removed]

Issued in Fort Worth, Texas, on May 11, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–10207 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0001; Airspace Docket No. 21–ASW–2]

RIN 2120–AA66

Amendment of Class E Airspace; Durant, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Durant Regional Airport-Eaker Field, Durant, OK. This action is the result of an airspace review caused by the decommissioning of the Texoma VHF omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operational Network (MON) Program. The name and geographical coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, August 12, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Durant Regional Airport-Eaker Field, Durant, OK, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10885; February 23, 2021) for Docket No. FAA–2021–0001 to amend the Class E airspace extending upward from 700 feet above the surface at Durant Regional Airport-Eaker Field, Durant, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 6.9-mile) radius of Durant Regional Airport-Eaker Field, Durant, OK; updates the name (previously Eaker Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters.

This action is the result of airspace reviews caused by the decommissioning of the Texoma VOR, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Durant, OK [Amended]

Durant Regional Airport-Eaker Field, OK
(Lat. 33°56′23″ N, long. 96°23′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Durant Regional Airport-Eaker Field.

Issued in Fort Worth, Texas, on May 11, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–10211 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31369; Amdt. No. 3956]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 14, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2021.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 30, 2021.

Wade Terrell,

Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
17–Jun–21	MA	Stow	Minute Man Air Field	0/9425	2/26/21	RNAV (GPS) RWY 21, Orig-C.
17–Jun–21	GA	Mc Rae	Telfair-Wheeler	1/0312	3/25/21	RNAV (GPS) RWY 21, Amdt 1B.
17–Jun–21	AK	Marshall	Marshall Don Hunter Sr	1/0584	4/16/21	RNAV (GPS) RWY 7, Amdt 2A.
17–Jun–21	AK	Marshall	Marshall Don Hunter Sr	1/0586	4/16/21	RNAV (GPS)-A, Amdt 2.
17–Jun–21	AZ	Safford	Safford Rgnl	1/0612	2/9/21	RNAV (GPS) RWY 12, Orig-C.
17–Jun–21	AK	Napaskiak	Napaskiak	1/0619	4/16/21	RNAV (GPS) RWY 2, Orig.
17–Jun–21	AK	Napaskiak	Napaskiak	1/0621	4/16/21	RNAV (GPS) RWY 20, Orig.
17–Jun–21	AK	Kobuk	Kobuk	1/0789	4/5/21	RNAV (GPS) RWY 27, Orig-A.
17–Jun–21	AK	Kobuk	Kobuk	1/0791	4/5/21	RNAV (GPS) RWY 9, Orig-A.
17–Jun–21	AK	Scammon Bay	Scammon Bay	1/2222	4/5/21	RNAV (GPS)-B, Orig-A.
17–Jun–21	OR	Albany	Albany Muni	1/2478	4/5/21	VOR/DME OR GPS–A, Amdt 4A.
17–Jun–21	AK	Seward	Seward	1/2686	4/21/21	RNAV (GPS)-A, Orig-A.
17–Jun–21	AK	Igiugig	Igiugig	1/3706	4/5/21	RNAV (GPS) RWY 23, Orig-C.
17–Jun–21	AK	Igiugig	Igiugig	1/3707	4/5/21	RNAV (GPS) RWY 5, Orig-C.
17–Jun–21	AK	Kivalina	Kivalina	1/3777	4/5/21	RNAV (GPS) RWY 12, Amdt 1.
17–Jun–21	AK	Kivalina	Kivalina	1/3778	4/5/21	RNAV (GPS) RWY 30, Amdt 1A.
17–Jun–21	PA	Latrobe	Arnold Palmer Rgnl	1/3855	4/7/21	ILS OR LOC RWY 24, Amdt 17B.
17–Jun–21	PA	Reading	Reading Rgnl/Carl A Spaatz Fld	1/3983	4/23/21	ILS OR LOC RWY 13, Amdt 1D.
17–Jun–21	MO	Boonville	Jesse Viertel Meml	1/4045	2/17/21	RNAV (GPS) RWY 18, Orig-B.
17–Jun–21	MO	Boonville	Jesse Viertel Meml	1/4046	2/17/21	RNAV (GPS) RWY 36, Orig-A.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4058	2/17/21	VOR OR TACAN RWY 30C, Amdt 2B.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4059	2/17/21	RNAV (GPS) RWY 12R, Amdt 1C.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4060	2/17/21	ILS OR LOC RWY 30C, Amdt 3B.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4061	2/17/21	RNAV (GPS) Y RWY 30C, Amdt 1B.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4062	2/17/21	RNAV (GPS) RWY 30L, Amdt 1C.
17–Jun–21	AZ	Phoenix	Phoenix-Mesa Gateway	1/4063	2/17/21	RNAV (GPS) RWY 12C, Amdt 1B.
17–Jun–21	MD	Baltimore	Martin State	1/4073	2/25/21	LOC RWY 15, Amdt 3C.
17–Jun–21	MD	Baltimore	Martin State	1/4074	2/25/21	RNAV (GPS) RWY 33, Amdt 1A.
17–Jun–21	MD	Baltimore	Martin State	1/4076	2/25/21	RNAV (GPS) RWY 15, Amdt 1B.
17–Jun–21	MD	Baltimore	Martin State	1/4079	2/25/21	LDA RWY 33, Orig-A.
17–Jun–21	ME	Bar Harbor	Hancock County-Bar Harbor	1/4111	4/5/21	ILS OR LOC RWY 22, Amdt 6D.
17–Jun–21	ME	Bar Harbor	Hancock County-Bar Harbor	1/4112	4/5/21	RNAV (GPS) RWY 22, Amdt 1A.
17–Jun–21	ME	Bar Harbor	Hancock County-Bar Harbor	1/4113	4/5/21	RNAV (GPS) RWY 4, Amdt 1B.
17–Jun–21	TX	Anahuac	Chambers County	1/4261	4/6/21	RNAV (GPS) RWY 12, Orig-B.
17–Jun–21	LA	New Orleans	Lakefront	1/4296	2/25/21	VOR/DME RWY 36L, Amdt 9.
17–Jun–21	LA	New Orleans	Lakefront	1/4298	2/25/21	RNAV (GPS) RWY 36L, Orig-A.
17–Jun–21	LA	New Orleans	Lakefront	1/4302	2/25/21	RNAV (GPS) RWY 18R, Amdt 2.
17–Jun–21	LA	New Orleans	Lakefront	1/4311	2/25/21	ILS OR LOC RWY 18R, Amdt 1.
17–Jun–21	AK	Selawik	Selawik	1/4444	4/23/21	RNAV (GPS) RWY 27, Orig-B.
17–Jun–21	AK	Selawik	Selawik	1/4445	4/23/21	RNAV (GPS) RWY 4, Orig-D.
17–Jun–21	AK	Selawik	Selawik	1/4446	4/23/21	RNAV (GPS) Y RWY 22, Orig-D.
17–Jun–21	AK	Selawik	Selawik	1/4447	4/23/21	VOR RWY 4, Amdt 1C.
17–Jun–21	AK	Selawik	Selawik	1/4448	4/23/21	VOR RWY 22, Amdt 1C.
17–Jun–21	SC	Charleston	Charleston Exec	1/4476	2/17/21	RNAV (GPS) RWY 27, Amdt 2B.
17–Jun–21	SC	Charleston	Charleston Exec	1/4477	2/17/21	RNAV (GPS) RWY 9, Amdt 3B.
17–Jun–21	SC	Charleston	Charleston Exec	1/4478	2/17/21	RNAV (GPS) RWY 4, Orig.
17–Jun–21	SC	Charleston	Charleston Exec	1/4481	2/17/21	ILS OR LOC RWY 9, Amdt 2C.
17–Jun–21	MO	Kirksville	Kirksville Rgnl	1/4486	2/17/21	VOR–A, Amdt 15A.
17–Jun–21	MO	Kirksville	Kirksville Rgnl	1/4487	2/17/21	RNAV (GPS) RWY 36, Amdt 2A.
17–Jun–21	MO	Kirksville	Kirksville Rgnl	1/4488	2/17/21	RNAV (GPS) RWY 18, Amdt 2A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
17–Jun–21	MO	Kirksville	Kirksville Rgnl	1/4489	2/17/21	ILS OR LOC/DME RWY 36, Amdt 1A.
17–Jun–21	WA	Seattle	Boeing Fld/King County Intl	1/4537	2/24/21	RNAV (RNP) Z RWY 14R, Amdt 1.
17–Jun–21	WA	Seattle	Boeing Fld/King County Intl	1/4541	2/24/21	RNAV (GPS) Y RWY 14R, Amdt 1.
17–Jun–21	MD	Baltimore	Martin State	1/4587	2/25/21	VOR OR TACAN RWY 15, Orig-C.
17–Jun–21	FL	Fort Myers	Southwest Florida Intl	1/4770	2/25/21	VOR/DME OR TACAN RWY 24, Amdt 2B.
17–Jun–21	FL	Fort Myers	Southwest Florida Intl	1/4771	2/25/21	ILS OR LOC/DME RWY 6, Amdt 7A.
17–Jun–21	FL	Fort Myers	Southwest Florida Intl	1/4772	2/25/21	RNAV (GPS) RWY 24, Amdt 1B.
17–Jun–21	FL	Fort Myers	Southwest Florida Intl	1/4773	2/25/21	RNAV (GPS) RWY 6, Amdt 1B.
17–Jun–21	OH	East Liverpool	Columbiana County	1/4775	4/23/21	RNAV (GPS) RWY 25, Orig.
17–Jun–21	MO	New Madrid	County Meml	1/4827	2/22/21	RNAV (GPS) RWY 18, Orig.
17–Jun–21	MO	New Madrid	County Meml	1/4829	2/22/21	RNAV (GPS) RWY 36, Orig.
17–Jun–21	ND	Casselton	Casselton Robert Miller Rgnl	1/4832	2/22/21	RNAV (GPS) RWY 31, Amdt 1A.
17–Jun–21	ND	Casselton	Casselton Robert Miller Rgnl	1/4833	2/22/21	VOR/DME RWY 31, Amdt 1B.
17–Jun–21	IL	Springfield	Abraham Lincoln Capital	1/4941	4/7/21	ILS OR LOC RWY 31, Amdt 2B.
17–Jun–21	IL	Springfield	Abraham Lincoln Capital	1/4942	4/7/21	RADAR–1, Amdt 9B.
17–Jun–21	MO	Rolla/Vichy	Rolla Ntl	1/5034	2/22/21	VOR RWY 22, Amdt 8.
17–Jun–21	MO	Rolla/Vichy	Rolla Ntl	1/5035	2/22/21	VOR/DME RWY 4, Amdt 3.
17–Jun–21	MO	Rolla/Vichy	Rolla Ntl	1/5036	2/22/21	RNAV (GPS) RWY 22, Orig-A.
17–Jun–21	MO	Rolla/Vichy	Rolla Ntl	1/5037	2/22/21	RNAV (GPS) RWY 4, Orig.
17–Jun–21	CA	Palm Springs	Bermuda Dunes	1/5167	2/19/21	VOR–C, Orig-B.
17–Jun–21	CA	Palm Springs	Bermuda Dunes	1/5171	2/19/21	RNAV (GPS) RWY 28, Orig-A.
17–Jun–21	CA	Palm Springs	Bermuda Dunes	1/5172	2/19/21	RNAV (GPS) RWY 10, Orig-B.
17–Jun–21	MD	Ocean City	Ocean City Muni	1/5190	4/6/21	RNAV (GPS) RWY 14, Orig-G.
17–Jun–21	MD	Ocean City	Ocean City Muni	1/5191	4/6/21	RNAV (GPS) RWY 2, Orig-C.
17–Jun–21	MN	Brainerd	Brainerd Lakes Rgnl	1/5221	4/8/21	ILS OR LOC/DME RWY 34, Amdt 2.
17–Jun–21	NH	Jaffrey	Jaffrey/Silver Ranch	1/5285	4/26/21	VOR–A, Amdt 8A.
17–Jun–21	ME	Dexter	Dexter Rgnl	1/5473	4/6/21	RNAV (GPS) RWY 16, Orig-B.
17–Jun–21	ME	Dexter	Dexter Rgnl	1/5475	4/6/21	RNAV (GPS) RWY 34, Orig-A.
17–Jun–21	NY	Oneonta	Albert S Nader Rgnl	1/5483	4/8/21	RNAV (GPS) RWY 6, Orig-C.
17–Jun–21	NY	Oneonta	Albert S Nader Rgnl	1/5490	4/8/21	RNAV (GPS) RWY 24, Orig-C.
17–Jun–21	MI	Manistee	Manistee County-Blacker	1/5648	4/7/21	ILS OR LOC RWY 28, Amdt 1B.
17–Jun–21	MI	Manistee	Manistee County-Blacker	1/5649	4/7/21	RNAV (GPS) RWY 28, Orig B.
17–Jun–21	MI	Manistee	Manistee County-Blacker	1/5650	4/7/21	RNAV (GPS) RWY 10, Orig B.
17–Jun–21	TX	Eagle Lake	Eagle Lake	1/6411	4/6/21	VOR RWY 17, Amdt 5A.
17–Jun–21	MN	Roseau	Roseau Muni/Rudy Billberg Fld	1/6852	2/25/21	RNAV (GPS) RWY 16, Orig A.
17–Jun–21	MN	Roseau	Roseau Muni/Rudy Billberg Fld	1/6853	2/25/21	RNAV (GPS) RWY 34, Orig.
17–Jun–21	NH	Laconia	Laconia Muni	1/6869	2/26/21	RNAV (GPS) RWY 8, Orig-B.
17–Jun–21	NH	Laconia	Laconia Muni	1/6870	2/26/21	RNAV (GPS) RWY 26, Orig-C.
17–Jun–21	AK	Northway	Northway	1/7043	4/14/21	RNAV (GPS) RWY 5, Orig-A.
17–Jun–21	AK	Northway	Northway	1/7045	4/14/21	RNAV (GPS) RWY 23, Amdt 1C.
17–Jun–21	AK	Northway	Northway	1/7047	4/14/21	VOR/DME–A, Amdt 1.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7119	2/25/21	RNAV (GPS) RWY 36R, Orig-A.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7120	2/25/21	RNAV (GPS) RWY 36L, Orig-C.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7121	2/25/21	ILS OR LOC RWY 18L, Amdt 9H.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7124	2/25/21	VOR/DME RWY 18R, Orig-A.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7127	2/25/21	RNAV (GPS) RWY 18R, Orig-A.
17–Jun–21	MS	Greenville	Greenville Mid-Delta	1/7128	2/25/21	RNAV (GPS) RWY 18L, Orig-B.
17–Jun–21	FL	Dunnellon	Marion County	1/7710	2/26/21	RNAV (GPS) RWY 23, Orig-A.
17–Jun–21	TX	Eagle Lake	Eagle Lake	1/8112	4/6/21	RNAV (GPS) RWY 17, Amdt 1B.
17–Jun–21	NC	Goldsboro	Wayne Exec Jetport	1/8510	2/25/21	ILS OR LOC RWY 23, Amdt 2B.
17–Jun–21	NC	Goldsboro	Wayne Exec Jetport	1/8511	2/25/21	RNAV (GPS) RWY 23, Amdt 1B.
17–Jun–21	NC	Goldsboro	Wayne Exec Jetport	1/8512	2/25/21	RNAV (GPS) RWY 5, Amdt 1A.
17–Jun–21	NC	Goldsboro	Wayne Exec Jetport	1/8514	2/25/21	VOR–A, Amdt 6.
17–Jun–21	TX	Commerce	Commerce Muni	1/8570	2/24/21	RNAV (GPS) RWY 18, Orig-B.
17–Jun–21	CA	Jackson	Westover Fld Amador County	1/8591	2/9/21	VOR/DME RWY 1, Amdt 1D.
17–Jun–21	AK	Kaltag	Kaltag	1/8748	4/16/21	RNAV (GPS) RWY 21, Amdt 1B.
17–Jun–21	TX	Baytown	Baytown	1/9407	4/6/21	RNAV (GPS) RWY 32, Orig.
17–Jun–21	TX	Baytown	Baytown	1/9409	4/6/21	RNAV (GPS) RWY 14, Orig.
17–Jun–21	TN	Lebanon	Lebanon Muni	1/9413	4/5/21	RNAV (GPS) RWY 1, Orig.
17–Jun–21	TN	Lebanon	Lebanon Muni	1/9414	4/5/21	RNAV (GPS) RWY 19, Orig.
17–Jun–21	MN	Hibbing	Range Rgnl	1/9806	2/22/21	RNAV (GPS) RWY 31, Amdt 1A.
17–Jun–21	MN	Hibbing	Range Rgnl	1/9809	2/22/21	RNAV (GPS) RWY 13, Amdt 1B.
17–Jun–21	MN	Hibbing	Range Rgnl	1/9810	2/22/21	ILS OR LOC RWY 31, Amdt 13.

[FR Doc. 2021–10206 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31368; Amdt. No. 3955]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 14, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2021.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on April 30, 2021.

Wade Terrell,

Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 17 June 2021

Big Lake, AK, PAGQ, RNAV (GPS) RWY 7, Amdt 2
Big Lake, AK, PAGQ, RNAV (GPS RWY 25, Amdt 2
Big Lake, AK, PAGQ, VOR RWY 7, Amdt 7B
Venetie, AK, Venetie, Takeoff Minimums and Obstacle DP, Amdt 1
Venetie, AK, Venetie, Venetie Three Graphic DP
Bay Minette, AL, 1R8, RNAV (GPS) RWY 8, Amdt 2A
Bay Minette, AL, 1R8, RNAV (GPS) RWY 26, Orig-E
Daytona Beach, FL, KDAB, RNAV (GPS) RWY 25L, Amdt 1D
Cynthiana, KY, 0I8, RNAV (GPS) RWY 11, Orig-B
Cynthiana, KY, 0I8, RNAV (GPS) RWY 29, Orig-B
Beverly, MA, KBVY, LOC RWY 16, Amdt 8
Beverly, MA, Beverly Rgnl, VOR RWY 16, Amdt 5E, CANCELLED
Sanford, ME, KSFM, RNAV (GPS) RWY 32, Amdt 1
Ennis, MT, Ennis-Big Sky, Ennis Two Graphic DP
Ennis, MT, Ennis-Big Sky, Takeoff Minimums and Obstacle DP, Amdt 1
Rochester, NH, KDAW, RNAV (GPS) RWY 33, Amdt 1
Rochester, NH, KDAW, VOR/DME–A, Amdt 2A, CANCELLED
Schenectady, NY, KSCH, RNAV (GPS) RWY 4, Orig-D
Spartanburg, SC, KSPA, ILS OR LOC RWY 5, Amdt 2
Spartanburg, SC, KSPA, RNAV (GPS) RWY 5, Amdt 1
Dickson, TN, Dickson Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Houston, TX, KIAH, GLS RWY 27, Amdt 1C
Medford, WI, KMDZ, RNAV (GPS) RWY 9, Amdt 1
Medford, WI, KMDZ, RNAV (GPS) RWY 27, Amdt 1

RESCINDED: On April 26, 2021 (86 FR 21932), the FAA published an Amendment in Docket No. 31366 Amdt No. 3953, to Part 97 of the Federal Aviation Regulations under section 97.29 and 97.33. The following entries for Gary, IN, effective June 17, 2021, are hereby rescinded in their entirety:

Gary, IN, KGYY, ILS OR LOC RWY 30, Amdt 7
Gary, IN, KGYY, RNAV (GPS) Y RWY 12, Amdt 3
Gary, IN, KGYY, RNAV (GPS) Y RWY 30, Amdt 2
Gary, IN, KGYY, RNAV (RNP) Z RWY 12, Amdt 2
Gary, IN, KGYY, RNAV (RNP) Z RWY 30, Amdt 2

[FR Doc. 2021–10205 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0230]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Marker 365, Natchez, MS

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), Mile Markers 364.5 through 365.5. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with a fireworks display in the vicinity of Natchez, MS. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective from 4 p.m. through 7 p.m. on May 15, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0230 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 MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
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 Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with a fireworks display in the vicinity of Natchez, MS. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the firework display in the vicinity of Natchez, MS.

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 Sector Lower Mississippi River (COTP) has determined that potential hazards

associated with the firework display, would be a safety concern for all persons and vessels on the Lower Mississippi River between Mile Marker (MM) 364.5 and MM 365.5 in the vicinity of Natchez, MS. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone during the firework display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on May 15, 2021. The safety zone will cover all navigable waters of the LMR from MM 364.5 through MM 365.5 in the vicinity of Natchez, MS. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during the firework display.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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, location, and duration of the safety zone. This emergency safety zone will temporarily restrict navigation on the LMR at MM 762 through 782 in the vicinity of Natchez, MS on May 15, 2021. Moreover, The Coast Guard will issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The rule allows vessels to seek permission to enter the zone.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the LMR at MM 364.5 through 365.5 in the vicinity of Natchez, MS that will prohibit entry into this zone.. It is categorically excluded from further review under paragraph L60 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. Add § 165.T08–0230 to read as follows:

§ 165.T08–0230 Safety Zone; Lower Mississippi River, Mile Marker 365, Natchez, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 364.5 through 365.5 in the vicinity of Natchez, MS.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 901–521–4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(c) *Effective period.* This section is effective from 4 p.m. through 7 p.m. on May 15, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: May 5, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–10256 Filed 5–13–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0157; FRL–10023–27–Region 3]

Air Plan Approval; Pennsylvania; Allegheny County Area Attainment Plan for the 2012 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD) to address Clean Air Act (CAA or ''the Act'') requirements for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the Allegheny County Moderate $PM_{2.5}$ nonattainment area (the ''Allegheny County Area,'' or ''the Area''). The revision constitutes a comprehensive plan to ensure the Allegheny County Area's timely attainment of the 2012 $PM_{2.5}$ NAAQS. EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the CAA.

DATES: This final rule is effective on June 14, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0157. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

Epidemiological studies have shown statistically significant correlations between elevated levels of $PM_{2.5}$ (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[1] $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be

[1] *See* National Ambient Air Quality Standards for Particulate Matter; (2012) Final Rule (78 FR 3086–3088, January 15, 2013).

formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

EPA first established annual and 24-hour NAAQS for $PM_{2.5}$ on July 18, 1997.[3] The annual standard was set at 15.0 micrograms per cubic meter (μg/m³), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour (daily) standard was set at 65 μg/m³, based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each monitor within an area.[4] On October 17, 2006, EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³, based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[5] On January 15, 2013, EPA revised the annual standard to 12.0 μg/m³, based on a 3-year average of annual mean $PM_{2.5}$ concentrations.[6] We refer to this standard as the 2012 $PM_{2.5}$ NAAQS. The SIP submission at issue in this action pertains to the 2012 $PM_{2.5}$ NAAQS.

II. Summary of SIP Revision and EPA Proposed Action

EPA designated and classified the Allegheny County Area as ''Moderate'' nonattainment for the 2012 $PM_{2.5}$ NAAQS.[7] On September 30, 2019, PADEP submitted the Allegheny County $PM_{2.5}$ Plan SIP revision, on behalf of ACHD, in order to meet the applicable requirements for Moderate areas and to provide for attainment of the 2012 $PM_{2.5}$ NAAQS in the Allegheny County Area. The SIP revision contains the attainment demonstration for the Allegheny County Area (also referred to as ''the Allegheny County $PM_{2.5}$ Plan'' or ''the Plan''). On June 12, 2020 (85 FR 35852), EPA proposed to fully approve the following elements of the Allegheny County $PM_{2.5}$ Plan: The base year emissions inventory, the particulate matter precursor contribution demonstration, the reasonably available control measures/reasonably available control technology (RACM/RACT) element, the air quality modeling demonstration supporting attainment by the attainment deadline, the reasonable further progress (RFP) analysis, and the quantitative milestones to ensure timely attainment.[8]

Having identified deficiencies (and having obtained a commitment to remedy those deficiencies within one year of final action), EPA proposed a conditional approval of the contingency measures and the 2021 motor vehicle emission budget (MVEB) element of the Allegheny County $PM_{2.5}$ Plan. Pennsylvania committed (via an April 20, 2020 letter to EPA) to submit a supplemental SIP revision to remedy those two elements of the Plan by no later than twelve months after EPA's final conditional approval action.

As part of our June 12, 2020 proposal, we proposed to find that the suite of $PM_{2.5}$ control requirements in the Allegheny County $PM_{2.5}$ Plan meets all RACM/RACT requirements for the control of direct $PM_{2.5}$ and PM precursors and to approve the $PM_{2.5}$ RACM evaluation as meeting the applicable nonattainment area plan requirements under CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009.

EPA also proposed to find that the attainment demonstration in the Allegheny County $PM_{2.5}$ Plan satisfies the requirements of sections 189(a)(1)(B) and 172(c)(1) of the CAA and 40 CFR 51.1011(a). In support of this proposal, we found that the ACHD relied upon acceptable modeling techniques to demonstrate attainment of the 2012 $PM_{2.5}$ NAAQS in the Allegheny County Area, and that the Plan demonstrates attainment of the 2012 $PM_{2.5}$ NAAQS as expeditiously as practicable. We determined that the Allegheny County $PM_{2.5}$ Plan provides a convincing justification that emission reductions from the control measures listed in the Plan will provide for timely attainment of the 2012 $PM_{2.5}$ NAAQS by the December 31, 2021 attainment date. Our June 12, 2020 proposed rule provides a more detailed discussion of our evaluation of the Plan.[9]

Other specific requirements applicable to attainment plans under the 2012 $PM_{2.5}$ NAAQS and the rationale for EPA's proposed action are explained in the June 12, 2020 proposed rule, and its associated technical support documents (TSDs), and will not be restated here.

III. Public Comments and EPA Responses

The June 12, 2020 proposed action to approve the Allegheny County $PM_{2.5}$ Plan opened a public comment period, which ended on July 13, 2020. Following a request for additional time from a public advocacy group, EPA published a document on July 31, 2020 reopening and extending the public comment period through August 13, 2020.[10] EPA received public comments from several environmental groups and several individual commenters. The comments received have been placed in the docket for this action. EPA's summary of the significant adverse comments received on the proposed action and our responses to those comments are listed below.

Comment 1: The commenter requests that EPA consider the lateness of ACHD submission of the Plan (nearly three years after the due date) when assessing the ''credibility'' of ACHD's attainment demonstration. The commenter contends that ACHD's stated reason for being late (*i.e.,* the complexity of the plan analysis) is inadequate justification for the lateness. The commenter states that if ACHD had not submitted a plan to EPA before the 18-month sanctions clock deadline, the Allegheny $PM_{2.5}$ nonattainment area would have been subject to sanctions, including a more stringent emissions offset ratio requirement applicable to new and modified major stationary sources. The commenter posits that the delay in submitting this Plan provides ''context'' for flaws in the submitted plan.

Response 1: Although the Commonwealth submitted the Allegheny County Plan well after the October 15, 2016 CAA statutory deadline, EPA disagrees with the commenter's assertion that this delay in submission must be presumed to result in a flawed Plan. Lateness of the Plan in and of itself does not interfere with the ability of ACHD to prepare an attainment plan meeting the CAA and related EPA regulatory requirements. Section 110(k) requires EPA to evaluate and to act upon SIP submissions from states. EPA has authority to approve, disapprove, or conditionally approve a SIP submission, in whole or in part, based upon whether the submission meets all applicable requirements. Lateness of a state's submission of the

[2] *See* Clean Air Fine Particle Implementation Rule; Final Rule (72 FR 20586, 20589, April 25, 2007).

[3] *See* National Ambient Air Quality Standards for Particulate Matter (1997); Final Rule (62 FR 38652, July 18, 1997). The initial NAAQS for $PM_{2.5}$ included annual standards of 15.0 μg/m³, based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 μg/m³, based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7).

[4] The primary and secondary standards were set at the same level for both the 24-hour and the annual $PM_{2.5}$ standards.

[5] *See* National Ambient Air Quality Standards for Particulate Matter; Final Rule (71 FR 61144, October 17, 2006).

[6] *See* National Ambient Air Quality Standards for Particulate Matter; Final Rule (78 FR 3086, January 15, 2013).

[7] *See* Air Quality Designations for the 2012 Primary Annual Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS); Final Rule (80 FR 2206, January 15, 2015).

[8] *See* Allegheny County Area Attainment Plan for the 2012 Fine Particulate Matter National Ambient Air Quality Standard; Proposed Rulemaking (85 FR 35852, June 12, 2020).

[9] *Id.*

[10] *See* 85 FR 46046, July 31, 2020.

Plan to EPA does not affect EPA's obligation to evaluate and act upon the SIP submission based on its merits, consistent with those requirements. As explained in the proposed action, EPA has determined that the SIP submission from ACHD does meet most of the applicable requirements as submitted. However, EPA is herein requiring that Pennsylvania meet these applicable requirements when addressing the conditional approval of the contingency measures' requirement.

Regarding the sanctions process mentioned by the commenter, EPA's finding of failure to submit deficiency was remedied by EPA's November 1, 2019 letter determining that PADEP's September 30, 2019 SIP submittal of the Plan was complete.[11] At that point, sanctions under section 179 of the CAA for failing to submit the required nonattainment plan ceased to be applicable. If Pennsylvania fails to remedy the identified conditions of the conditional approval, converting those elements of the Plan to a disapproval, then that disapproval would constitute a new finding under the terms of CAA section 179(a), beginning a new 18-month period prior to potential application of sanctions described by CAA section 179(b). EPA's conversion of the proposed conditional approval into a final conditional approval by this action will prevent the further imposition of CAA section 179(b) sanctions unless Pennsylvania does not submit the required elements of the Plan by the deadline under the final conditional approval, *i.e.,* one year from the date of EPA's final conditional approval.

Comment 2: The commenter states that EPA should require more rigorous analyses from ACHD for the Plan since it contains air quality modeling tailored to attaining the NAAQS of 12.0 μg/m^3 precisely, with no margin of safety. The commenter cites EPA's 2018 ''Guidance for Attainment Demonstrations for $PM_{2.5}$,'' which states that ''supplemental evidence should accompany all model attainment demonstrations'' [12] and that ''generally, those modeling analyses that show that attainment will be reached in the future with some margin of safety will need more limited supporting material,'' [13] and goes on to state that ''for other attainment cases in which the projected future design value is closer to the NAAQS, more rigorous supporting analyses should be completed.'' [14] The commenter points out that ACHD's modeling projects attainment at exactly the level of the NAAQS (*i.e.,* 12.0 μg/m^3) and the commenter thus believes EPA should adhere to its guidance by compelling ACHD to provide more rigorous analyses to support its attainment demonstration.[15]

The commenter questions the credibility of ACHD's Plan, given public statements by ACHD that it is prohibited from developing a control strategy for NAAQS attainment that reduces emissions to levels that would result in air quality that is better than the level required for purposes of the 2012 $PM_{2.5}$ NAAQS. The commenter argues that ACHD's contention in the Plan that they are prevented by state/local law from adopting a control strategy that exceeds Federal requirements (*i.e.,* that provides emission reductions resulting in an attainment year design value below the 12.0 μg/m3 standard) is not supported by state or local law.

Response 2: EPA acknowledges that its guidance recommends that modeling demonstrations projecting $PM_{2.5}$ design value concentrations that are close to the level of NAAQS (as is the case for the Liberty Monitor at issue in the Plan) should have more supporting evidence and analyses. EPA's November 2018 Ozone, $PM_{2.5}$ and Regional Haze guidance directs that supplemental evidence should accompany all model attainment demonstrations and that, generally, those modeling analyses that show that attainment will be reached in the future with some margin of safety will need more limited supporting material. However, for other attainment cases in which the projected future design value is closer to the NAAQS, more rigorous supporting analyses should be completed.[16]

Based on information provided in the weight of evidence (WOE) analysis submitted as part of the Allegheny County $PM_{2.5}$ Plan, including information from the electric grid operator for the area (PJM Interconnection, LLC), EPA has concluded that Allegheny County has performed a ''more rigorous supporting analyses'' in support of its modeling analysis demonstration that meets EPA's guidance. The Plan projects that all monitors in the Allegheny County $PM_{2.5}$ nonattainment area will comply with the 2012 $PM_{2.5}$ NAAQS by the required 2021 attainment date.[17] The commenter did not mention the Plan's WOE analysis or PJM data in its comment, so it is not clear if the commenter was aware of their existence. Allegheny County's WOE analysis shows declining $PM_{2.5}$ monitor concentrations, additional source emission reductions not included in the modeling analysis, precursor sulfur dioxide (SO_2) reductions imposed in Allegheny County's 1-hour SO_2 SIP, reductions in emissions due to electric generating unit (EGU) shutdowns within the PJM Interconnection territory, a comparison of model SO_2/NO_X EGU emissions showing potential excess precursor emissions in the projected year model inventory (see Appendix K of ACHD's SIP submittal) which could lead to a model overprediction bias, overall emission reductions due to declining local population trends, and additional emission reductions associated with several local control measures. These represent additional analyses that would not be necessary if the modeling projected attainment at a design value below 12.0 μg/m^3. Also, the commenter does not elaborate on why ACHD's analysis is inadequate, other than to assert that it should be more rigorous. Finally, the commenter did not provide any additional analyses or evidence supporting its assertion that Allegheny County's SIP will not provide for attainment of the $PM_{2.5}$ NAAQS by the statutory attainment date (see response to comment 4 regarding current $PM_{2.5}$ design values in Allegheny County). In the absence of any contrary evidence, upon EPA's review of the SIP submission including the modeling and additional evidence supporting the predicted attainment by the attainment date, EPA concludes that ACHD's Plan will bring the area into attainment.

The commenter asserts that there is no legal prohibition at the state or county level preventing the state or county from requiring a greater level of emission reductions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors that would allow the Area to model attainment at a design value below 12.0 μg/m^3. However, the existence or nonexistence of such a prohibition is not germane to the task at hand, which is determining whether the submitted Plan will result in attainment of the 2012 $PM_{2.5}$ NAAQS in Allegheny County by the attainment date. In this case, the attainment modeling projecting

[11] *See* Document EPA–R03–OAR–2020–0157–0045 in the docket for this action at *www.regulations.gov.*

[12] *See* EPA, Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze (November 29, 2018), p. 169, available in the online docket for this action at *www.regulations.gov,* Document ID EPA–R03–OAR–2020–1057–0068.

[13] *Id.*

[14] *Id.*

[15] *See* ACHD September 30, 2019 SIP revision Main Document, (Table 5–5, Base and Future Design Values (μg/m^3), Liberty), p. 36. Available at *www.regulations.gov,* Document ID EPA–R03–OAR–2020–1057.

[16] *See* EPA's November 2018 Ozone, $PM_{2.5}$ and Regional Haze guidance, p. 169.

[17] *See* Appendix M of ACHD's September 12, 2019 SIP revision, comments 69 and 70.

that the design value for this Area will meet the NAAQS limit by the attainment date is sufficient to demonstrate that the $PM_{2.5}$ NAAQS will be met, in accordance with CAA requirements.

Comment 3: The commenter claims that EPA's 2018 guidance does not allow the use of a Local Area Analysis (LAA) in order to disregard a modeled future (*i.e.,* attainment year) design value that is higher than the NAAQS. The commenter asserts this is not reasonable because the purpose of the attainment demonstration analysis is to facilitate a control strategy, rather than as a substitute for a forecast of nonattainment. The commenter states that after calculating a future design value of 12.6 μg/m³ at the Liberty monitor using CAMx modeling, ACHD rejected the result and instead conducted a supplemental LAA, the results of which ACHD instead used to demonstrate that the attainment year design value test was met.

The commenter notes that ACHD acknowledges that the CAMx model, which is EPA's recommended model for $PM_{2.5}$, can address local impacts as well as regional impacts by selecting certain available options within the CAMx model. The commenter also alleges that despite the fact that the CAMx modeling addressed local impacts, ACHD ignored those CAMx-derived local impacts in favor of a separate LAA that used AERMOD to determine those local impacts, which were then fed back into the CAMx model.[18] The commenter argues that this approach is not consistent with EPA's $PM_{2.5}$ attainment demonstration guidance. Further, the commenter states that the purpose of a LAA is not to engineer a design value that will just meet the NAAQS, but rather to supplement the results of the attainment test.

The commenter asserts that EPA's 2018 Guidance cites the relative attainment tests described in sections 4.2, 4.4.2 and 4.5 of the guidance as the primary modeling tools used in an attainment demonstration, and that use of a chemical transport grid model on a regional or local scale is the best tool available to judge the impacts of changes in future year emissions on concentrations. The commenter further argues that ''while the Agency contemplates other models, the purpose is only to 'supplement' the results of the modeled attainment test.'' [19] The commenter notes that when EPA's guidance indicates that while use of such models ''may be useful as a supplemental analysis . . .'' it is speaking to the control strategy rather than to the attainment demonstration itself.

The commenter argues that EPA's guidance does not state that a supplemental dispersion model could be the basis for the actual attainment test, which is the result reached by ACHD. The commenter disagrees (both from a policy and a legal perspective) with ACHD's rationale, which seeks to characterize the sources contributing to levels of fine particulates at the Liberty Monitor, based on statements in ACHD's modeling demonstration that ''Source characterization with CAMx was likely not fully representative of some sources near Liberty, specifically for some processes at the USS Clairton Plant,'' and that ''Refined modeling with AERMOD can more accurately account for many processes with the use of different source types . . .'' The commenter argues that a question regarding relative contribution among sources is separate from a question regarding the reliability of modeling results obtained through the use of CAMx.

The commenter argues that ACHD's other rationales for use of a LAA are also invalid, surmising that if CAMx were conservative with its EGU assumptions, that would not make the CAMx modeling flawed.[20] Similarly, the commenter argues that if ''some local primary $PM_{2.5}$ emissions were overestimated with the inventory used for the CAMx modeling,'' that would not be a justification for abandoning the CAMx model.[21] The commenter further argues that suggestions that the spatial grading in the CAMx model is ''likely too large to properly simulate localized impacts at Liberty'' or that ''species are not being properly apportioned by the modeled results'' are also not justifiable.[22]

The commenter argues that while EPA guidance contemplates that $PM_{2.5}$ measurement data from monitors may not be representative of ''area-wide'' air quality and therefore not suitable for comparison with the standard, this statement is limited to ''micro-scale'' and ''middle-scale'' sites.[23] The commenter contends that by preparing a LAA with ''supplemental'' modeling and then using this to replace the ''primary'' modeling analysis, ACHD has made a determination that the Liberty Monitor data is unsuitable for comparison with the NAAQS—a determination that is contradicted by the fact that the Liberty Monitor is a core $PM_{2.5}$ site (characterized in the monitoring plan as a ''neighborhood'' site) that is used to determine compliance with NAAQS.[24]

The commenter argues that these supporting arguments prevent use of an alternative LAA to ignore the projected 2021 Liberty 12.5 μg/m³ CAMx modeled design value from the primary analysis in lieu of the lower 12.0 μg/m³ design value provided by ACHD's LAA.

Response 3: The Community Air Quality Model with Extensions [25] or CAMx, with a 1.33-kilometer (km) grid, projected 2021 model results are summarized in Table 5–4 of Allegheny County's main SIP document. Projected 2021 $PM_{2.5}$ design value concentrations for all Allegheny County monitors except for the Liberty Monitor, which was not included in the table, are below the 24-hr and annual $PM_{2.5}$ NAAQS. Results from EPA's Model Attainment Test Software (MATS, version 2.6.1) for all of the Allegheny County monitors are listed in Appendix I.1 of Allegheny County's SIP document. Projected 2021 $PM_{2.5}$ concentrations are included in Table 3.6 of Appendix I.1 (for annual $PM_{2.5}$ NAAQS) and Table 3.7 of Appendix I.1 (for the 24-hour $PM_{2.5}$ NAAQS). Liberty's CAMx projected 2021 annual $PM_{2.5}$ design value is 12.5 μg/m³ and its projected 24-hour $PM_{2.5}$ design value is 38.6 μg/m³, which exceed both the Annual and 24-hour $PM_{2.5}$ NAAQS.

Allegheny County's SIP document outlines several reasons why it believes CAMx has overstated projected 2021 $PM_{2.5}$ design values at the Liberty Monitor (see page 32 of the main SIP document). These points include over-projections of future SO_2 and NO_X in the EGU sector (see EPA's TSD regarding PJM Interconnection, LLC EGU fuel usage and projected year emission differences within the 4-km CAMx domain for additional support on this point), overestimated local primary $PM_{2.5}$ emissions, too coarse spatial resolution of CAMx domain (1.33 km)

[18] *Id.* See section 5.4.1 [Liberty LAA Methodology], p. 33.

[19] *Id.* Pp. 171–172.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See* EPA ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' p. 133, which states, ''$PM_{2.5}$ measurement data from monitors that are not representative of ''area-wide'' air quality, but rather of relatively unique micro-scale, or localized hot spot, or unique middle-scale impact sites, are not eligible for comparison to the annual $PM_{2.5}$ NAAQS.''

[24] *See* ACHD 2020 Air Monitoring Network Plan, page 33, Section 10.2.

[25] CAMx is a state-of-the-science photochemical grid model that comprises a ''one-atmosphere'' treatment of tropospheric air pollution over spatial scales ranging from neighborhoods to continents. *See* the CAMx web page, at: *www.camx.com/about/default.aspx.*

used in the projected 2021 $PM_{2.5}$ concentrations, and CAMx's uniform treatment of all emissions as emanating from stack point sources when a significant number of sources at some of the larger US Steel plants are better represented as (fugitive) volume or area source types. Additional discussion of these points can be found in Appendix I.2 and Appendix F.3 of the Allegheny County Plan SIP.

The commenter offers several points to counter Pennsylvania's LAA, but EPA's guidance clearly allows an option to utilize a Gaussian type air-dispersion model (such as AERMOD) to model the primary components of $PM_{2.5}$ (organic carbon (OC), elemental carbon (EC) and other primary $PM_{2.5}$ (OPP)) and to exclude chemically reactive components of $PM_{2.5}$ such as sulfate and nitrate. Per EPA's ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' dated November 29, 2018, states that, ''local influences creating large spatial gradients are likely to consist mostly of primary $PM_{2.5}$ (OC, EC, and OPP). These sources may be point sources, or they may be nearby roads or other mobile or area sources.'' [26]

$PM_{2.5}$ monitor concentrations in Allegheny County show there is a significant concentration (spatial) gradient near the Liberty Monitor site (see Allegheny County monitor's current 2017–19 $PM_{2.5}$ design value maps contained in the attached technical support document). Liberty's current design values are 16–29% higher on the annual basis and 34–48% higher on the 24-hour basis than the two nearest $PM_{2.5}$ monitors (Clairton and North Braddock). Furthermore, Liberty's $PM_{2.5}$ speciation breakdown from CAMx shows it has substantially higher values in its OC, EC and OPP components than the other monitors in Allegheny County (see Tables 3.6 and 3.7 in Appendix I.1). Documentation of high OC, EC and OPP is needed to justify using the Gaussian (AERMOD) dispersion model.

EPA's guidance directs that a grid model can be run at very high horizontal resolution (1 or 2 km or finer) or a Gaussian dispersion model can be used.[27] Grid-based models simulate chemical transformation and complex meteorological conditions, while dispersion models are generally more simplistic; being limited to a local-scale, using Gaussian approximations with little or no chemistry. Therefore, while dispersion models may not be an appropriate tool for determining secondary $PM_{2.5}$ or ozone concentrations, they work well for use in determining local primary $PM_{2.5}$ impacts.

The commenter asserts that the Allegheny County Area $PM_{2.5}$ plan's modeling demonstration ''abandons'' the (1.33 km) CAMx demonstration results. This significantly mischaracterizes ACHD's $PM_{2.5}$ SIP modeling demonstration. Allegheny County indicated that it was using the LAA for the Liberty Monitor to remodel the primary (nonreactive) $PM_{2.5}$ components of its modeling demonstration, while retaining the chemically reactive $PM_{2.5}$ species from CAMx. In essence, it is removing only the nonreactive portion of $PM_{2.5}$ generated by CAMx, in accordance with EPA guidance, and replacing values from the nonreactive chemical CAMx species with results from a Gaussian dispersion model (AERMOD). This AERMOD modeling was performed using the same meteorological Weather Research and Forecasting (WRF) model data set via EPA's Mesoscale Model Interface Program (MMIF) that was used in the CAMx modeling.

Allegheny County further justified developing and using its LAA based on improved model spatial resolution and source characterizations available via this pathway. The CAMx model, while relative fine-scaled (approximately 1.33 km grid spacing), is still coarse when considering some of the large primary $PM_{2.5}$ emission sources in Allegheny County. In essence, all emissions are inserted into CAMx at a horizontal scale of approximately 1.33 km and within specified vertical layers within CAMx. The CAMx model distributes emissions across the entire grid box in which they are emitted, and because of this artificial dilution the distribution of these emissions in CAMx may be represented in the model as artificially high outside of the source plume and artificially low within the source plume. Such artificial dilution is not problematic for regional scale air quality modeling purposes, but can impact local scale modeling of plumes, as is the case here. ACHD pursued plume-in-grid and AERMOD dispersion modeling to better resolve the emission sources' plume transport and dispersion that were not well resolved with the base CAMx modeling. To alleviate this issue, Allegheny County's CAMx modeling system utilized a plume in grid parameterization that withholds a portion of emissions from being directly released across the entire model grid cell; without plume in grid, CAMx would instantaneously disperse source emissions across a full grid when in reality the plume will spread more slowly from its release point.

Spatial resolution for a Gaussian dispersion model such as AERMOD is not limited in scale; and AERMOD can resolve emissions and processes more finely than the CAMx model. Additionally, AERMOD has multiple source characterizations available while CAMx can only model stack-like point source releases. CAMx treats fugitive emissions using a point source parameterization that does not resolve the emissions in sufficient detail to properly characterize the impacts of important $PM_{2.5}$ sources such as fugitive releases from the US Steel sources in this nonattainment area modeling demonstration. Near the Liberty Monitor, there are prominent fugitive emission sources that include coke oven emissions (oven leaks, pushing, charging, quenching and material handling). AERMOD can more finely resolve these fugitive emissions to ensure better placement of these emissions into the modeling domain, resulting in a better prediction of source impacts in the local area near the source and a better estimate of the projected DV. Allegheny County's SIP followed EPA guidance in the development, running and processing of its LAA.

For these reasons, EPA believes Allegheny County is justified in conducting a LAA using a Gaussian dispersion model (AERMOD) to more accurately project the Liberty Monitor's 2021 $PM_{2.5}$ design values. Furthermore, Allegheny County has fully documented that it has followed EPA's guidance in executing its LAA.

Comment 4: The commenter asserts that ACHD's 2021 modeling projection is flawed and unreasonable because the selected 2011 base year is unrepresentative of current and potential future meteorological conditions for the area. The commenter contends that the area experienced an unusually low number of atmospheric inversions and higher than normal annual precipitation in 2011. Given the importance of meteorological inputs in modeling, the commenter believes the 2011 meteorological data will result in lower modeled $PM_{2.5}$ concentrations for 2021 than modeling using another year's meteorological data. As evidence that 2011 is unrepresentative of current and future meteorological conditions, the commenter cites ACHD's meteorological analysis, which states, ''more recent years have recorded above normal average temperatures along with precipitation amounts substantially above normal; therefore, the 2011 base year may well represent these more

[26] *See* section 4.6.1 of EPA's ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' November 29, 2018.

[27] *Id.* Section 4.6.1.

current conditions.'' The commenter contends that while ACHD used the Weather Research and Forecasting (WRF) meteorological model for the Allegheny County domain, stating that is has been determined to produce appropriate representative meteorological conditions to provide meteorological inputs for the air quality modeling, they also cautioned that the accuracy of the modeling is dependent upon the ''representativeness of the meteorological dataset.''

The commenter argues that 2011 had a lower than average number of temperature inversions (134 days versus an average of 157 days with inversions from 2008 to 2018), and that the location where temperature inversions are measured (the Pittsburgh International Airport) will have not only fewer temperature inversions in a year than the low-lying valleys that make up most of the nonattainment area, but also that the strength of the inversions will be greater in the valleys. The commenter argues that 2012 meteorological data would be more representative because it had only one more temperature inversion than the average from 2008 to 2018.

The commenter argues that with respect to precipitation, the selected 2011 base year is not representative because Allegheny County experienced 44.24 inches of precipitation that year, which is more than six inches greater than the NWS 30-year mean for the period 1981–2010 [28] and was over four-and-one-half inches greater than the average between 1991–2019. The commenter contends that ACHD's choice of 2011 precipitation data is a statistical outlier, exceeded only five years in the most recent thirty. The commenter contends that ACHD is appealing to climate change as a basis for use of unrepresentative meteorological conditions in modeling future year emissions, contrary to EPA guidance.[29] Finally, the commenter contends that ACHD did not follow EPA's guidance by using meteorological inputs for modeling that are conducive to elevated $PM_{2.5}$ concentrations.[30]

Response 4: Multiple factors are considered in selecting a base year for modeling purposes. ACHD considered meteorology, source emissions data, and monitoring data, and ultimately selected 2011, due to the availability of the 2011 National Emissions Inventory (NEI) as well as the availability of reasonably representative monitoring and meteorological data. In some cases, choice of available actual data eases the burden of adjusting or altering the data to represent other possible base years (*e.g.,* the availability of 2011 NEI year data lends itself to selection of a 2011 base year without adjustment). Allegheny County provided an overview of its base year selection in several sections of its SIP documentation, namely its Problem Statement (Section 2) of the SIP and the CAMx Model Protocol (Appendix F.2). Estimates of the effects of climate change over the short time periods and small spatial scales (*i.e.,* for the purpose of attainment of the $PM_{2.5}$ NAAQS by the attainment deadline) would be too uncertain to add value.

EPA reviewed Clean Air Council's climatological information for Pittsburgh International Airport (temperature and precipitation) and inversion strength information generated by the Allegheny County Health Department (ventilation rate). A more detailed analysis of Pittsburgh International Airport's 30-year temperature and precipitation as well as Allegheny County's inversion strength summary is included as a separate TSD. EPA will summarize its findings in the next several paragraphs.

EPA analyzed daily temperature and precipitation information collected at the Pittsburgh International Airport weather station over a 30-year period between 1990 to 2019, listed at the Pennsylvania State Climatological website.[31] EPA focused our review on the 2011 base year and the other years that are used to reconstruct the base year design values. All years that include 2011 in the Allegheny County monitoring design values, and that were used in the model attainment test, were considered (*i.e.,* the periods 2009–11, 2010–12 and 2011–13). While monthly and annual average temperatures and total precipitation values for 2011 do sometimes vary from the 30-year averages, they generally fall within 1 standard deviation of the mean. This means that while temperatures and precipitation totals may differ from their 30-year means, the differences in precipitation and temperature would not be considered statistically significant outliers in the normal distribution (for example several standard deviations from the 30-year means). Additionally, the commenter has not established that there is a strong correlation between the meteorological conditions (*i.e.,* temperature and precipitation values) at the Pittsburgh International Airport's weather station and the projected $PM_{2.5}$ design values for Allegheny County monitors, especially the Liberty Monitor.

EPA also reviewed and updated the inversion strength information that is developed by the Allegheny County Health Department as part of its assessment of daily dispersion characteristics.[32] Allegheny County has identified a correlation with inversions and elevated $PM_{2.5}$ concentrations within the county and has included it in several sections of its SIP documentation (problem statement section of the main SIP and more thoroughly discussed in Appendices B and F). EPA's review of Allegheny County's most recent 2019 annual inversion summary report, available on Allegheny County's website, shows that the 2011 model base year has an unusually low number of days without significant inversions and the number of inversion days in 2011 lies outside 1 standard deviation of the 2008–19 average. EPA's analysis also shows the Liberty Monitor's annual quarterly means and 98th percentile 24-hour $PM_{2.5}$ concentrations do appear to correlate well with Allegheny County's inversion day totals; $PM_{2.5}$ concentrations, both 24-hour and annual, are higher during years with more inversion days. EPA therefore finds merit with the commenter's point that Allegheny County's base year 2011 is unrepresentative of the yearly number of inversions because it has a significantly lower number of inversion days, which could lead the modeling to skew lower in its $PM_{2.5}$ concentrations.

While we acknowledge the commenter's concern that Allegheny County's 2011 meteorological data has a lower number of inversion days than other years, EPA disagrees with the commenter's assertion that Allegheny County's selection of 2011 as its base year will lead to projected 2021 $PM_{2.5}$ design values that are lower than would otherwise be projected using other years of meteorological data. The selection of a base year with fewer than usual number of inversion days will be mostly muted by how the modeled attainment test is constructed. This is because the

[28] *See* National Weather Service, *Pittsburgh Historical Precipitation Totals 1836 to Current,* at: *www.weather.gov/media/pbz/records/hisprec.pdf.*

[29] *See* 2019 Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze, Section 2.6.2 (Assessing Impacts of Future Year Meteorology), page 32, at *www.regulations.gov:* Document ID EPA–R03–OAR–2020–0157–0068.

[30] *See* U.S. EPA, Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze, Section 2.3.1 (Choosing Time Periods to Model), page 20.

[31] *See www.climate.met.psu.edu/data/ida/* for select FAA daily summaries.

[32] *See* ACHD's monitoring data web page, at: *www.alleghenycounty.us/Health-Department/Programs/Air-Quality/Monitored-Data.aspx,* under ''Air Dispersion Reports.''

$PM_{2.5}$ model demonstration uses modeling in a ''relative'' sense and not in an absolute sense.[33] That is, the predicted model $PM_{2.5}$ concentration for the projected year simulation is not directly used for attainment determination purposes, and instead is used to develop species-by-species $PM_{2.5}$ relative reduction factors that are applied to a weighted base year design value (for each individual component of $PM_{2.5}$). The influence of meteorology on model $PM_{2.5}$ concentrations is dampened because projections are done using ratios of concentrations based on the same meteorology; the base-year and projection-year meteorology are identical. Furthermore, the weighted design value concept that EPA's guidance utilizes generates a base year (2011) monitor design value that is taken from multiple years of monitoring data. This partially offsets the impacts of selecting one or more years with favorable meteorology that may contribute to lower modeled concentrations.

Furthermore, the commenter's assertion that the selection of a year with an unrepresentative number of inversions (2011) as Allegheny County's base year would lead to an under-estimation of future monitor design values, and therefore attainment, does not hold up when Allegheny County's final projected 2021 design values are compared to the most recent (2017–19) monitor design values. If anything, Allegheny County's modeling results are over-predicting based on current design values.[34] EPA used the modeled base year and future year design values for all of the Allegheny County monitors to calculate linear annual and 24-hour $PM_{2.5}$ trend lines, then applied the model calculated change in $PM_{2.5}$ concentration per year to generate a projected 2019 design value concentration.[35] Further information on EPA's calculation of the projected 2019 design value calculation is available in the TSD prepared for this action. These values could then be compared with the actual monitor values to see how well Allegheny County's modeling demonstration could reproduce actual monitor design values. In nearly every case, the model projected design values that were higher than the actual monitor design values, suggesting that the model projections are conservative with respect to actual monitor $PM_{2.5}$ design values. The most recent design values pulled from EPA's Air Quality System (AQS) indicate that only annual $PM_{2.5}$ design values at the Liberty monitor exceed the NAAQS; Liberty's 2017–19 annual design value is 12.4 μg/m^3.

Based on Allegheny County's modeled yearly emission change (−0.24 μg/m^3 per year), EPA expects Liberty will achieve the $PM_{2.5}$ NAAQS by its projected attainment date of 2021. All other $PM_{2.5}$ monitors inside Allegheny County currently meet the 2012 $PM_{2.5}$ NAAQS, two years before the statutory attainment date. Allegheny County also included an unmonitored area analysis (Appendix I.3) to confirm the $PM_{2.5}$ NAAQS will be met across the entire (county) nonattainment area.

To summarize, EPA agrees with the commenter's point that the selected 2011 base year for the $PM_{2.5}$ modeling demonstration has a lower than typical number of inversion days, but this fact does not undermine Allegheny County's attainment demonstration, because the model is being used in a relative sense and not an absolute sense. Lower modeled $PM_{2.5}$ generation due to meteorology in the base year (fewer inversions) would likely lead to lower modeled relative reduction factors (that are applied to a multi-year-weighted base year design value). Furthermore, Allegheny County's projected $PM_{2.5}$ concentrations appear to be overpredicting current $PM_{2.5}$ design values (2017–19). All current $PM_{2.5}$ design values in Allegheny County meet the 2012 $PM_{2.5}$ NAAQS except for the annual $PM_{2.5}$ design value at Liberty. Using the Liberty Monitor's projected modeled $PM_{2.5}$ reduction rate, this monitor is projected to attain the NAAQS by the area's December 31, 2021 statutory attainment date. The CAMx modeling projects that all other monitors in the area will attain by the 2021 attainment deadline.

Comment 5: The commenter argues that instead of disregarding the CAMx modeled attainment year projected design value of 12.5 μg/m^3 at the Liberty Monitor, ACHD should have focused on strengthening the emission control strategy for U.S. Steel facilities in the Allegheny County $PM_{2.5}$ nonattainment area. Instead, the commenter alleges that during its process to propose the attainment demonstration, ACHD claimed that it is not appropriate to require companies to make emissions reductions in the context of preparing attainment demonstrations. The commenter argues that section 110(a)(2) of the CAA directs states to ''include enforceable emission limitations and other control measures, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' The commenter contends that federal rules, specifically 40 CFR 51.1009(a)(1), require a state to ''identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors,'' in the attainment plan control strategy and that 40 CFR 51.1009(a)(2) requires the state to ''identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and all sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area.''

In developing a control strategy to model attainment of the $PM_{2.5}$ NAAQS, the commenter argues that ACHD should seek emission reductions from the largest sources of fine particulates, which are the three U.S. Steel facilities that are responsible for over half of all point source $PM_{2.5}$ emissions in the nonattainment area.[36] Given the proximity of these facilities to the Liberty Monitor in the Mon Valley, which has typically been the violating monitor in the area for the $PM_{2.5}$ NAAQS, the commenter argues that the $PM_{2.5}$ plan control strategy does not adequately focus on reducing emissions contributions to the Liberty Monitor from the three U.S. Steel facilities in the Mon Valley. The commenter states that there is no change in the annual $PM_{2.5}$ emissions at the Edgar Thomson facility in Braddock (633.215 tpy) or the Irvin facility in West Mifflin (71.936 tpy), while the Clairton Coke Works will see a small reduction of 34.63 tpy between the 2011 base year and the 2021 attainment year inventory—a decrease of only about six percent over ten years.[37] The commenter points out that most of the emission reductions achieved at the Clairton Coke Works stem from two coking quench tower

[33] *See* Section 4.1 of EPA's *Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,* November 29, 2018 for additional discussion on the Model Attainment Test.

[34] EPA's analysis of modeled and monitored design values in Allegheny County is more fully explained in its TSD included as part of this response.

[35] *See* EPA's Supplemental TSD, ''Providing Responses to Comments Regarding the EPA's Proposed Approval of the Attainment Demonstration for the Allegheny County $PM_{2.5}$ Nonattainment Area, under the 2012 National Ambient Air Quality Standard,'' prepared October 2020.

[36] *See* ACHD's September 30, 2019 SIP revision, Appendix D.1, pp. 10–11 (Table D–2) (identifying base year emissions of 588.725 tons pr year (tpy), 633.215 tpy, and 71.936 tpy from three U.S. Steel facilities, which comprise more than half the total emissions of 2,503 tpy from all point sources). Also, pp. 14–15 (Table D–3) (identifying future year emissions of 554.094 tpy, 633.215 tpy, and 71.936 tpy from the three facilities, which exceed half the total emissions of 2,256 tpy from all point sources).

[37] *See* ACHD's September 30, 2019 SIP Revision, Appendix D.1, pp. 10, 14. The Clairton Coke Works emissions were 588.7 tpy in the 2011 base year inventory and 554.1 tpy in the 2021 projected inventory.

replacements (approximately 117.2 tpy)—with little progress in reducing emissions (less than one tpy) from coal handling or other coke manufacturing operations at that facility. The commenter notes that upgrades to Battery C (including tower replacement) resulted in a net increase in emission of 82.3 tpy—with the new Tower C for C Battery being installed in 2012, however, the emission reductions from the shutdown of the old towers it replaced occurred prior to the 2011 base year and are therefore not creditable as a control strategy in the $PM_{2.5}$ plan. The control strategy, including reductions at the Clairton Coke Works, for the $PM_{2.5}$ plan period of 2011 to 2021 results in a reduction of 35.1 tpy.

The commenter suggests that over six years have passed since the last significant emissions reduction measures were enacted at the U.S. Steel facilities and that additional reductions should be enacted as part of the attainment demonstration. The commenter suggests, among other things, that Clairton undertake projects to reduce emissions from leaking doors, lids, and offtakes from coke oven batteries, pursuant to the EPA National Emission Standards for Hazardous Air Pollutants (NESHAP) for charging, leaks, and bypass stacks at coke oven batteries.[38]

Response 5: As explained in EPA's response to Comment 3, ACHD did not ''disregard'' any modeling results. EPA believes Allegheny County is justified in conducting a LAA using a Gaussian dispersion model (AERMOD) to develop more accurately the Liberty Monitor projected 2021 $PM_{2.5}$ design values. Furthermore, Allegheny County has fully documented that it has followed EPA's guidance in executing its LAA.

In a moderate area plan, a state is only obligated to adopt measures adequate to demonstrate attainment of the NAAQS. As explained in EPA's PM Implementation Rule, if a moderate area's attainment demonstration shows attainment by the attainment date ''. . . without implementing all reasonably available control measures (*i.e.,* RACM/RACT and additional reasonable measures), the state would not be required to adopt certain otherwise reasonable measures if the state demonstrates that collectively such measures would not enable the area to attain the standard at least 1 year earlier (*i.e.,* 'advance the attainment date' by one year). The EPA has long applied this particular test to satisfy the statutory provision related to an area demonstrating attainment 'as expeditiously as practicable.' The EPA continues to believe that this approach provides an appropriate degree of flexibility to a state to tailor the control strategy in the Plan to the actual attainment needs of a particular $PM_{2.5}$ nonattainment area.'' [39]

ACHD's modeling projects attainment by the attainment date. The RACM analysis indicated that no measures would advance the attainment by 1 year. Therefore, additional controls at Clairton Coke Works or any other facility in the Area are not required to demonstrate attainment.

Comment 6: EPA should require that ACHD better substantiate its RACT evaluation for the U.S. Steel facilities in the Allegheny County Area, in light of more recent innovations in emission control technology. The commenter states that ACHD asserts that there are no feasible controls (or combination thereof) in the Area that would advance the attainment date by one year or more, and that already implemented controls represent reasonably available (or better) control technology. The commenter believes that ACHD has not substantiated the assertion that further reductions are not reasonably available from the three Mon Valley U.S. Steel facilities, which are collectively projected to emit 1,294 tpy of $PM_{2.5}$ in 2021 (588.7 tpy from Clairton Coke Works, 633 tpy from Edgar Thomson, and 71.9 tpy from Irwin).

The commenter provides multiple examples of sources at the U.S. Steel facilities where emissions could be reduced, for example reduction of fugitive emissions through improved coke oven door sealing measures at the Clairton Coke Works. The commenter also suggests that ACHD should have considered potential RACT controls involving enclosure of emission sources, where feasible, to fully or partially capture emissions, citing examples of this control in use in Japan.[40] The commenter also cites other additional resources for RACT comparison, including European Union Best Available Techniques for the iron and steel industry [41] and the website of the Institute for Industrial Productivity, which provides a list of coke manufacturing emission control innovations.[42]

Response 6: The RACT requirements under subparts 1 and 4 of the CAA are focused on measures needed to attain the NAAQS. A state is not required to impose all potential emission control measures if existing measures are sufficient for the area to attain by the attainment date. EPA's PM Implementation Rule and EPA's General Preamble provide that: (i) RACT has historically been defined as 'the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'; (ii) RACT generally applies to stationary sources, both stack and fugitive emissions; (iii) major stationary sources (*i.e.,* sources with potential to emit 100 tons per year or more of direct $PM_{2.5}$ or any $PM_{2.5}$ precursor) should be the minimum starting point for a state's RACT analysis, but states are recommended to evaluate RACT for smaller stationary sources as needed for attainment and considering the feasibility of controls; and (iv) it is possible that a state could demonstrate that an existing source in an area should not be subject to a control technology especially where such technology is unreasonable in light of the area's attainment needs, or such technology is infeasible. In such a case, it could be concluded that no control technology is 'reasonably available,' and RACT for the source could be considered to be no additional control. Thus, the RACT requirement under CAA subpart 4 is primarily focused on stationary sources and forms of emissions control that are technology based.[43]

[38] *See* 40 CFR part 63, subpart L—National Emission Standards for Coke Oven Batteries.

[39] *See* 81 FR 58010, 58035 (August 24, 2016).

[40] *See* Clean Air Council Comment letter dated August 13, 2020, Attachment 8—Okazaki et al., Program for Sustainable Development at Nippon Steel, Nippon Steel Technical Report No. 101 (November 2012), at: *www.nipponsteel.com/en/tech/report/nsc/pdf/NSTR101-30_tech_review-5-1.pdf.*

[41] *See* Clean Air Council comment letter dated August 13, 2020, Attachment 10—JRC Reference Report, Best Available Techniques (BAT) Reference Document for Iron and Steel Production (2013), at: *https://ec.europa.eu/jrc/en/publication/reference-reports/best-available-techniques-bat-reference-documentforiron-and-steel-productionindustrial-emissions.* Specifically, sections relating to Coke Oven Plants (Chapter 5, pages 205–287), Blast Furnaces (Chapter 6, pages 289–352), and Basic Oxygen Steelmaking and Casting (Chapter 7, pages 353–418). *Id.* Refer also to emerging technologies for Coke Ovens (Section 11.3, pages 549–553), Blast Furnaces Section 11.4, pages 554), and BOF and Casting (Section 11.5, pages 555–558).

[42] See Attachment 11—The Institute for Industrial Productivity, Industrial Efficiency Technology Database, *http://ietd.iipnetwork.org/content/coke-making* (coke making); see also Attachment 12—The Institute for Industrial Productivity, Industrial Efficiency Technology Database, *http://ietd.iipnetwork.org/content/coke-dry-quenching* (coke dry quenching).

[43] *See* 81 FR 58010, 58034. *See* also ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992). *See* also ''State Implementation Plans for Serious PM–10 Nonattainment Areas: Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act (CAA) Amendments,'' 59 FR 41998 (August 16, 1994).

EPA's $PM_{2.5}$ Implementation Rule requires that all moderate area plans contain RACM, which is defined in 40 CFR 51.1000 as any technologically and economically feasible measure that can be implemented within 4 years of designation of a $PM_{2.5}$ nonattainment area and that achieves permanent and enforceable reductions in emissions of $PM_{2.5}$ and/or $PM_{2.5}$ precursor emissions. RACM includes RACT. As stated in the preamble to the Implementation Rule, EPA recommends that the state should follow a process by which it first identifies all sources of emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the nonattainment area, and all potential control measures to reduce emissions from those source categories. The state next determines if any of the identified potential control measures are not technologically feasible or economically feasible. The Preamble to the Implementation Rule also states that ''measures that are not necessary for attainment need not be considered as RACM/RACT.'' In the preamble to the $PM_{2.5}$ Implementation Rule, EPA notes that this has been ''EPA's longstanding interpretation of RACM/RACT in CAA sections 172(c)(1) and 189(a)(1)(C), which were enacted as part of the amendments to the Act in 1990. Even prior to the 1990 amendments, EPA interpreted the statutory term RACM to encompass only those measures 'necessary to assure reasonable further progress and attainment by the required date.' '' [44] In the 1990 amendments to the Act, Congress enacted a ''general savings clause,'' which states that ''each regulation, standard, rule, notice, order and guidance promulgated or issued by [EPA] under this chapter, as in effect [before the 1990 Amendments], shall remain in effect according to its terms.'' [45] Since the passage of the 1990 amendments, EPA's interpretation of RACM and RACT encompasses only those measures necessary to advance attainment has been upheld in multiple U.S. Circuit Courts of Appeals. *See NRDC* v. *EPA,* 571 F.3d 1245, 1251–1253 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 314 F.3d 735, 743– 744 (5th Cir. 2002); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002). But cf. *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015) (holding that an area must have subpart 1 RACM/RACT approved into its SIP prior to redesignation, regardless of whether the area is attaining the NAAQS).

In Appendix J of the Allegheny County $PM_{2.5}$ Plan, ACHD explains the methodology it used for its RACT analysis. ACHD explains that the first step was to identify ''all current major stationary point sources'' in the nonattainment area. ACHD included major sources for $PM_{2.5}$, SO_2, or NO_X. The second step was to identify the different processes (or process groups) for the applicable major source facilities, and then identify current controls in place for the processes. After the sources and processes (or process groups) were identified, ACHD identified potential RACT alternatives for the processes.

As stated in Appendix J of the Plan for examination of reasonable alternative controls, ACHD used several EPA resources, including the RACT/BACT/LAER [46] Clearinghouse (RBLC),[47] the Menu of Control Measures (MCM) for NAAQS Implementation,[48] and the Control Cost Manual.[49] ACHD also examined determinations from the RBLC over the past 10 years (from January 1, 2009 through July 1, 2019) for comparison to existing controls. ACHD based its economic analysis of alternatives on estimates of total costs (capital costs plus operating/indirect costs) and/or cost effectiveness (ratio of cost per ton of pollutant). Reasonable controls considered by ACHD included operation and work practices and/or permitted limits for some processes. ACHD concluded in its RACM/RACT analysis that other reasonable control measures it considered but decided not to implement would not advance the attainment date by one year. EPA believes that ACHD's use of the RBLC, the MCM, and the Control Cost Manual comprises a reasonably thorough approach for evaluating potential RACT control options for sources in this area. Furthermore, the modeling demonstration in ACHD's Plan shows attainment by the target attainment date with the control measures set forth in the control strategy. EPA agrees with ACHD's conclusion that those measures that were identified and evaluated under this analysis but that were not adopted and implemented in the area would collectively not advance the attainment date by more than a year. Therefore, EPA agrees that ACHD did not need to adopt and impose additional controls in the area to meet the RACT requirement.

Comment 7: The commenter supports EPA's determination that two measures submitted by ACHD as contingency measures do not meet statutory requirements for such measures. However, the commenter objects to EPA's proposal to approve these two measures instead as ''additional control measures.'' [50] The two measures at issue are: (1) Newly installed air curtains and/or covers on the Battery B Shed at the US Steel Clairton Coke Works; and (2) a new combustion (underfire) stack for Battery 15 at the US Steel Clairton Coke Works. In particular, the commenter objects to the approval of the taller combustion stack not only as a contingency measure, but as a control measure appropriate for inclusion in the SIP for the Allegheny $PM_{2.5}$ Plan.

The commenter argues that the higher stack is not a ''control measure'' at all because control measures must reduce emissions, rather than merely disperse the emissions. Commenter cites 40 CFR 51.1014(b)(1) (''The contingency measures *shall consist of control measures* that are *not otherwise included in the control strategy* or that *achieve emissions reductions not otherwise relied upon in the control strategy for the area* . . . .'' (emphasis added by commenter)) and 40 CFR 51.100(n) (''Control strategy means *a combination of measures designated to achieve the aggregate reduction of emissions* necessary for attainment and maintenance of national standards . . . .'') for the proposition that a higher stack which merely disperses the emissions.

Response 7: EPA has reevaluated its proposal to approve the two measures at the US Steel Clairton Plant coke works as ''additional measures'' in light of the commenter's objections, and following further review, it is clear that these measures are discussed in the Plan solely in the context of the contingency measure element of the Plan to address CAA section 172(c)(9). As such, EPA's proposed approval of these two proposed contingency measures as ''additional measures'' went beyond ACHD's proposal and therefore should not have been considered by EPA as anything other than proposed contingency measures.

[44] *Id,* at footnote 71, citing 44 FR 20375 (April 4, 1979); see 40 CFR 51.1(o) (1972) (defining RACT in similar terms); 42 U.S.C. 7502(b)(2) (1988) (requiring RACM in the precursor to current CAA section 172(c)(1)).

[45] *See* 42 U.S.C. 7415.

[46] BACT = Best Available Control Technology; LAER = Lowest Achievable Emission Rate.

[47] *See* EPA's RACT/BACT/LAER Clearinghouse web page, at *https://cfpub.epa.gov/RBLC/index.cfm?action=Home.Home&lang=en.*

[48] *See* EPA's Menu of Control Measures for NAAQS Implementation web page, at: *https://www.epa.gov/air-quality-implementation-plans/menu-control-measures-naaqs-implementation.*

[49] EPA Air Pollution Control Cost Manual, 6th Edition: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution.*

[50] *See* EPA's Proposed Rulemaking, at 85 FR 35871 (col. 3), June 12, 2020.

Additional review of ACHD's SIP revision shows that the attainment plan does not rely on any potential emission reductions from these two projects in order to show attainment, and modeling supporting the Plan used neither the future increased stack height of the underfire air stack of battery 15 nor the cover/air curtains on the south side of Battery B shed in the analysis, as mention of these two measures was limited to the contingency measure section of the Plan. Thus, EPA's decision to not approve these as ''additional measures'' has no impact on the modeled attainment demonstrations showing that the other measures in the control strategy will result in attainment by the attainment date.

The Plan does not rely on the emission reductions from the two measures as part of the control strategy in the modeled attainment demonstration for the Allegheny $PM_{2.5}$ nonattainment area, but rather as early implemented contingency measures to be implemented under a settlement order between US Steel and ACHD.[51] EPA reiterates our rejection of these two measures as contingency measures as they are both required by a settlement order and are being implemented regardless of whether triggered as a contingency measure.

Comment 8: The commenter also asserts that ACHD's future contingency measures must obtain 34 tons per year of emissions reductions, which is the amount representing one year of areawide reductions necessary under the reasonable further progress (RFP) element of the Plan, in order to comply with long-standing policy of the EPA.[52] The commenter believes that ACHD's alternative proposal to adopt contingency measure obtaining reductions in emissions near the Liberty Monitor of only 9.4 tons per year is not in accordance with EPA guidance for contingency measures and that ACHD has not sufficiently ''shown its work'' to justify why contingency measures representing less than one year of RFP reduction for the Area is needed. Commenter asserts that ACHD's stated rationale that additional modeling shows that the proposed lower level (9.4 tpy) of contingency measures would lead to a reduction in absolute annual modeled impacts of 0.10 $\mu g/m^3$ at the Liberty Monitor—a level sufficient to model attainment at that monitor in 2022 (if all other emissions are held constant at 2021 levels)—is an inadequate justification for this departure from EPA's guidance.

Response 8: EPA agrees with the commenter that its longstanding guidance to states with respect to contingency measures is that such measures should result in at least one year's worth of RFP as determined in the nonattainment plan for the area at issue. EPA also agrees that the determination of what is necessary for RFP should be based upon the overall emission reductions necessary for attainment of the relevant NAAQS in the area, not based on the premise that some lesser amount of emissions reduction from an individual source in a nonattainment area is sufficient for this purpose. This is especially the case for attainment of the $PM_{2.5}$ or Ozone NAAQS, where violations of the NAAQS in a given area are commonly the result of aggregate emissions from numerous sources located across the designated nonattainment area. Similarly, EPA agrees that for purposes of supporting a conditional approval of an element of a nonattainment plan under section 110(k)(4), the commitment submitted by a state should be to adopt and submit additional specific measures that would correctly address the deficiency in the original SIP submission that is the reason for the conditional approval. In this instance, the conditional approval pertains to ACHD's commitment to submit adequate contingency measures, consistent with the requirements of section 172(c)(9) and with EPA guidance for those requirements.

EPA disagrees that the ACHD commitment letter is insufficient to support conditional approval of the contingency measures element of the Allegheny County $PM_{2.5}$ Plan. In its April 7, 2020 commitment letter, ACHD committed to adopt specific contingency measures that would achieve 34 tons per year for the Area, or 9.4 tons per year of reductions nearby the Liberty Monitor. The Agency's June 12, 2020 proposed approval of ACHD's SIP revision proposed conditional approval of the contingency measure element of the plan on the basis that ACHD would adopt additional contingency measures necessary to satisfy CAA requirements applicable to contingency measures. EPA's longstanding guidance on this is that contingency measures should achieve reductions in pollutants from sources that constitute one year's worth of RFP in the area, unless presented with facts and circumstances that justify a different amount.[53]

EPA is finalizing the conditional approval based on ACHD's commitment to adopt and submit contingency measures meeting statutory requirements and consistent with EPA guidance. In this action, EPA is not determining definitively whether such measures must achieve 34 tpy or any other specific amount of emissions. EPA is finalizing this conditional approval based on its expectation that ACHD's new contingency measures will obtain reductions at least equal to one year's worth of RFP, *i.e.,* 34 tpy, but notes that it is neither accepting nor rejecting at this time the possibility that the state could submit contingency measures obtaining some other amount of reductions and adequately justify this other amount. When ACHD adopts and submits the specific control measures to remedy the current deficiency with respect to the contingency measure element of the plan, EPA will review and take rulemaking action to assess the necessary levels of emission reductions for ACHD's replacement contingency measures.

Comment 9: The commenter cites federal court decisions for the proposition that EPA lacks the authority to conditionally approve a $PM_{2.5}$ Plan that entirely lacks contingency measures, see *Sierra Club* v. *EPA,* 294 F.3d 155, 164 (D.C. Cir. 2002), and that EPA cannot grant conditional approval based on a state commitment letter that does not provide specific enforceable limits, see *Sierra Club* v. *EPA,* 356 F.3d 296 (D.C. Cir. 2004). Based on these cases, the commenter then contends that ACHD cannot simply identify specific contingency measures without establishing that they would be approvable if implemented. The commenter cites the second *Sierra Club* case for the proposition that the commitment must be ''something more than a mere promise to take appropriate but unidentified measures in the future,'' *Sierra Club* v. *EPA,* 356 F.3d 296, 303, and that this ''requires that the States complete the analyses necessary to identify appropriate measures before, rather than after, conditional approval is granted.''[54] The commenter argues that because the Department does not quantify any putative emissions

[51] Settlement Agreement and Order #190604, between U.S. Steel and ACHD, June 27, 2019.

[52] 81 FR 58010 and 58068, column 2. *See also* General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (August 16, 1992), 57 FR 13496, 13543 (column 3) through 13544 (column 1).

[53] *See,* for example ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 at 13543 and 13544 (April 16, 1992) and ''Fine Particulate Matter National Ambient Air Quality Standards; State Implementation Plan Requirements; Final Rule,'' 81 FR 58010 at 58067 (August 24, 2016).

[54] *Id.*

reductions from the ''hypothetical'' contingency measures set forth in its commitment letter, it is impossible to identify appropriate measures before conditional approval is granted, as the D.C. Circuit required.[55] Therefore, the commenter states that EPA may not grant the requested conditional approval.

Response 9: EPA agrees that in order to support a conditional approval under section 110(k)(4), a state must provide a written commitment to take specific actions to address the identified deficiencies in the initial SIP submission that resulted in the need for a conditional approval. As explained in the proposal document, and as evidenced by the commitment letter in the docket supporting this final action, ACHD has made an adequate commitment to support conditional approval of the contingency measures element of the Allegheny County $PM_{2.5}$ Plan. Thus, EPA does not agree that the *Sierra Club* cases cited by the commenter preclude this conditional approval.

The factual circumstances in the 2004 *Sierra Club* case are different and therefore distinguishable from the facts of ACHD's $PM_{2.5}$ Plan in several respects. First, the SIP submission at issue in the *Sierra Club* case initially included nothing addressing three required elements of that nonattainment plan: Contingency measures, RACM analyses and RACM, and a post-1999 Rate of Progress (ROP) plan. *Sierra Club* at 301. The *Sierra Club* court concluded that it was inappropriate for EPA to exercise its conditional approval authority under section 110(k)(4) in a situation in which the states had submitted nothing to address these requirements. Here, ACHD did address the contingency measures requirement as an element in its initial nonattainment plan SIP submission (*i.e.,* installation of a new underfire stack on Battery 15 and installation of a cover or air curtains on south side of B battery shed). Although EPA found that these measures did not meet the statutory requirements for contingency measures because a consent order required that these actions take place regardless of whether the area failed to attain or failed to meet its ROP plan, ACHD did make a good faith effort to submit contingency measures as part of the Allegheny County $PM_{2.5}$ Plan, unlike in the 2004 *Sierra Club* case cited.

Second, the commitment letters subsequently submitted by the states involved in the 2004 *Sierra Club* case were vague and failed to list any specific, enforceable measures that the state would adopt as contingency measures. Citing one state's commitment letter, the Court noted that the commitment letters only promised to submit ''adopted contingency measures to be implemented if the DC Area does not attain the one-hour ozone NAAQS by November 15, 2005.'' *Id.* at 302. Here, ACHD has identified seven specific contingency measures it will adopt to obtain an additional 34 tons per year of direct $PM_{2.5}$ emission reductions (or of $PM_{2.5}$ precursors) or 9.4 tpy in the vicinity of the Liberty Monitor. ACHD has committed to adopt contingency measures that will meet EPA's requirements for contingency measures (*i.e.,* adopted measures that equate to one year's worth of RFP reductions, along with the requisite description of triggering mechanisms for these measures) and will submit the contingency measures to EPA within one year from EPA's final conditional approval. EPA notes that it is basing this approval on the ACHD commitment to obtain the 34 tpy that would constitute the one year's worth of RFP that is consistent with EPA guidance for the contingency measures requirement, not the 9.4 tpy alternative posited by ACHD. The *Sierra Club* court found that ''[t]he statute requires that the States commit to adopt specific enforceable measures,'' *Sierra Club* at 302, but that EPA was accepting as sufficient a commitment to adopt what it conceded are unspecified measures.[56] The measures identified by ACHD are much more specific than those identified in that case, and are made more specific by the promise to adopt some combination of these measures to achieve the necessary amount of reductions needed in the area.

Third, the *Sierra Club* decision language cited by the commenter as requiring state analyses prior to EPA granting conditional approval can also be distinguished from the circumstances in this SIP submission. The 2004 *Sierra Club* court was expounding upon its earlier decision in the Natural Resources Defense Council *(NRDC)* v. *EPA,* 22 F. 3d 1125 (D.C. Cir. 1994). In the *NRDC* case, the Court was reviewing EPA's interpretation of newly created conditional approval language in section 110(k)(4) that Congress adopted in the 1990 CAA amendments. Through guidance and rulemaking, EPA had interpreted section 110(k)(4) as allowing conditional approval of a ''committal SIP'' containing no substantive provisions, so long as the state submitted it within one of the deadlines and the state promised to adopt specific enforceable measures within a year and a schedule of interim milestones in the future adoption process. The *NRDC* court concluded that ''the conditional approval mechanism was intended to provide the EPA with an alternative to disapproving substantive, but not entirely satisfactory, SIPs submitted by the statutory deadlines and not, as the EPA has used it, a means of circumventing those deadlines.'' *NRDC* at 1134–1135. The court then held that ''section 110(k)(4) does not authorize the EPA to use committal SIPs to postpone SIP deadlines.'' *Id.* at 1135. That situation is not present here. Although ACHD submitted its nonattainment plan SIP submission late, ACHD did submit a complete nonattainment plan containing all the required elements—including the contingency measures element. Upon further evaluation of the SIP submission, EPA determined that the contingency measures were not approvable, and therefore based on ACHD's commitment has elected to exercise its authority to provide ACHD up to one year to remedy the deficiency, in accordance with section 110(k)(4). Thus, EPA is not circumventing the original SIP submission deadline by granting conditional approval in this matter, but merely allowing ACHD to revise these ''substantive, but not entirely satisfactory, elements of the SIP.'' See *Id.* at 1134–1135. EPA is thus using its discretionary authority under section 110(k)(4) in an appropriate way.

Regarding the Clean Air Council's claim that ACHD had to do further analyses of the contingency measures before EPA could grant conditional approval, EPA has concluded that ACHD has done such an analysis by identifying readily available emission control contingency measures which, if triggered, will achieve the necessary emission reductions in the nonattainment area. The submitted emission reduction numbers come from the analysis contained in the attainment demonstration and all the elements that make up the demonstration, such as emission inventories and modeling. The 34.1 tpy number is one year of emission reductions derived from ACHD's Reasonable Further Progress (RFP) plan, which was informed by the modeling. Having completed this analysis, ACHD then had to analyze where it could obtain emission reductions equal to this amount, and that analysis resulted in

[55] *See* Commitment Letter of the Allegheny County Health Department, dated April 7, 2020, available in the docket for this action, Document ID EPA–R03–OAR–2020–0157–0071.

[56] *Id.*

the list of seven specific contingency measures set forth in the ACHD commitment letter, which ACHD will evaluate, adopt, and then submit to EPA for approval as contingency measures to meet the requirement of the conditional approval.

The commenter also claims that this language from the *Sierra Club* decision requires, under these circumstances, that the SIP submission include analyses identifying both the specific contingency measures and the specific amount of emission reduction obtained from each measure before EPA can grant conditional approval. EPA disagrees with this reading of the court's ruling. The 2004 *Sierra Club* court did not specifically identify what ''analyses'' must be done by the state as part of the conditional approval. In the *Sierra Club* case, the three missing statutory elements of the attainment plan were contingency measures, RACM analyses, and Rate of Progress plans. The court did not address the issue of what specific analyses the state needed to perform as part of the submittal of the contingency measures, because there were no contingency measures identified or included in the SIP. In the absence of specific contingency measures in that SIP, the court would only be hypothesizing about what analysis needed to accompany specific contingency measures.

The Clean Air Council's argument that ACHD must quantify the specific amount of emission reductions available from each specified contingency measure (prior to EPA granting conditional approval) is also not supported by the *Sierra Club* case. In the 2004 *Sierra Club* matter, the states did not submit anything to meet the three required elements of the attainment plan, including the contingency measures, so the court had no reason to opine on what specific analysis should accompany three entirely missing elements of the attainment plan. EPA does not agree that the decision requires ACHD to identify specific amounts of emission reductions from these specific proposed measures prior to conditional approval, as EPA expects that the state will provide additional information supporting the calculation of estimated emission reductions for all adopted contingency measures as part of a future SIP revision to address EPA's final conditional approval of the contingency measure element of the plan. ACHD has committed to adopt sufficient measures from the identified list of potential control measures sufficient to achieve the necessary one year's worth of RFP for this area.

EPA does not agree that ACHD must precisely calculate how much emission reduction will be achieved by the individual measures until ACHD actually submits the adopted measures to EPA for evaluation and approval into the SIP, as appropriate at that time. For these reasons, EPA does not agree with the commenter's claim that case law prohibits EPA from granting conditional approval for the contingency measures under the circumstances of this SIP submission, and also disagrees that ACHD's commitment to adopt contingency measures must, at this time, contain specific amounts of emissions attributable to individual measures.

IV. Final Action

A. Approval of the Attainment Plan and Related Elements

Under CAA section 110(k)(3), EPA is approving Pennsylvania's SIP revisions to address the CAA's Moderate area planning requirements for the 2012 $PM_{2.5}$ NAAQS in the Allegheny County nonattainment area—with the exception of the contingency measures element of the plan, which EPA is conditionally approving. Specifically, EPA is proposing to approve the following elements of the Allegheny County $PM_{2.5}$ plan: The 2011 base year emissions inventory as meeting the requirements of CAA section 172(c)(3); the RACM/RACT demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C); the attainment demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(B); the RFP demonstration as meeting the requirements of CAA section 172(c)(2); the QM demonstration as meeting the requirements of CAA section 189(c); and the MVEB for 2021, which meets the transportation conformity related requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

EPA is approving the 2021 MVEB element of the Plan in this final action. EPA has determined that ACHD has remedied the deficiency with the 2021 MVEB, for which EPA proposed conditional approval in our June 12, 2020 proposed action. Pennsylvania, in an April 20, 2020 letter to EPA, committed to finalize adoption of its intended 2021 MVEB, which had not yet been finally adopted or undergone public participation at the local level. EPA's proposed to conditionally approve the MVEB element of the Allegheny County $PM_{2.5}$ Plan, contingent upon final adoption by ACHD of the intended 2021 MVEB. On October 2, 2020, PADEP submitted a SIP revision (on behalf of ACHD) that contained the final 2021 MVEB for the Allegheny County Area, remedying EPA's June 12, 2020 proposed condition upon approval of the MVEB element of the Plan. This final 2021 MVEB was unchanged from the intended MVEB upon which EPA proposed conditional approval in our June 12, 2020 proposed action.[57] EPA has determined that this final 2021 MVEB remedies the deficiency underlying our conditional approval of the MVEB element of the plan, as the final MVEB was adopted (as proposed), satisfies public participation requirements of EPA's conformity rule under 40 CFR 93.118(e), and has been formally submitted to EPA as a supplemental SIP revision. The final 2021 MVEB for the 2012 $PM_{2.5}$ NAAQS, including direct $PM_{2.5}$ and the precursor NO_X, is listed in Table 1,

TABLE 1—ALLEGHENY COUNTY, PA 2012 $PM_{2.5}$ NAAQS ATTAINMENT YEAR MVEB FOR DIRECT $PM_{2.5}$ AND NO_X

Motor Vehicle Emissions Budget year	Direct $PM_{2.5}$ on-road emissions (tons per year)	NO_X on-road emissions (tons per year)
2021	266	5,708

[57] *See* 85 FR 35872, 35873 (June 12, 2020).

B. Conditional Approval of the Contingency Measures Portion of the Attainment Plan

EPA is conditionally approving the contingency measures element of the Allegheny County Plan. In accordance with section 172(c)(9) of the CAA and EPA's $PM_{2.5}$ Implementation Rule, the attainment demonstration for a moderate $PM_{2.5}$ nonattainment area must include contingency measures.[58] Contingency measures are additional control measures to be implemented in the event that the area fails to meet RFP requirements, fails to submit or meet quantitative milestones (QM), or EPA determines that the area fails to attain by the attainment date.

In order for contingency measures to be approved as part of a state's $PM_{2.5}$ moderate area attainment plan, the measures must meet the following requirements set forth in the $PM_{2.5}$ Implementation Rule and 40 CFR 51.1014: (1) The contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon a determination by the EPA Administrator of the nonattainment area's failure to meet RFP, failure to meet any QM, failure to submit a QM report or failure to attain the standard by the attainment date; (2) the plan must contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented with minimal further action by the state or by EPA; (3) the contingency measures shall consist of control measures not otherwise included in the control strategy for the area; and (4) the contingency measures should provide for emissions reductions approximately equivalent to one year's worth of reductions needed for RFP. PADEP submitted a letter to EPA dated April 20, 2020 conveying ACHD's commitment to adopt specific contingency measures, from a list specified in that letter, that will provide for a reduction of one year's worth of reasonable further progress towards attainment, or equivalent (up to 34 tons per year of direct $PM_{2.5}$ emissions). Further detail on ACHD's commitment and a description of the specific measures is detailed in EPA's June 12, 2020 proposed rulemaking for this action.

After ACHD adopts contingency measures, in compliance with related requirements under CAA section 172(c)(9) and the $PM_{2.5}$ Implementation Rule (specifically the requirements of 40 CFR 51.1003 and 40 CFR 51.1014), PADEP will submit a SIP revision containing the adopted contingency measures, along with a description of the trigger mechanisms and schedules for implementation of the contingency measures. ACHD and PADEP have committed to submit the contingency measures SIP revision to EPA within one year after EPA's conditional approval.

If EPA makes a determination that Pennsylvania has satisfied the approval condition, EPA shall take action to remove the condition on its approval of the contingency measure element of the Allegheny County $PM_{2.5}$ Plan, converting our action to full approval. Should Pennsylvania fail to remedy the condition within the one-year deadline for doing so, this conditional approval shall automatically convert to a disapproval and EPA will issue a finding of disapproval. A finding of disapproval would start an 18-month clock to apply sanctions under CAA section 179(b) and a two-year clock for a Federal implementation plan under CAA section 110(c)(1).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

[58] *See* 40 CFR 51.1014 and 81 FR 58010, p. 58066 (August 24, 2016).

postpone the effectiveness of such rule or action. This action to approve SIP revisions consisting of the Allegheny County $PM_{2.5}$ Plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: April 30, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry ''2012 $PM_{2.5}$ NAAQS Attainment Demonstration (including 2011 Base Year Emissions Inventory, Particulate Matter Precursor Contribution Demonstration, Reasonable Further Progress Demonstration, Demonstration of Interim Quantitative Milestones to Ensure Timely Attainment. and Motor Vehicle Emission Budgets for 2021) (excluding Section 8, Contingency Measures)'' at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	* *
2012 $PM_{2.5}$ NAAQS Attainment Demonstration (including 2011 Base Year Emissions Inventory, Particulate Matter Precursor Contribution Demonstration, Reasonable Further Progress Demonstration, Demonstration of Interim Quantitative Milestones to Ensure Timely Attainment. and Motor Vehicle Emission Budgets for 2021) (excluding Section 8, Contingency Measures).	Allegheny County ..	09/30/19 10/02/20	5/14/21, [INSERT **FEDERAL REGISTER** CITATION].	Contingency Measures (Section 9) portion of the plan is Conditionally Approved, until 5/16/22. See 40 CFR 52.2023(n).
* *	*	*	* *	* *

* * * * *

■ 3. Section 52.2023 is amended by adding paragraph (n) to read as follows:

§ 52.2023 Approval status.

* * * * *

(n) EPA conditionally approves the Contingency Measures element (Section 8) of the Attainment Plan (dated September 12, 2019) for the Allegheny County Area for the 2012 $PM_{2.5}$ NAAQS, as submitted to EPA as a SIP revision by Pennsylvania on September 30, 2019. Pennsylvania shall submit a SIP revision within one year of EPA's final conditional approval to remedy this condition, which satisfies all related requirements for contingency measures under CAA section 172(c)(9) and the $PM_{2.5}$ Implementation Rule (specifically, 40 CFR 51.1003 and 40 CFR 51.1014). Pursuant to CAA section 110(k)(4), this conditional approval is based upon April 20, 2020 and April 7, 2020 letters from Pennsylvania and Allegheny County committing to submit a SIP to EPA to remedy the deficiencies of this conditional approval within 12 months of EPA's conditional approval action.

[FR Doc. 2021–09565 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0434; FRL–10023–51–Region 6]

Air Plan Approval; Texas; Clean Data Determination for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Anderson and Freestone Counties and Titus County Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a clean data determination for the Anderson and Freestone Counties and the Titus County nonattainment areas, concluding that each area is currently in attainment of the 2010 1-hour Primary Sulfur Dioxide National Ambient Air Quality Standard (SO_2 NAAQS) per the EPA's Clean Data Policy. The primary sources of Sulfur Dioxide emissions in these counties have permanently shut down and air quality in these areas is now attaining the SO_2 NAAQS. This final action is supported by EPA's evaluation of available monitoring data, emissions data, and air quality modeling. This action suspends the requirements for these areas to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 2010 SO_2 NAAQS until the area is formally redesignated, or a violation of the NAAQS occurs. This action is being taken in accordance with the Clean Air Act.

DATES: This final rule is effective on June 14, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0434. All documents in the docket are listed on

the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Imhoff, EPA Region 6 Office, SO_2 and Regional Haze Branch, (214) 665–7262, or by email at *Imhoff.Robert@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our September 24, 2020 proposal (85 FR 60407). There, we proposed to determine that the Anderson and Freestone Counties and the Titus County nonattainment areas in Texas have attained the 2010 SO_2 NAAQS per the EPA's Clean Data Policy. A Clean Data Determination (CDD) suspends the requirements for an area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the 2010 SO_2 NAAQS until the area is formally redesignated or a violation of the NAAQS occurs.

The public comment period for this final action ended on September 24, 2020 and the EPA is responding to all relevant comments submitted in this final action.

The EPA received three comment letters on the proposal. The comments are included in the publicly posted docket associated with this action at *https://www.regulations.gov.* The EPA did not respond to one comment which failed to raise an issue relevant to this final action. We address the remaining relevant comments below. After careful consideration of all comments, we have determined that we should finalize this action with no changes from the proposed action.

II. Response to Comments

Comment: One commenter expressed support of EPA's determination that the Anderson and Freestone Counties and Titus County areas have attained the 2010 SO_2 NAAQS.

EPA Response: The EPA acknowledges the commenter's support of this final action.

Comment: Sierra Club commented that issuance of this CDD would prevent attainment of the NAAQS as ''expeditiously as practicable'' in accordance with CAA ''Sections 7409(b)(1) and 7502(c)(1).''

EPA Response: The EPA disagrees that issuance of this CDD prevents expeditious attainment of the SO_2 NAAQS.[1] A CDD is the EPA's formal determination that the air quality in a nonattainment area is currently in attainment of the NAAQS. Therefore, by its own terms, a determination that an area is in attainment does not delay or prevent attainment, rather it acknowledges that attainment has already been achieved. We do not agree that not issuing this final CDD would expedite attainment in any way since the areas have already attained the NAAQS.

Comment: Sierra Club asserts that the EPA should not issue a CDD in this case because doing so would thwart permanent attainment of the SO_2 NAAQS in these areas and would jeopardize maintenance. Sierra Club states that the EPA is not authorized to redesignate the two areas to unclassifiable or attainment and should make clear that EPA is not doing so in this action. Sierra Club claims that issuing this CDD would short circuit needed additional air quality planning requirements and delay permanent attainment.

EPA Response: The EPA disagrees that issuing a CDD for these areas would delay permanent attainment or jeopardize maintenance of the SO_2 NAAQS. We also clarify that we are not in this notice redesignating these areas to either unclassifiable or attainment, as is clearly stated in our proposal.[2] While it is sometimes the case that an area's attainment and monitored clean data results from temporary conditions, this is not true for these areas. As noted in the proposal, the EPA's determination of attainment for these areas is due in large part to the fact that the primary sources of SO_2 impacting these areas have permanently shut down. We therefore do not agree that the CDD's suspension of attainment planning requirements for these areas delays permanent attainment or jeopardizes maintenance. We do agree that the CAA's requirements for a redesignation to attainment have not been met; in particular, the state has not submitted a SIP revision under CAA section 107(d)(3)(E)(iv) that meets the requirements of CAA section 175A.

Comment: The commenter states that the EPA has not issued CDD regulations under the SO_2 NAAQS. The commenter claims that the only authority EPA points to for this action are CDD regulations and policy statements governing CDDs for PM and Ozone. The commenter continues that EPA cannot rely on regulations governing other NAAQS, especially where the Clean Air Act contains additional, wholly separate safeguards and mechanisms for monitoring, reporting, complying with, and enforcing those standards.

EPA Response: The EPA disagrees with Sierra Club's comment that the Agency was required to issue implementing regulations providing for a CDD for the SO_2 NAAQS. The EPA's authority to promulgate CDDs arises from our interpretation of the CAA's nonattainment planning provisions, and in this action, we are relying on that statutory interpretation, not regulations implementing other NAAQS. The fact that the Agency has elected to codify that interpretation in some NAAQS implementation rules is irrelevant to our statutory authority for this action. As noted in our proposed rulemaking, ''the legal bases set forth in the various guidance documents and regulations establishing the Clean Data Policy for other pollutants are equally pertinent to all NAAQS.'' The EPA cites the PM–2.5, 1997 8-hour Ozone, and the 2008 8-hour Ozone regulations as additional evidence of its longstanding, judicially upheld interpretation of the CAA's general NAAQS requirements.

EPA's interpretation of the statutory provisions governing ''attainment planning'' requirements throughout Part D of the CAA is that those requirements have no meaning for an area that is already attaining the NAAQS. Specifically, EPA's Clean Data Policy is that, where the Agency has made a determination that an area is attaining the standard, states are not obligated to submit: An air quality modeling demonstration showing how an area will achieve attainment of the NAAQS (including reasonably available control measures needed to achieve attainment), a demonstration that the area is making reasonable further progress towards

[1] We note that the commenter cited to incorrect CAA provisions for the attainment date associated with these areas so we make note of that correction here. The correct provision is found in CAA Part D, Subpart 5, Section 7514(a) which states that Texas shall submit a nonattainment area planning SIP which shall provide for attainment ''as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.''

[2] 85 FR 60412 (''[T]his proposed action, if finalized, would not constitute a redesignation to attainment under Section 107(d)(3) of the CAA.'').

attainment, and contingency measures to be triggered for areas that fail to timely attain. The Agency's interpretation of the Act is that the requirement to submit those attainment planning elements is suspended as long as an area continues to attain the standard. If the Agency makes a subsequent finding rescinding the CDD, the state's obligation to submit those requirements immediately springs back.

EPA has long applied its Clean Data Policy interpretation without codifying it in regulation, and courts have consistently acknowledged and upheld that application. *See Sierra Club* v. *U.S. EPA,* 99 F.3d 1551, 1555 (10th Cir. 1996) (upholding application of Clean Data Policy to ozone areas prior to such policy being codified into regulation); *Latino Issues Forum* v. *U.S. EPA,* 315 Fed. Appx. 651, 652 (9th Cir. 2009) (unpublished) (upholding application of Clean Data Policy for PM–10 area despite lack of regulation). In *Latino Issues Forum,* the court stated, ''The Clean Data Policy expressly applies to areas currently attaining ozone and PM–2.5 standards, but there is no similar written regulation governing areas attaining PM–10 standards. It was not unreasonable, however, for the EPA to apply the policy to an area that was currently attaining the PM–10 standards. As the EPA rationally explained, if an area is in compliance with PM–10 standards, then further progress for the purpose of ensuring attainment is not necessary.'' 315 Fed. Appx. at 652. The commenter's opinion that implementing the NAAQS in binding regulations is preferable to implementation via guidance does not diminish the EPA's judicially upheld CAA authority to promulgate a CDD for these areas.

The Agency agrees that mechanisms and safeguards for assessing an area's continued attainment of the NAAQS are a key component to the Clean Data Policy because the Agency must be able to determine whether an area continues to attain a NAAQS and whether the CDD's suspension of requirements continues to apply. However, such mechanisms may be reasonably tailored to the area in question. In the case of these two areas, the primary sources of SO_2 which caused the area to be in nonattainment have permanently shut down, and there are no other significant sources of SO_2 in the area. These factual circumstances do not warrant the Agency's requirement of a complex or comprehensive ongoing reporting or monitoring mechanism.

Comment: The commenter states that the EPA's Clean Data Policy is in conflict with the CAA. The plain language of the Act requires the EPA to ensure that the air stays clean and that no mandatory control requirement (requirements of part D) be lifted until a maintenance plan is in place. The commenter claims that the Clean Data Policy itself is arbitrarily inconsistent with the plain language of the CAA.

EPA Response: The EPA does not agree with the commenter that the Clean Data Policy contravenes the letter and purpose of the CAA. Multiple U.S. Courts of Appeals have heard and dismissed challenges to the Clean Data Policy that are similar to those raised by the commenter. *NRDC* v. *EPA,* 571 F.3d 1245, 1260–61 (D.C. Cir. 2009); *Latino Issues Forum* v. *U.S. EPA,* 315 Fed. Appx. 651, 652 (9th Cir. 2009); *Sierra Club* v. *U.S. EPA,* 99 F.3d 1551 (10th Cir. 1996).

In *NRDC* v. *EPA,* petitioners argued that the Clean Data Policy's suspension of attainment planning requirements circumvented the plain language of the Act. While the D.C. Circuit dismissed some of the petitioners' challenges because they were not raised in the comment period, the court rejected the remaining ''plain language'' claim that was properly preserved. It agreed with the Agency that ''[t]he Act is . . . ambiguous as to what reductions are required when no further progress toward attainment is necessary—or for that matter, possible.'' 571 F.3d at 1260. It held that ''EPA reasonably resolved this ambiguity by concluding [reasonable further progress reductions] are simply inapplicable in that circumstance.'' *Id.*

And, similar to the commenter here, the petitioners in *NRDC* also argued that the Clean Data Policy ''violates the mandate that all Part D requirements remain in force until an area has an approved maintenance plan in place,'' citing CAA section 175A(c). 571 F.3d at 1260. The D.C. Circuit similarly disagreed, holding that ''[t]he Clean Data Policy does not effect a redesignation; an area must still comply with the statutory requirements before it can be redesignated to attainment. Furthermore, Part D . . . remains in force insofar as it applies, but, as we have just seen, the EPA has reasonably concluded the provisions of the Act [regarding reasonable further progress] do not apply to an area that has attained the NAAQS.'' *Id.* at 1260–61.

The EPA has consistently interpreted the Act not to require the submission of planning requirements designed to achieve an area's attainment when the area is factually attaining the NAAQS. See Seitz Memo,[3] $PM_{2.5}$ Memo, 70 FR 71612 (Nov. 29, 2005) (Phase 2 ozone regulations),[4] SO_2 Implementation Guidance from 2014,[5] and PM–2.5 Implementation Rule from 2016.[6] That is, the EPA's position is that the Act's requirements that pertain specifically to achieving attainment remain in force for areas that have not yet been redesignated, but they are inapplicable or suspended while the area continues to attain the NAAQS. The two statutory provisions raised by the commenter—CAA section 172(c)(1) (requirement to submit an attainment demonstration and reasonably available control measures) and 172(c)(2) (requirement to submit provisions that require reasonable further progress)—state as follows: ''Such plan provisions shall provide for the implementation of all reasonably available control measures . . . and shall provide for attainment of the national primary ambient air quality standards''; and ''Such plan provisions shall require reasonable further progress.'' These general nonattainment planning provisions found in Subpart 1 are either identical or functionally similar to the provisions at issue in the *NRDC, Sierra Club,* and *Latino Issues Forum* cases cited above, and the CAA is ambiguous as to whether a state is still required to submit, for example, a plan that provides for attainment of the NAAQS (*i.e.,* an attainment demonstration) even if the area is already attaining the NAAQS. Because we think the purpose of the attainment demonstration and other attainment planning provisions has been fulfilled for areas that are currently attaining the NAAQS, we interpret the Act as not

[3] (Seitz Memo) Memorandum of May 10, 1995, from John Seitz, Director Office of Air Quality Planning and Standards to Air Division Directors, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard.'' Located at *https://www.epa.gov/sites/production/files/2016-03/documents/clean_data_policy_signed_05101995.pdf.*

[4] Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' This document is available at: *http://www.epa.gov/pmdesignations/guidance.htm.*

[5] The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' provides guidance for the application of the clean data policy to the 2010 1-hour primary SO_2 NAAQS. This document is available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

[6] Final Rule Adopting 40 CFR 51.1015 (Clean Data Policy for PM 2.5 NAAQS), Aug. 24, 2016. 81 FR 58009.

requiring submission of those provisions so long as the area continues to attain. The commenter states, without explaining, that ''the plain language of the Act requires EPA to ensure the air stays clean and that no mandatory control requirement be lifted until a maintenance plan is in place.'' This may be the commenter's conclusion about the purpose of the CAA's requirements, but we do not think the commenter has pointed to any plain language of the Act that imposes a requirement for the EPA to ''ensure the air stays clean'' nor that ''no mandatory control requirement be lifted until a maintenance plan is in place;'' but in any case, the Clean Data Policy is not inconsistent with those purposes.

Comment: The commenter claims that issuance of a CDD for the Freestone and Anderson Counties (Big Brown Power Plant) and Titus County(Monticello power plant) areas is inconsistent with the EPA's guidance that determination of attainment will be based on monitoring data (when available) and modeling information for the area, and/or a demonstration that the control strategy in the SIP has been fully implemented. The commenter states that there is no modeling or the required three full years of monitoring data as evidence supporting a determination of attainment in the record and that EPA's only evidence is the relinquishment of permits for the two sources. The commenter also notes that there is no monitor near the Monticello plant. The commenter continues that there is no inventory of other emission sources in the area, or assessment of whether nearby sources, such as the Welsh Power Plant are impairing air quality in the nonattainment areas. The commenter then concludes that the EPA fails to meet the criteria in the CDD policy and does not provide evidence demonstrating that the areas are attaining the NAAQS and will maintain the NAAQS. Additionally, the commentor claims that without monitoring or modeling, the EPA cannot evaluate whether the area remains in attainment or ensure attainment.

EPA Response: We agree that EPA guidance suggests that three years of monitoring data and/or modeling over a three-year period is generally needed to determine attainment. This is particularly the case in areas where sources continue to emit SO_2 emissions whose contribution to ambient air quality can be monitored or modeled. However, as explained in our proposal, for areas designated based on air quality modeling alone and where the source determined to be the primary cause of the violation has been permanently shut down and is no longer emitting, the EPA finds that a streamlined analysis may be more appropriate, rather than requiring three years of monitoring and/or modeling. In this case, the allowable emissions limit for each areas' primary cause of violation has been lowered to zero. The EPA believes that the permanent cessation of SO_2 emissions from these primary sources in conjunction with relevant monitoring, emissions, and modeling data for each area provide sufficient evidence to support the findings of attainment.

We disagree with the commenter's claims that there is no evidence that the areas are attaining the NAAQS. The EPA's determination is supported by relevant modeling, emissions, and monitoring data. As discussed in the proposal action, the primary evidence is that the sources of SO_2 emissions in the nonattainment areas have ceased operations and have permanently shut down. Contrary to the commenter's statements, the EPA did perform an analysis of modeling data to support this clean data determination.[7] While neither the EPA nor Texas performed new modeling, the EPA analyzed the modeling that formed the basis of our initial nonattainment designations. A nonattainment area encompasses the area shown to be in violation of the standard and the principal source or sources that contributes to the violation. Our analysis of the maximum impacts of each area found that Big Brown and Monticello were responsible for almost 100% of the impacts on the maximum ambient concentration and thus, it was appropriate for these sources to be the only sources explicitly modeled. The EPA has no knowledge and Sierra Club provided no evidence of new sources, emissions, or operations that would contribute or cause a violation of the SO_2 NAAQS in either area. Therefore, the EPA determined that rerunning the initial modeling would be redundant since the only change would be to revise the emissions for the modeled sources to zero. Instead, the EPA performed an analysis of that initial modeling to determine how the shutdown of the two power plant sources would impact the modeling results for each area. This analysis zeroed out the power plant emissions in each area leaving only background concentrations which would show each area in attainment of the 2010 SO_2 NAAQS, as discussed at length in the proposed action.

The EPA also analyzed all available monitoring data at the time of the proposal indicating large drops in ambient concentrations due to the cessation of emission from the power plant sources and supporting the determination that the areas are attaining the standard.[8] With respect to the Freestone-Anderson nonattainment area, EPA noted in the proposal that while insufficient monitoring data for the period from 2017–2019 prevented calculation of a valid design value, the extremely low SO_2 concentrations after the 2018 shutdown of Big Brown indicated that a preliminary design value based on the monitored 99th percentile concentrations in the nonattainment area for that period had dropped to 41 ppb, well below the 75 ppb SO_2 NAAQS. At the time of this final action, we now have a full three years of data at the Big Brown monitor for the period 2018–2020; the Big Brown Power Plant ceased operations and emissions in February 2018 so this data primarily consists of monitored air quality without the major source of SO_2 emissions. While the data for 2020 is not yet certified, the preliminary 3-year design value is 17 ppb and the EPA anticipates that there will be no material changes to that design value when data for 2020 is certified.

Regarding the Titus County nonattainment area, the EPA noted in our proposal that the area did not have an installed monitor. However, in addition to the analysis of modeling data, the EPA determined that the monitoring data from the nearby Welsh Facility Monitor (approximately 12 miles from the Titus County Monticello Power Plant) could serve as an indicator of air quality in the Titus county area to support a CDD. The EPA performed a thorough analysis of the impacts the Monticello facility (Titus County) had on the Welsh Monitor before and after shutdown. The proposal indicated that the Welsh Monitor's 2017–2019 three-year design value is 28 ppb, in attainment of the standard. The EPA's analysis showed that there are no other sources in the area between the Monticello and Welsh Facility and that concentrations decrease as you move farther from the Welsh source toward the Titus County nonattainment area which supports the EPA's determination that concentrations in the Titus County nonattainment area are also in attainment. The Welsh monitor data was also evaluated to demonstrate the significant decrease in monitored concentrations post-shutdown when the monitor was downwind of the Monticello facility. Prior to the shutdown, the maximum concentration captured when wind blew from the direction of Monticello to the monitor

[7] 85 FR 60411.

[8] 85 FR 60411–60412.

was 112.7 ppb. After the shutdown, the maximum concentrations from that direction in 2018 and 2019 were 6.8 ppb and 6 ppb respectively. This significant change in maximum concentrations at the Welsh monitor provides additional evidence to support a CDD.

The commenter is incorrect in their claim that there was no inventory of other sources in the area. In our proposed action we reviewed the available emission inventory and stated that ''Review of 2017 National Emission Inventory data shows one additional SO_2 emission source, Freestone Energy Center, within the Freestone/Anderson nonattainment area with total annual SO_2 emissions of only 11.7 tons. There are no other SO_2 emission sources in the Titus County nonattainment area.'' [9] We also provided a complete inventory of the primary sources causing nonattainment, demonstrating reported emissions from before and after shutdowns.

Our analysis of the modeling, monitoring, and emissions data all support the determination that the area is attaining the standard. The commenter provides no new information or analysis to suggest otherwise. As a result of the permanent shutdown of the primary sources there are no significant SO_2 emission sources in the areas, and no nearby sources that could cause nonattainment in the areas. While the Agency agrees that monitoring and/or modeling can be important for evaluating whether an area continues to attain, it is not universally required, and the assessment of whether an area continues to attain can be tailored to the facts and area in question. Based on the above information, the Agency does not believe a complex or comprehensive ongoing reporting or monitoring mechanism is necessary. The EPA also notes that these areas remain designated nonattainment and will remain so until the CAA's redesignation criteria are satisfied. Therefore, any new major sources seeking to operate within the nonattainment area would be required to complete nonattainment new source review (NNSR) permitting that would evaluate any potential NAAQS impacts.[10] Because the two power plants have had their operating permits revoked, any resumption of operations would require the sources to apply for new permits as new sources. This evidence collectively supports the EPA's determination that the areas are now in attainment and the belief that it is highly unlikely that the areas will violate the standard in the future. Finally, the requirements for redesignation of a nonattainment area to attainment include a determination that the improvement in air quality is due to permanent and enforceable reductions in emissions and a fully approved maintenance plan for the area.

III. Final Action

The EPA is taking final action to approve a CDD for the Anderson and Freestone Counties and the Titus County nonattainment areas based on each areas' current attainment of the 2010 SO_2 NAAQS. Pursuant to the EPA's longstanding and judicially upheld interpretation of the CAA and our SO_2 ''Clean Data'' policy provided for in the memorandum of April 23, 2014 from Steve Page, this action suspends certain required planning SIP revisions related to attainment of the 2010 SO_2 NAAQS on the condition that the area continues to attain the 2010 SO_2 NAAQS.[11] [12] Specifically, as discussed in the proposal action (85 FR 60407), the obligation for Texas to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2010 SO_2 NAAQS shall be suspended until such time as: (1) The area is redesignated to attainment for the 2010 1-hour Sulfur Dioxide NAAQS, at which time the requirements no longer apply; or (2) EPA determines that the area has violated the 2010 SO_2 NAAQS, at which time the area is again required to submit such plans.

V. Statutory and Executive Order Reviews

This action, which makes a determination of attainment based on emissions data, air quality planning information, air quality monitoring data, and air quality modeling data, will result in the suspension of certain Federal requirements, and thus will not impose any additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

[9] 85 FR 60411.

[10] 40 CFR 51.165. Permit Requirements.

[11] Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' This document is available at: *http://www.epa.gov/pmdesignations/guidance.htm.*

[12] The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' provides guidance for the application of the clean data policy to the 2010 1-hour primary SO_2 NAAQS. This document is available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: May 7, 2021.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. Section 52.2277 is added to read as follows

§ 52.2277 Control strategy and regulations: Sulfur Dioxide.

(a) *Determination of Attainment.* Effective June 14, 2021, based upon EPA's review of the available monitoring data, emissions data, and air quality modeling, EPA has determined that the Anderson and Freestone Counties and the Titus County nonattainment areas have attained the 2010 Primary 1-hour Sulfur Dioxide National Ambient Air Quality Standard (2010 SO_2 NAAQS). Under the provisions of EPA's Clean Data Policy, this clean data determination suspends the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan revisions related to attainment of the standard for as long as this area continues to meet the 2010 SO_2 NAAQS or until the area is formally redesignated.

(b) [Reserved]

[FR Doc. 2021–10140 Filed 5–13–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 83

[EPA–HQ–OAR–2020–0044; FRL 10024–10–OAR]

RIN 2060–AV18

Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is rescinding the final rule entitled ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.'' The EPA is rescinding the rule because the changes advanced by the rule were inadvisable, untethered to the CAA, and not necessary to effectuate the purposes of the Act.

DATES: This rule is effective June 14, 2021. The EPA will consider comments on this rule received on or before June 14, 2021.

If a member of the public requests a public hearing by May 21, 2021, the EPA will hold a virtual public hearing on Wednesday, June 9, 2021. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0044, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2020–0044 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Leif Hockstad, Office of Air Policy and Program Support, Office of Air and Radiation, U.S. EPA, Mail Code 6103A, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 343–9432; email address: *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms

APA Administrative Procedure Act
BCA Benefit-Cost Analysis
CAA Clean Air Act
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulations
CRA Congressional Review Act
CRS Congressional Research Service
E.O. Executive Order
EPA Environmental Protection Agency
FR Federal Register
GAO Government Accountability Office
NAAQS National Ambient Air Quality Standards
NAS National Academies of Science, Engineering, and Medicine
NESHAP National Emission Standards for Hazardous Air Pollutants
NRDC National Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RTC Response to Comments document
SAB Science Advisory Board
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

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I. General Information

A. What action is the Agency taking?

In this interim final rule, the EPA is rescinding the final rule entitled, ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process'' (hereafter ''Benefit-Cost Rule'').[1] For all of the reasons stated in this preamble, the EPA has determined that the Benefit-Cost Rule should be rescinded.

B. Does this action apply to me?

This rule does not regulate the conduct or determine the rights of any entity or individual outside the Agency, as this action pertains only to internal EPA practices. However, the Agency recognizes that any entity or individual interested in the EPA's regulations promulgated under the Clean Air Act (CAA) may be interested in this rule. In addition, this rule may be of particular interest to entities and individuals interested in how the EPA conducts and considers benefit-cost analyses (BCA).

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

The Agency is taking this action pursuant to CAA section 301(a)(1).[2] Section 301(a)(1) provides authority to the Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the CAA. As discussed in Section III of this preamble, the EPA has determined that the Benefit-Cost Rule was not ''necessary'' and lacked a rational basis under CAA section 301(a), and therefore the EPA lacked authority to issue it; we are accordingly rescinding the Rule.

II. Background

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,''[3] which, among other actions, directed the EPA to immediately review and consider suspending, revising, or rescinding the Benefit-Cost Rule. Accordingly, the EPA has conducted a comprehensive review of both the legal and factual predicates for the Benefit-Cost Rule and, in particular, the need for the regulations that the Agency promulgated in the Benefit-Cost Rule. As a result of this review, the EPA has determined that the changes to Agency practice required by the Benefit-Cost Rule were inadvisable, not needed, and untethered to the CAA, and is therefore rescinding the Rule.

The Benefit-Cost Rule was a procedural rule establishing requirements related to the development and consideration of BCA that the EPA would have been required to undertake when promulgating certain proposed and final regulations under the CAA. The final Benefit-Cost Rule stated, ''[t]he purpose of this action is to codify procedural best practices for the preparation, development, presentation, and consideration of BCA in regulatory decision-making under the CAA. This codification will help ensure that the EPA implements its statutory obligations under the CAA, and describes its work in implementing those obligations, in a way that is consistent and transparent.''[4] The final Benefit-Cost Rule was effective upon publication in the **Federal Register** based on the procedural rule exemption from delayed effective-date requirements in the Administrative Procedure Act (APA). After publication, several parties filed petitions for review of the Benefit-Cost Rule in the U.S. Court of Appeals for the District of Columbia, and these consolidated cases are currently in abeyance.[5]

The Benefit-Cost Rule included four independent elements. The first element required the EPA to prepare a BCA for all significant proposed and final regulations under the CAA. The Rule defined a significant regulation to include any proposed or final regulation that was determined to be significant by the Office of Management and Budget (OMB) under E.O. 12866 or was otherwise so designated by the EPA Administrator.

The second element codified specific practices for developing the BCAs required by the Rule. Those practices were drawn largely from, but not identical to, the EPA's Guidelines for Preparing Economic Analyses (hereafter ''Economic Guidelines'')[6] and OMB's Circular A–4.[7] Such practices included providing a statement of need, analysis of regulatory options, and appropriate baseline. In addition, the Rule required the risk assessments used to support BCAs to follow certain methods for risk characterization and risk assessment, including a systematic review approach. These methods included a specific process for selecting health benefit endpoints for quantification, including the requirement that a clear causal or likely causal relationship between pollutant exposure and effect had been established; a systematic review process; use of particular models to quantify the concentration-response relationships; and a presentation of results that highlighted uncertainty associated with the estimated benefits. The BCA was also required to include specific methods for assessing uncertainty and an explanation for the

[1] 85 FR 84130, (December 23, 2020).

[2] 42 U.S.C. 7601(a)(1).

[3] 86 FR 7037 (January 25, 2021).

[4] 85 FR 84130.

[5] *State of New York* v. *EPA,* No. 21–1026 (D.C. Cir.); *Cal. Cmtys. Against Toxics* v. *EPA,* No. 21–1041 (D.C. Cir.); *Envt'l Def. Fund* v. *EPA,* No. 21–1069 (D.C. Cir.). *State of New York* v. *EPA,* No. 21–1026 (D.C. Cir.), Doc. No. 1886762 (Feb. 23, 2021) (abeyance order).

[6] U.S. EPA. 2010. *Guidelines for Preparing Economic Analyses. https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses.*

[7] Exec. Office of the President, OMB, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003), *available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

methods chosen to analyze uncertainties. To the extent permitted by law, the Benefit-Cost Rule required the EPA to ensure that all information used in the development of the BCA would be publicly available. Any departures from the specified practices required a discussion of the likely effect on the results of the BCA.

The third element required the presentation of the BCA results in the preamble of the rulemakings subject to the Rule. In addition to a summary of the overall BCA results, the Benefit-Cost Rule required preambles to include a separate reporting of impacts that accrue to non-U.S. populations, an additional reporting of the public health and welfare benefits that pertain to the specific objective(s) of the CAA provision(s) under which the rule is promulgated, and a similar presentation of any costs that the CAA provision(s) specifies should be considered.

Finally, the fourth element required the Agency to consider the BCA in promulgating the regulation except where the CAA provision(s) under which the regulation is promulgated prohibit it. The Rule required that the Agency explain in the preamble how the Agency considered the BCA in its decision-making. The preamble indicated the EPA's intention that compliance with the Rule's requirements would be judicially reviewable.

The EPA cited CAA section 301(a)(1) as the sole source of authority for the Benefit-Cost Rule. That provision states, ''[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' The preamble to the Rule explained that the Agency had authority under that CAA provision because the ''authority in Section 301(a)(1) extends to internal agency procedures that increase the Agency's ability to provide consistency and transparency to the public in regard to the rulemaking process under the CAA.'' [8] The final Rule cited *NRDC* v. *EPA,* 22 F.3d 1125, 1148 (D.C. Cir. 1994) for the proposition that ''[CAA section 301] is sufficiently broad to allow the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'' [9]

III. Rationale for Rescission

After review of the Benefit-Cost Rule and its record, the EPA has concluded that the Rule should be rescinded in its entirety for several reasons. The Agency stated that it had authority to promulgate the Rule under CAA section 301(a) because it asserted that the Rule's additional procedures were necessary to ensure consistency and transparency in CAA rulemakings.[10] However, as discussed in Section III.A of this preamble, the Agency failed to articulate a rational basis for the Rule, and did not explain how the existing CAA rulemaking process had created or was likely to create inconsistent or non-transparent outcomes, *i.e.,* that an actual or theoretical problem existed. We have also determined, after reviewing each element of the Rule, that the additional procedures required under the Rule were not needed, useful, or advisable policy changes. In some cases, as discussed in this Section of the preamble, the new procedures could have hindered the EPA's compliance with the CAA and may not have even furthered the Rule's stated purposes of consistency and transparency. Our rationale for rescinding each of the four independent elements of the Rule is severable and provided below in Sections III.B–E of this preamble. Finally, in Section III.F we note that the existing public process provides ample ability for the public to participate in the EPA's CAA rulemakings.

A. The Benefit-Cost Rule Failed To Establish a Rational Basis for Its Requirements Based on the Rule's Record.

As an initial matter, the EPA has determined that the Agency failed to provide a rational basis to support the Rule or explain why the Rule was needed or reasonable. The Rule did not provide any record evidence that the guidance and administrative processes already in place presented problems that justified the mandate imposed by the Rule. Indeed, the Rule failed to point to a single example of a rule promulgated under the CAA where problems emerged that would have been avoided had the mandate imposed by the rule been in place. Although the Agency asserted that the Benefit-Cost Rule's purported achievement of greater consistency and transparency in economic analyses across those CAA rulemakings affected by the Rule would ''better allow the Agency to fulfill the purpose described in Section 101(b)(1) of the CAA 'to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population,' '' [11] the mere assertion of ''consistency'' or ''transparency'' in the Rule did not adequately explain what the Agency was trying to accomplish. Furthermore, there was no discussion of how the requirements of the Rule improved the Agency's ability to accomplish the CAA's goals to protect and enhance air quality.[12]

Some portions of the Rule suggested that it was intended to combat a theoretical threat. For example, the preamble of the final rule stated, ''Without enforceable procedural regulations for BCA, future regulations may be promulgated without consideration of, and public accountability concerning, their costs and benefits. Thus, the EPA has determined that the Final Rule is necessary to ensure that BCA practices are implemented in a consistent fashion prospectively.'' [13] The hypothetical threat that future significant CAA regulations would be promulgated without appropriate consideration of costs and benefits and without due public process is highly implausible. The Agency's consideration of all factors it is required to analyze under the specific provisions of the CAA is already subject to public notice and comment processes (*see* Section III.F of this preamble) and enforceable judicial review. Moreover, as discussed in Section III.B of this preamble, there has been an unbroken, bipartisan, decades-long commitment from Presidential Administrations to conducting benefit-cost analyses for economically significant regulations issued in the United States. These analyses are rigorous, publicly available, subject to interagency review, and are conducted according to extensive peer-reviewed guidelines from OMB and the EPA.[14]

We therefore rescind the Rule on the basis that it failed to articulate a rational basis justifying its promulgation.

B. The Benefit-Cost Rule Was Not Necessary To Carry Out the CAA Because the EPA Already Prepares a BCA for CAA Rules That Warrant Such Analysis.

In this section, we address the reasons for rescinding the Rule's expansion of BCA to ''significant'' CAA rulemakings that are not economically significant under E.O. 12866. While BCA is a useful analytic tool for informing regulatory actions, it is a resource-intensive undertaking. The Rule expanded the universe of CAA rulemakings for which the EPA would be required to conduct BCAs without justifying why such

[8] 85 FR 84137.

[9] *Id.*

[10] 85 FR 84137.

[11] 85 FR 84138.

[12] The Rule referenced CAA sections 101(b)(1) and 101(c) but failed to explain how its procedures better served those Congressional aims than the status quo ante.

[13] 85 FR 84137.

[14] *See* Section III.C of this preamble.

expansion was necessary or appropriate. We conclude that existing directives under E.O. 12866 and guidance to conduct BCAs for economically significant rules, while retaining flexibility in analyzing costs, benefits, and other factors for non-economically significant rules, strike the better balance between agency resources and the information provided by additional economic analysis for such rules.

BCA has been part of executive branch rulemaking for decades. Presidents since the 1970s have issued E.O.s directing agencies to conduct analyses of the economic consequences of regulations as part of the rulemaking development process. E.O. 12866, which is still in effect, requires that for all significant regulatory actions, an agency provide ''an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate . . .'' [15] Some statutes also impose analytical requirements for regulatory actions. For example, the Unfunded Mandates Reform Act of 1995 (UMRA) includes requirements that are similar to the analytical requirements under E.O. 12866. Both E.O. 12866 (and its predecessors) and its implementing guidance, Circular A–4, call for Agencies to focus resources on quantifying benefits and costs using BCA for those regulations that are anticipated to have the largest effects on the economy. Specifically, E.O. 12866 requires a quantification of benefits and costs to the extent feasible for any regulatory action that is ''likely to result in a rule that may . . . have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' [16] Rules meeting any of these criteria are labelled as ''economically significant.'' Similarly, UMRA's analytical requirements pertain to all regulatory actions that include federal mandates ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' [17]

The EPA estimates the anticipated impacts of its regulatory actions using methods and assumptions that are transparent, consistent with the best available science, and appropriate for the scope of the regulatory action. In performing analysis of regulatory action, the EPA adheres to the executive order requirements pertaining to economic analysis by following the guidance laid out by Circular A–4 and the Economic Guidelines. Per those directives and guidance, the BCAs and other types of analysis supporting significant CAA regulations are subject to internal review and an interagency review process under E.O. 12866 that involves application of the principles and methods defined in Circular A–4. The scientific information and models used within BCA and other analyses supporting regulatory decisions are also subject to EPA's peer review guidance [18] and OMB's guidance to federal agencies on what information is subject to peer review, the selection of appropriate peer reviewers, opportunities for public participation, and related issues.[19]

Executive orders and subsequent guidance distinguish between analytical requirements for economically significant rules and other significant rules, both because of the resource intensity of regulatory analysis and because of substantive differences between types of rules. Developing a BCA for an economically significant CAA rule takes considerable Agency resources often spanning a year or more and frequently involves the development of policy-relevant emissions inventories, photochemical air quality modeling, engineering research assessments and analyses, engineering cost assessments, and benefits assessments for human health, climate, visibility, ecological and/or other categories of benefits. These complex and time-consuming analytical undertakings are appropriate for economically significant rules. However, these complex analyses may not always be the best use of Agency resources for smaller rules determined to be significant by OMB under E.O. 12866 because they raise novel legal or policy issues rather than because of the magnitude of their benefits or costs.

The Benefit-Cost Rule significantly expanded the set of rulemakings for which a BCA would have been conducted. As the Rule required BCA for all rules designated as significant under E.O. 12866, this would have included many actions that are not economically significant. For example, between January 2017 and January 2021, the EPA finalized 32 significant regulations under the CAA, including only 7 economically significant regulations.[20] This expansion to conduct BCA for a substantially larger set of CAA rules would have consumed significant EPA staff time and other resources, and the additional time such unwarranted analyses would have taken could have resulted in delays in fulfilling statutory obligations under the CAA. Removal of this requirement allows the Agency to better target analytic resources towards CAA rules that tend have larger economic consequences.

Under E.O. 12866, rules that are designated significant include those that may: ''[h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities''; ''[c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency''; ''[m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof''; or ''[r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.'' Most significant CAA regulations that are not economically significant are determined to be significant for novel legal or policy reasons. These rules raise issues that may be unrelated to the magnitude of benefits or costs analyzed in BCA. As a result, key policy decisions in the context of these rules are often issues that can be fully addressed through a more targeted or different kind of analysis than a BCA. For significant rules that are not economically significant, other less resource-intensive and time-consuming analyses are prepared to inform and support the rulemaking. For example, instead of conducting a BCA, the EPA may instead examine the emission and cost impacts on particular regulated entities or conduct qualitative analyses for less consequential rules, which may regulate smaller sectors of economy, affect sectors that are not well connected with other parts of the economy, or have smaller effects to the economy overall. In addition, often in these situations data and methods for quantifying and

[15] E.O. 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993).

[16] *Id.* at section 3(f)(1).

[17] 2 U.S.C. 1532(a).

[18] *See* EPA's *2015 Peer Review Handbook,* 4th Edition, *available at https://www.epa.gov/osa/peer-review-handbook-4th-edition-2015.*

[19] *See* OMB's *Final Information Quality Bulletin for Peer Review* (70 FR 2664, January 14, 2005).

[20] *See* the memorandum in the docket ''Final Significant Regulations under the Clean Air Act 2017–2021'' for the list of the significant and economically significant regulations.

monetizing overall net benefits may not be available. In such cases, less extensive analyses may provide sufficient information for the rulemaking. These analyses may also include elements of a BCA that contribute important information to the policy decision. For example, the Agency routinely prepares economic impact assessments for many rules, including risk and technology reviews for NESHAPs and new source performance standards. As noted above, though, the resources involved in doing a BCA may not be warranted when the focus of regulatory analysis is on novel legal or policy issues or other non-economic factors that make the action significant.

The Benefit-Cost Rule did not provide a justification for its expansion of the number of CAA rules for which the EPA must conduct a BCA, and after reviewing the Rule, we have concluded that we do not think a BCA is necessarily warranted for every CAA rule that is designated as significant under E.O. 12866. The EPA remains committed to the principles outlined in the Economic Guidelines and Circular A–4 when designing and conducting analysis of all significant regulations. As noted, these analyses are the most extensive—*i.e.,* result in a BCA—for economically significant rules as those would most benefit from resource-intensive, complex inquiries into societal costs and benefits and a calculation of net benefits. The Rule did not provide an explanation for why BCAs are required for other CAA rules that OMB has designated ''significant'' for reasons other than the magnitude of their benefits or costs. Requiring a BCA even when the primary issues of importance are not economic unnecessarily complicates the rulemaking process, potentially diverts the Agency's resources from those aspects of the rule that warrant additional consideration (*i.e.,* the reasons why the rule was designated significant), and could delay rules needed for protection of public health and the environment. In addition, requiring a BCA for all significant CAA rules could delay BCAs for economically significant rules if staff time and resources are diverted.

C. The Codification of Specific Practices in the Benefit-Cost Rule Limited the EPA's Ability To Rely on the Best Available Science

The EPA is rescinding the Benefit-Cost Rule's codification of specific practices for the development of BCA in a regulation because this aspect of the Rule could have prevented the EPA from relying on best available science. First, because best practices for conducting a high-quality BCA cannot be established using a set formula, codification of specific practices could prevent situation-specific tailoring of BCA, which is always necessary. Second, best practices evolve over time, and the Benefit-Cost Rule would have locked the EPA into using outdated practices until it could have been amended via rulemaking, which could have delayed incorporation of new scientific information and methods. Third, some of the Rule's ''best practice'' requirements did not derive from the Economic Guidelines, Circular A–4, or the EPA's Science Advisory Board (SAB) advice. Below we discuss each rationale for rescission in turn.

1. The Benefit-Cost Rule Demonstrated the Difficulty in Codifying Specific Practices Into Implementable and Reviewable Requirements for BCA

Although the Benefit-Cost Rule stated that it was based on the requirements of Circular A–4 and the Economic Guidelines, codification of such requirements in regulation is inconsistent with the instructions in those same guidance documents to tailor an analysis to the specific situation. In the 2003 memo to the heads of executive agencies and establishments, Circular A–4 states: ''You will find that you cannot conduct a good regulatory analysis according to a formula. Conducting high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' [21] The Economic Guidelines similarly acknowledge that there are a wide variety of case-specific issues that arise in conducting a BCA, noting that ''[the] most productive and illuminating approaches for particular situations will depend on a variety of case-specific factors and will require professional judgment.'' [22] The Economic Guidelines emphasize that they are not intended to be a ''rigid blueprint'' or a ''cookbook,'' [23] as doing so would be unproductive and ultimately less helpful to analysts due to the diversity of analyses and situations requiring professional judgement. For example, the Benefit-Cost Rule required quantitative methods to analyze uncertainties in the assessment of costs, changes in air quality, assessment of likely changes in health and welfare endpoints, and the valuation of those changes, without allowing flexibility to tailor this requirement to the size or complexity of the rule being analyzed. In contrast, Circular A–4 recognizes that formal quantitative uncertainty analysis is most important to conduct for the largest rules: ''For major rules involving annual economic effects of $1 billion or more, you should present a formal quantitative analysis of the relevant uncertainties about benefits and costs.'' [24]

In their review of the proposed Benefit-Cost Rule, the SAB commented on the tension created by codifying BCA requirements into regulation. The SAB ''urge[d] EPA to consider carefully which aspects of BCA should be included in the final rule versus which aspects should be in guidance, given the case-by-case nature of BCA.'' [25] The SAB also highlighted examples where a more flexible approach would be warranted, including recommending that ''no 'one size fits all' approach to causality be mandated because a variety of approaches may need to be taken.'' [26] However, the EPA did not revise the requirements in the proposed Benefit-Cost Rule in response to this advice from SAB. After further review, the EPA has reconsidered the record of the Benefit-Cost Rule, including the public comments and SAB advice, and agrees that a ''one size fits all'' approach is not an appropriate approach to BCA in general or mandating specific practices for benefits assessment causality in particular.

In addition, the final Benefit-Cost Rule had no exemption for rules without costs or with de minimis costs or benefits, and certain limitations were only caveated by technical considerations rather than practicality or usefulness (*e.g.,* 40 CFR 83.3(a)(9)(vi) (''When sufficient data exist''); 40 CFR 83.3(a)(10)(iii) (''Where data are sufficient'')). Circular A–4 provides a contrary, more flexible and reasoned approach, stating that ''[a]s with other elements of regulatory analysis, you will need to balance thoroughness with the practical limits on your analytical

[21] *Circular A–4* at p. 3.

[22] *Economic Guidelines* at p. 1–2.

[23] *Id.*

[24] *Circular A–4* at p. 40.

[25] U.S. EPA SAB. 2020. *Science Advisory Board (SAB) Consideration of the Scientific and Technical Basis of EPA's Proposed Rule titled ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.''* EPA–SAB–20–012. September 30. (''SAB (2020)'') at p. i, *available at https://yosemite.epa.gov/sab/sabproduct.nsf/0A312659C8AC185D852585F80049803C/$File/EPA-SAB-20-012.pdf.*

[26] *Id.* at p. 7.

capabilities.'' [27] Even the CAA provision (section 317) that requires economic impact assessments for certain proposed regulations under the CAA also requires the EPA to consider practicability, professional judgement, and the time and resources involved in determining the extent of any such assessment.[28] This disconnect between the need to adapt economic analyses to particular circumstances as articulated in Circular A–4 and CAA section 317, and the requirements in the Benefit-Cost Rule provides an additional rationale for rescinding the Benefit-Cost Rule. Existing guidance affords flexibility for the EPA to conduct the type of analysis warranted by a particular rulemaking.

Even the parts of the Benefit-Cost Rule that appeared to be intended to provide flexibility—such as certain caveats for benefits assessment like ''to the extent possible''—would have unnecessarily constrained the Agency compared to the recommendations in the Economic Guidelines and Circular A–4. In practice, these caveats demonstrated one of the problems with attempting to codify BCA best practices into regulation, and the advantages of using guidance to conduct BCAs. Under the guidance documents, technical experts exercise their professional judgment to design and conduct analyses tailored to the situation at hand. The Benefit-Cost Rule's restrictive caveats like ''to the extent possible'' eliminated or at the very least cabined the ability for experts to exercise that judgment by potentially requiring the expert to first demonstrate that compliance with the requirement was not possible, before being able to select more appropriate methods and approaches.

Further, some of the requirements of the Benefit-Cost Rule were very unclear. For example, the requirement in 40 CFR 83.3(a)(9)(iii)(E) (''To the extent possible, the studies or analyses should be: [. . .] reliably distinguish [sic] the presence or absence (or degree of severity) of health outcomes'') did not provide clear direction to the analyst because multiple technical interpretations of the standard in the regulation were reasonable. The lack of clarity in these requirements would have created confusion within the Agency and with the public. The codification of such unclear requirements in regulation would undoubtedly have generated unnecessary and wasteful litigation by creating opportunities to question whether the EPA had strictly followed the letter of the Benefit-Cost Rule, rather than focusing on whether it had conducted scientifically sound analyses.

We conclude that reverting to the use of existing, well-vetted guidance allows the Agency to design BCAs and analyses that demand scientific rigor without forcing the Agency's economists and other scientists into choosing between complying with the Benefit-Cost Rule or exercising professional scientific and economic judgment.

2. As Best Practices Evolve Over Time, the Benefit-Cost Rule Would Have Locked the EPA Into Using Outdated Practices Until the Rule Could Have Been Amended

As acknowledged in the Economic Guidelines, environmental policymaking and economic analysis evolves over time and new literature is continually published.[29] For this reason, the EPA adopted an approach described as the ''loose-leaf'' format [30] in the Economic Guidelines that provides flexibility to account for new information and the growth and development of economic tools over time. Circular A–4 also acknowledges the continual advancement of BCA methods: ''New methods may become available in the future. This document is not intended to discourage or inhibit their use, but rather to encourage and stimulate their development.'' [31] However, the final Benefit-Cost Rule failed to account for this constantly evolving environment by enshrining specific practices in regulation. If the EPA had retained the Benefit-Cost Rule, the Agency would have been required to amend the Rule before being allowed to incorporate new scientific, including economic, information or update methods that had evolved since the Benefit-Cost Rule was promulgated. Preventing the EPA from keeping up with evolving best practices and requiring the EPA to rely on potentially outdated methods until a revised rulemaking is completed is inconsistent with the CAA direction to make decisions based on the best scientific data available.[32]

By freezing and defining what constituted ''best practices'' at a single point in time, the Benefit-Cost Rule elevated ''consistency'' over the exercise of sound judgment based on latest scientific knowledge and, given that revision by rulemaking would take a long time, would have slowed or discouraged progress in the development and use of newer and better methods. This risk was particularly notable for the highly prescriptive requirements in the Benefit-Cost Rule for benefits assessment and uncertainty analysis (as discussed below in this Section of the preamble). In contrast, since guidance is inherently less prescriptive than regulation, it can be more flexible in allowing agencies to keep up with the evolution of best practices to be used to support CAA regulations.[33] As further evidence of how best practices change over time, we note that the Economic Guidelines are in the process of being updated as part of a periodic review undertaken by the EPA.[34] In addition, President Biden

[27] *Circular A–4* at p. 40.

[28] CAA section 317 applies to a subset of regulations promulgated under the CAA. Specifically, it applies to new source performance standards, ozone and stratospheric protection, prevention of significant deterioration, new motor vehicles and engines, fuel and fuel additives, and aircraft emissions regulations. In contrast, the Benefit-Cost Rule would have applied to all significant CAA regulations. In addition, the economic impact assessment required by CAA section 317 is a less complex and time-consuming analytical undertaking than a BCA because it does not require the assessment of benefits. *See* CAA section 317(d) (''Extensiveness of assessment. The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.'').

[29] *Economic Guidelines* at p. 1–1.

[30] *Id.*

[31] *Circular A–4* at p. 42.

[32] *See, e.g.,* CAA section 108(a)(2) (directing the EPA to use ''latest scientific knowledge'' in setting the NAAQS); CAA section 211(c)(2)(A) (requiring the EPA to consider ''all relevant medical and scientific evidence available'' in regulating fuels); CAA section 606(a)(1) (instructing the EPA to consider accelerated timetable for regulation in part ''based on an assessment of credible current scientific information'').

[33] As a parallel example under another environmental statute, the National Academies of Science, Engineering, and Medicine (NAS) recently released a peer review report that criticized the EPA's systematic review process for evaluating existing chemical substance risks under the Toxic Substances Control Act for not meeting state-of-practice standards. *See* National Academies of Sciences, Engineering, and Medicine. 2021. *The Use of Systematic Review in EPA's Toxic Substances Control Act Risk Evaluations.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/25952.* In response, the EPA announced that it would no longer use the prior systematic review approach and would instead develop a new approach that incorporates the NAS advice. *See* EPA. 2021. *EPA Commits to Strengthening Science Used in Chemical Risk Evaluations.* Press Release. Feb 16. *https://www.epa.gov/newsreleases/epa-commits-strengthening-science-used-chemical-risk-evaluations.* The Benefit-Cost Rule would have precluded or slowed this kind of adjustment in response to future peer reviews and the Agency's ability to keep up with evolving best practices for significant CAA rules.

[34] In January 2021, the SAB released their final peer review report of the EPA's draft revision, and the EPA anticipates finalizing the updated Economic Guidelines shortly. Although the EPA intended for the requirements in the Benefit-Cost Rule to align with the updated Economic Guidelines, the Rule was finalized before the SAB's

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issued a memorandum on January 20, 2021, on Modernizing Regulatory Review,[35] which directs OMB in consultation with other agencies to recommend revisions to Circular A–4. Therefore, the Benefit-Cost Rule, because it froze the requirement to use certain practices, may not have been consistent with the forthcoming updates to the Economic Guidelines or Circular A–4.

While the Benefit-Cost Rule purported to promote consistency, after further consideration we have concluded that it instead would have promoted inconsistency. Best practices for preparing BCA evolve and improve over time as scientific learning advances. The Benefit-Cost Rule sought, by codifying a discrete set of specific requirements as ''best practices,'' to lock in those specific practices and allow judicial review to enforce them until a future rulemaking was undertaken to update them. Because these requirements applied only to significant CAA rules, they would not have affected how the EPA conducts BCA for economically significant rules issued under other statutes. For these rules under other statutes, the EPA would have been able to conduct BCA by using the latest state-of-the-art methods, without waiting for updates to the Benefit-Cost Rule. The EPA has determined, consistent with the approach in the Economic Guidelines and Circular A–4, that a more flexible approach than the Benefit-Cost Rule is warranted, and thus the Rule should be rescinded in its entirety.

3. The Benefit-Cost Rule Codified Certain Practices That Conflict With Best Science

Implementation of some of the specific requirements of the Benefit-Cost Rule would also undermine the quality of the EPA's BCA for CAA regulations. Some of the requirements for health benefits assessment promoted particular types of data in a way that could have conflicted with the use of best scientific practices. As discussed in Sections III.C.1 and 2 of this preamble, the codification of BCA practices in regulation as opposed to guidance presents significant disadvantages; this problem is only compounded where there are requirements in the regulation that are scientifically problematic. While the EPA is not asserting that every requirement in the Benefit-Cost Rule conflicted with sound scientific or economic best practices, the problematic elements were significant and difficult to address in piecemeal fashion. These substantive problems provide further support that the Rule as a whole should be rescinded.

For example, the requirement in 40 CFR 83.3(a)(9)(iii)(C) to ''employ or design an analysis that adequately addresses relevant sources of potential critical confounding'' could have led to inferior selection of health studies or the potential exclusion of some health endpoints altogether. Specifically, this requirement could prioritize the selection of studies that attempt to control for confounding,[36] inappropriately or to an unwarranted extent, when scientific evidence demonstrates that a particular confounder is not important (*e.g.,* not well correlated with the health outcome) or if the model incorporating a particular confounder yields implausible or unstable statistical results. In addition, the SAB advised that the proposed requirement regarding consideration of confounders was ''vague and would be difficult to implement'' since ''there is ample room for disagreement over which confounders are appropriate, or how to evaluate an actual confounding effect.'' [37]

As another example, the requirement in 40 CFR 83.3(a)(9)(iii)(D) to ''consider how exposure is measured, particularly those that provide measurements at the level of the individual and that provide actual measurements of exposure'' introduced a bias against some higher quality methods. Specifically, this requirement suggested that individual-level or ''actual'' measurements are more highly valued than other established and accepted methods of estimating exposure. Though individual measures of exposure would be preferred, no population-level study has yet gathered these data due in part to the resources that would be required. Rather, most epidemiologic studies of air pollution use measures or models of concentrations in ambient air as a surrogate for human exposure. Indeed, measured concentrations from air quality monitors may yield less accurate estimates of exposure among populations living further from a monitor compared to modeled exposure. In addition, codifying a preference for measured concentrations could discourage consideration of studies that combine both measured and modeled concentrations. For example, studies that estimate air quality and human exposure using a combination of approaches (*e.g.,* remote sensing techniques and/or models, ground-truthed by monitoring data) are preferred over those that use a single method (*e.g.,* measured concentrations), because the combination of multiple estimation methods can reduce statistical bias and generate higher-resolution exposure estimates than data from a single monitor.[38]

Further, the requirement in 40 CFR 83.3(a)(9)(i)(A) that the process of selecting human health benefit endpoints would be based upon scientific evidence that indicates there is ''a clear causal or likely causal relationship between pollutant exposure and effect'' did not derive from the Economic Guidelines, Circular A–4, or SAB advice. In fact, the SAB criticized the requirement that benefits analyses for health endpoints should be limited to those with a ''causal or likely causal'' relationship. Specifically, the SAB recommended the Rule allow for inclusion of effects for which the relationship may be less certain (*e.g.,* ''possibly causal'') if the impact would be substantial, as a way to more completely account for uncertainties.[39] The Benefit-Cost Rule did not address the SAB's recommendation.

The Benefit-Cost Rule in 40 CFR 83.3 also imposed disparate requirements on the consideration of costs and benefits that would have led to arbitrary and distorted BCAs. The Rule set a high bar for which benefits to include and how they should be calculated (scientific evidence indicates there is a clear causal or likely to be causal relationship between pollutant exposure and effect (40 CFR 83.3(a)(9)(i)(a)), a preference for ''actual'' measurements (40 CFR 83.3(a)(9)(iii)(D)), potentially prioritizing confounding controls over other considerations 40 CFR 83.3(a)(9)(iii)(C), etc.). By contrast, the Rule contained no requirements specific

peer review was completed. U.S. EPA SAB. 2021. Transmittal of the Science Advisory Board Report titled ''SAB Peer Review of the EPA's Revised Guidelines for Preparing Economic Analysis''. EPA–SAB–21–002. January 6, *available at https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/61C74C0E14BD5956852586550071E058/$File/EPA-SAB-21-002.pdf.*

[35] 86 FR 7223 (January 26, 2021).

[36] Confounding occurs when a variable is associated with both pollutant exposure and the health outcome, which could mask the true statistical association between them. For example, people are exposed to multiple pollutants in the ambient air that can be associated with the same health outcome. Epidemiologic studies attempt to control for confounding using a variety of methods, and relevant confounders vary across pollutants, health outcomes, and study designs. For more information, see Chapter 3 (Exposure to Ambient Particulate Matter) in: U.S. EPA. 2019. *Integrated Science Assessment for Particulate Matter (Final Report);* Research Triangle Park, NC, *available at https://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=539935.*

[37] SAB (2020) at p. 11.

[38] For more information, see Chapter 3 (Exposure to Ambient Particulate Matter) in U.S. EPA (2019).

[39] SAB (2020) at p. ii.

to how costs were to be calculated (*see generally* 40 CFR 83.3). The EPA merely discussed in the preamble that certain approaches could generate ''relatively precise'' and ''reasonable'' estimates of a proposed regulation's compliance costs. The Benefit-Cost Rule did not justify this disparity between setting highly specific and very stringent requirements for assessing benefits and substantially less stringent requirements for assessing costs. In addition, this requirement in the Benefit-Cost Rule only applied to health benefits, which created an inconsistency with other categories of benefits (*e.g.,* visibility, ecological effects) that did not have this limitation. This could have led to misleading BCAs in future significant CAA rules. The Rule's inconsistencies with sound economic and scientific principles warrant the Rule's rescission.

D. The Benefit-Cost Rule's Presentational Requirements Invited Net Benefit Calculations in Regulatory Preambles That Are Misleading and Inconsistent With Economic Best Practices.

We discuss in this section our reasons for rescinding the Rule's requirements in 40 CFR 83.4(a) and (b) to separately and selectively present certain subsets of benefits . The EPA already disaggregates benefit and cost estimates in BCAs, so these presentational requirements do not provide additional transparency.[40] Moreover, the presentational requirements seemingly invited partial net benefit calculations that are contrary to economic best practice.

Both the Economic Guidelines and Circular A–4 explain what BCA is and its purpose in regulatory analysis. BCAs assess economic efficiency by asking whether it is theoretically possible for those who gain from the policy to fully compensate those who lose and remain better off. When the answer to this question is 'yes,' then net benefits are positive, and the policy is a movement toward economic efficiency. The Economic Guidelines state that a BCA ''evaluates the favorable effects of policy actions and the associated opportunity costs of those actions'' and ''the calculation of net benefits helps ascertain the economic efficiency of a regulation.''[41] Circular A–4 further clarifies that ''[w]here all benefits and costs can be quantified and expressed in monetary units, benefit-cost analysis provides decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects). This is useful information for decision makers and the public to receive, even when economic efficiency is not the only or the overriding public policy objective.''[42]

Both guidance documents are clear that net benefits are calculated by subtracting total costs from total benefits, regardless of whether the benefits and costs arise from intended or unintended consequences of the regulation. As Circular A–4 notes, the ''analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks,'' where an ancillary benefit is defined as a ''favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.''[43] This is particularly important in instances when unintended effects are important enough to potentially change the rank ordering of the regulatory options considered in the analysis or to potentially generate a superior regulatory option with strong ancillary benefits and fewer countervailing risks.

The Benefit-Cost Rule required the EPA to present in the preamble a summary of both the overall BCA results as well as an additional reporting of subsets of the total benefits of the rule. First, the Rule required a presentation of only the benefits ''that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the significant regulation is promulgated.''[44] Second, the Rule required that if any benefits and costs accrue to non-U.S. populations, they must be reported separately to the extent possible.[45] These presentational requirements are duplicative of existing information provided because the EPA already presents these types of benefits in disaggregated form in Regulatory Impact Analyses (RIAs), so there was no lack of transparency with respect to these subsets of benefits. The additional requirement to separately present and articulate these benefits was problematic because it could have resulted in, and seemingly invited, misleading net benefit calculations that excluded impacts that were due to the regulation. For example, in the final Affordable Clean Energy Rule, the EPA provided complete net benefit calculations consistent with economic best practices, but also used calculations of segregated benefits—like those required under the Benefit-Cost Rule—to create tables of ''net'' benefit calculations (*i.e.,* benefits minus costs) that accounted for only a subset of the rule's benefits.[46] In addition, requiring a separate presentation that excluded certain categories of benefits that Circular A–4 and the Economic Guidelines indicate should be considered could call into question, without justification, the significance of those benefits. Such an exclusion is inconsistent with the purpose of BCA and thus would have promoted arbitrary rather than informed decision-making.

E. The Benefit-Cost Rule Did Not Reconcile Its Consideration Requirement With the Substantive Mandates of the CAA.

In this section, we address the Rule's requirement that the Agency ''consider'' the required BCAs in decision making and the Rule's stated intention to make compliance with the Rule enforceable by outside parties through judicial review. As a preliminary matter, we did not intend these aspects of the Rule to be read as creating a substantive cause of action, and we do not think the record for the Benefit-Cost Rule supports such a position. Moreover, after reviewing the record for the Benefit-Cost Rule, we conclude that the Rule's failure to identify the CAA provisions to which it would apply, much less its lack of any explanation of how to reconcile the Rule's requirement to ''consider'' the BCA in the context of the various CAA provisions, as discussed in Sections E.1 and E.2 of this preamble, support rescission of the Rule. First, for CAA provisions where the EPA is prohibited from considering costs, the Rule's requirement to prepare a BCA and include it in the judicially reviewable rulemaking record solely for the purpose of providing ''additional information'' is not necessary to effect any purpose under the Act. Second, for CAA provisions that do permit some consideration of cost or other economic factors, the Rule did not explain why BCA is an appropriate way to consider cost, particularly given the existence of areas in which Congress required the EPA to regulate despite anticipating that

[40] *See, e.g.,* Chapter 11 of the *Economic Guidelines* (Presentation of Analysis and Results) and *Circular A–4* at p. 15.

[41] *Economic Guidelines* at p. xi.

[42] *Circular A–4* at p. 2.

[43] *Id.* at p. 26. Ancillary benefits or benefits not related to the statutory provision under which a rule is promulgated have sometimes been called ''co-benefits.'' However, this term is imprecise and has been applied inconsistently in past practice, and as such should be avoided (unless the term is used explicitly in statutes).

[44] 40 CFR 83.4(b).

[45] 40 CFR 83.4(a).

[46] *See* 84 FR 32520, 32572 tbl.10–12 (July 8, 2019).

few, if any, benefits could be monetized. Because the EPA would essentially have to give the newly required BCA little to no weight in such situations, we fail to see why the added procedure was a necessary one to carry out the statute. To the contrary, we conclude that the traditional, pre-existing manner of interpreting and implementing the CAA is the better way to interpret and apply the CAA.

Addressing the preliminary question noted above, to the extent that these aspects of the Benefit-Cost Rule could be read as requiring more than just an additional procedural step, such a reading would be impermissible. The EPA's general-rulemaking authority under CAA section 301(a) is broad, but the authority ''to issue ancillary regulations is not open-ended, particularly when there is statutory language on point.'' [47] Given the complexity of the CAA, including the numerous provisions addressing the authority of the Agency to consider costs, the EPA could not have issued a substantive rule along the lines of the Benefit-Cost Rule under our general rulemaking authority without substantial, additional analysis and explanation addressing the specific requirements of the Act. The EPA acknowledged as much in the preamble to the Benefit-Cost Rule in discussing our view that the Agency's compliance with what we characterized as ''these procedural requirements'' would be subject to judicial review but admitting also that we had not based the Rule on any interpretation of the substantive provisions of the CAA.[48] Notwithstanding this discussion, to the extent that some may have viewed the Benefit-Cost Rule as creating a new avenue for substantive judicial review of future CAA actions, which was not intended, we do not agree that the Benefit-Cost Rule and its record could support such a view, and this supports rescinding the Rule. At most, we believe that the procedural requirements in the Benefit-Cost Rule—similar to an Agency's failure to provide adequate notice under the APA or CAA 307(d)—could only have provided a basis for remanding a rule to the Agency to cure process flaws. Rescinding the Rule will avoid misunderstanding that the Rule created a substantive cause of action and will avoid unnecessary litigation contending that the Rule had substantive impacts that were not intended and not supported.

This view is consistent with provisions in the CAA indicating that Congress did not intend that additional analytical requirements such as those at issue in the Benefit-Cost Rule should play a substantive role in determining compliance with statutorily mandated agency action. In CAA section 317, Congress created a process by which it required the EPA to prepare an economic impact assessment prior to issuing proposed rulemakings for seven types of regulations under the Act.[49] However, Congress was careful to point out that the specific statutory mandates underlying the regulations are controlling and that failure to comply with the additional economic impact assessment requirements is not a basis upon which review can be obtained for the applicable rules.[50] Congress even explicitly stated that where a statutory provision required the Agency to consider costs, ''the adequacy or inadequacy of any assessment required under [CAA section 317] may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.'' CAA section 317(g). If Congress did not want its own statutorily mandated economic impact assessments to provide a basis to invalidate CAA rules, then it is unlikely Congress would have granted the EPA authority to create a new substantive cause of action based on failure to comply with a procedural rule establishing BCA requirements.

1. The Rule Is Plainly Unnecessary With Respect to CAA Provisions That Prohibit the EPA From Considering Cost

The Benefit-Cost Rule's requirement to prepare a BCA applied to all significant CAA rulemakings, including those promulgated under CAA provisions that prohibit consideration of cost or other economic factors. The only waiver from the Rule's requirements for these rulemakings was that the BCA need not be ''considered'' in such cases where ''the provision or provisions . . . prohibit the consideration of the BCA.'' [51] In the final rule, the Agency reasoned that ''while certain statutory provisions may prohibit reliance on BCA or other methods of cost consideration in decision-making, such provisions do not preclude the Agency from providing additional information regarding the impacts of a proposed or final rule to the public. For example, while the CAA prohibits the EPA from considering cost when establishing or revising requisite NAAQS for certain criteria pollutants, the EPA nonetheless provides RIAs to the public for these rulemakings.'' [52] The desire to provide ''additional information'' for those rules where Congress prohibited the EPA from considering cost does not on its face fall within CAA section 301(a)'s authority to promulgate regulations as are necessary to carry out the statute. We therefore find the Rule's application to CAA provisions that prohibit the consideration of cost to be inconsistent with the Act.

To support the argument for broad application of the Benefit-Cost Rule, the EPA asserted equivalency between the Benefit-Cost Rule's requirements and the EPA's historic preparations of RIAs for rulemakings under which it was prohibited from considering costs, such as setting the NAAQS. We have concluded, however, that even where equivalent, the EPA's past practices do not provide support for a conclusion that such practices are necessary to carry out the Act. In addition, the new procedures promulgated under the Rule made two key changes to the existing process under which the EPA prepared RIAs for economically significant rulemakings. The Benefit-Cost Rule required that the EPA develop a BCA meeting very specific requirements (as opposed to one tailored to the rule at issue, as permissible under existing guidance, *see* Section III.C of this preamble), and perhaps more importantly, it required the EPA to include the results of the BCA and how the information was considered in the preambles to forthcoming proposed and final rules promulgated under the CAA. That is, the BCA mandated by the Rule was explicitly required to be part of the Agency's record for decision-making. In

[47] *See NRDC* v. *EPA,* 749 F.3d 1055, 1063–64 (D.C. Cir. 2014) (citing *American Petroleum Inst.* v. *EPA,* 52 F.3d 1113, 1119 (D.C. Cir. 1995).

[48] 85 FR 84138.

[49] The Benefit-Cost Rule did address comments regarding CAA section 317, but its discussion of that provision is limited to making the point that nothing in CAA section 317 precludes the Agency from requiring any additional analysis, such as its BCA. *See* Response to Comments (RTC) at page 53, available in the docket at EPA–HQ–OAR–2020–0044–0687.

[50] CAA section 317(c) (''Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any [covered] action''); CAA section 317(e) (''Nothing in this section shall be construed—(1) to alter the basis on which a standard or regulation is promulgated under this chapter; (2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or (3) to authorize or require any judicial review of any such standard or regulation or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.'').

[51] 40 CFR 83.2(b).

[52] 85 FR 84134.

addition, the Benefit-Cost Rule's preamble stated the Agency's compliance with the Rule's requirements would be subject to judicial review. *See* the preamble to the final rule (''[T]he Final Rule is binding upon the Agency for significant CAA regulations, and . . . EPA's compliance is subject to judicial review in challenges to such rulemakings.'').[53] These changes are in stark contrast to the existing process for interagency review for rules such as the NAAQS, where the EPA does not include the RIA as part of its administrative record for the rulemaking, nor is compliance with the E.O. subject to judicial review.[54]

The Benefit-Cost Rule's proffered explanations for why the Rule was necessary are expressly tied, in part, to these two changes. The Rule noted that one motivation for requiring BCAs was that ''courts have noted the usefulness of BCA and have utilized the information provided therein to inform their analysis when reviewing agency-created BCAs and/or RIAs as evidence that an agency ignored alternatives or acted in an arbitrary or capricious manner when taking action.'' [55] Similarly, the EPA articulated that it viewed enforceability of its new requirements as critical to its argument that the Rule was necessary. In the Response to Comments document, the Agency stated, ''EPA has not had procedural enforceable regulations in place to ensure consistency in its past BCA practices. To the extent that commenters assert that EPA's past practice has been consistent and transparent, it is not due to an enforceable standardized approach that would ensure such a result. . . . Without enforceable procedural regulations for BCA, future regulations may be promulgated without consideration of, and public accountability concerning, their costs and benefits. Thus, the EPA has determined that the Final Rule is necessary to ensure that BCA practices are implemented in a consistent fashion prospectively.'' [56]

But neither of these reasons articulating the necessity of the Rule can extend to regulations promulgated under CAA provisions where the Agency is prohibited from considering cost or economic factors. Where Congress did not intend the EPA to consider cost, there would be no purpose for the EPA to incorporate a BCA into its rulemaking record, and it would be contrary to the CAA to subject a Congressionally-required rule to review based on failure to adhere to an agency-created mandate to prepare a BCA where the statute precludes consideration of cost.

2. For Provisions That Permit Consideration of Cost or Economic Factors, the Requirement To Consider BCA Is Unwarranted Because Implementation of Those Provisions Should Begin With Analysis of Statutory Text and Context

The CAA contains a vast array of instructions about whether and how the EPA may consider benefits, costs, or other economic factors, and discerning Congress' intent with respect to those instructions requires analysis of statutory context.[57] Rather than grapple with any of the statutory provisions at issue, the Benefit-Cost Rule assumed that because Congress provided authority for the EPA to consider costs in making some regulatory decisions, and because courts have concluded that BCA may be an appropriate way for agencies to account for costs in some contexts, it was ''necessary'' and reasonable that the EPA should require consideration of BCA in all significant CAA rules where it was not precluded from doing so. However, this faulty logic does not constitute an adequate justification, and the EPA has concluded that the Rule's approach is inferior to the existing process of interpreting and applying the relevant CAA provisions.

Under the CAA, Congress granted the EPA broad powers to act on behalf of protecting and enhancing the nation's air resources. The Act specifically directs the EPA to, among other things, set NAAQS, establish emission standards for both stationary and mobile sources of air pollution, reduce emissions of nearly 200 specified hazardous air pollutants, regulate fuels and fuel additives, and issue permits and enforce the Act's emission limits. In these various authorities, Congress established a wide range of direction with respect to the EPA's consideration of benefits, costs, or other economic factors.[58] With respect to costs, the statutory text in some provisions explicitly indicates that the EPA should incorporate a consideration of cost or economic factors.[59] Other authorities suggest by implication that the EPA should or may consider costs, using language directing the EPA to establish standards that are ''practicable,'' ''reasonably achievable,'' or ''feasible.'' [60] And in many if not all of the CAA authorities, Congress made clear that the EPA was to give strong, if not overriding, consideration to the ''benefits'' of its regulations—*i.e.,* beneficial effects on public health, welfare, risk prevention, the

[53] 85 FR 84138.

[54] While the earlier E.O.s that required a regulatory analysis (*i.e.,* E.O. 12291 (46 FR 13193, February 17, 1981)) contained a requirement that BCAs prepared per E.O.s be included in the Agency's rulemaking record, that directive was removed from E.O. 12866, which replaced the prior E.O. *Compare* E.O. 12291 section 9 (''The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.'') *with* E.O. 12866 section 11 (containing no such requirement). Neither E.O. has ever subjected agency compliance with these E.O.s to judicial review. *See* E.O. 12866, section 11 (''Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.''); E.O. 12291, section 9 (''This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.'').

[55] 85 FR 84134.

[56] RTC at Chapter 3.1.1, p. 32.

[57] Three Supreme Court cases from the last two decades addressing whether the EPA properly interpreted the CAA with respect to whether it could consider cost illustrate the critical role of context and purpose in statutory interpretation. *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001); *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014); *Michigan* v. *EPA,* 576 U.S. 743 (2015).

[58] For additional information regarding various CAA authorities and discussion of cost, see Congressional Research Service (CRS) report titled ''Cost and Benefit Considerations in Clean Air Act Regulations.'' In the report, the CRS identifies various CAA authorities that either mention or imply cost considerations and authorities that neither mention nor imply cost consideration. May 5, 2017, *available at https://crsreports.congress.gov/product/pdf/R/R44840/4.*

[59] Examples include: The setting of emission standards for new stationary sources in section 111, going ''beyond the floor'' in emission standards for sources of 187 hazardous air pollutants in section 112(d), setting emission standards for motor vehicles beyond those standards listed in the act under sections 202(a) and 202(i), controlling mobile source air toxics under section 202(l), controlling or prohibiting the manufacture and sale of fuels and fuel additives under section 211(c), requiring the sale of reformulated gasoline in nonattainment areas under section 211(k), setting emission standards for nonroad vehicles and engines under section 213, and setting emission standards for locomotives, buses, and aircraft, under sections 213, 219, and 231.

[60] Examples include: Providing for the use of ''generally available control technologies'' to control area sources of hazardous pollutants under section 112(d)(5), promulgating ''reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases,'' of extremely hazardous substances and take into consideration ''the concerns of small business,'' under section 112(r)(7), and imposing emission standards or emission control technology requirements that ''reflect the best retrofit technology and maintenance practices reasonably achievable'' for retrofit of urban buses under section 219(d).

environment, safety, and visibility, to name but a few.

In the Benefit-Cost Rule, the EPA presumed that its requirements were permissible because it ''was not aware of any impediment to this rulemaking.'' [61] But the Rule failed to identify, much less discuss, *any* statutory provision governing the rules to which its requirements would have applied. The EPA is bound to look to the statutory language and context of a particular provision, and in some cases consider the factual circumstances of the issue the agency is attempting to address in determining whether *and how* the EPA may consider benefits, costs, and other factors.[62]

The Benefit-Cost Rule's failure to examine the statutory provisions governing the regulations it would impact would have resulted in cases where the Rule required ''consideration'' of BCAs where it may not have been feasible to even produce a meaningful or useful BCA. Even for those CAA provisions where cost may be considered, BCA is not necessarily useful, and may even be misleading. As Circular A–4 has noted, ''[w]here all benefits and costs can be quantified and expressed as monetary units, benefit-cost analysis provides decision makers with a clear indication of the most efficient alternative.'' [63] Circular A–4 goes on to caution, however, that it is not always possible to quantify benefits (or costs), and ''[w]hen important benefits and costs cannot be expressed in monetary units, BCA is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.'' [64]

This caution is relevant as there are a number of authorities under the CAA authorizing or requiring the EPA to regulate pollutants where, in many cases, important benefits cannot readily be monetized. For example, in CAA section 112(d)(2), the Act prescribes that the EPA establish emission standards based on maximum achievable control technology or ''MACT'' for new and existing sources of hazardous air pollutants. Section 112 authorizes the EPA to consider costs at some steps in this process but not at the first step of establishing the minimum stringency emission limit, because Congress recognized the dangerous nature of hazardous and toxic air pollutants. Where the EPA can consider cost in this context (*e.g.,* requiring more stringent emission limits), it has not historically used BCA to establish appropriate emission standards. We note that as methods do not yet exist that can reliably quantify the value of changes in many HAP-related risks, a BCA would include only a qualitative assessment of the benefits of HAP reductions. In other words, while we know that there are important health outcomes associated with exposure to HAP that include cancer, birth defects, reproductive effects, and neurodevelopmental defects, we currently lack the ability to precisely quantify and fully monetize all of the benefits of a change in the MACT standard. In implementing section 112, the EPA has therefore historically employed other types of analyses, such as examining the cost per ton of emissions removed.[65]

Perhaps recognizing the varied landscape presented by the CAA's provisions, the Benefit-Cost Rule ultimately only required that its BCA be ''considered,'' but prescribed no further instruction or requirement as to how the Agency should consider it.[66] The Agency had taken comment on the possibility of requiring a more substantive outcome, soliciting input ''on approaches for how the results of the BCA could be weighed in future CAA regulatory decisions,'' including ''whether and under what circumstances the EPA could or should determine that a future significant CAA regulation be promulgated only when the benefits of the intended action justify its costs'' or ''only when monetized benefits exceed the costs of the action.'' [67] Because the final Benefit-Cost Rule did not strictly direct how the Agency should weigh BCA in its future CAA rulemakings, the EPA could have formally complied with the Rule while giving the BCA little to no weight in its decision making. The need to adhere to the particular statutory language and context governing the significant CAA rulemaking at issue, including examples like the one cited above, would make that outcome plausible, if not likely. By appropriately allowing the EPA to determine how best to consider benefits, costs, and other factors in the context of a particular statutory provision, the Benefit-Cost Rule conceded that it may serve no purpose in helping the EPA to effectuate the purposes of the Act. At the same time, by acknowledging that the Agency's choice of analysis depends on what each CAA provision requires or permits,[68] the Benefit-Cost Rule refuted its claim that the Rule provided ''consistency.''

Given the exacting demands of discerning Congressional intent in any given CAA provision, we conclude that returning to implementation of the CAA using the traditional process of statutory interpretation provides advantages over the Benefit-Cost Rule's presumption that consideration of BCA is ''necessary'' and reasonable to promulgate all significant CAA regulations regardless of statutory text and context. Under its pre-existing process, the Agency first looks to the text of the relevant statutory provision to determine whether Congress intended or permitted the Agency to consider cost or economic factors. If yes, the Agency further looks to the statutory context, legislative history, and the nature of the program or environmental problem to be addressed to determine a reasonable manner of considering cost. We conclude that this process of interpreting and discerning Congress' intent, subject to public notice and comment and judicial review, is superior to the Benefit-Cost Rule's presumptive imposition to consider BCA followed by a subsequent attempt to reconcile with the statutory text.

F. The Pre-Existing Administrative Process Provides for Ample Consistency and Transparency

In the Benefit-Cost Rule the EPA also failed to establish that its requirements were needed with respect to process, in light of the existing procedures under the APA and, where applicable, CAA section 307(d). These requirements are more than adequate to accomplish the general good government goals of ''consistency'' and ''transparency,'' and the Benefit-Cost Rule failed to provide any support for its contention that the pre-existing process was deficient so as to warrant the Rule's new procedures.

When promulgating regulations under the CAA such as those targeted by the Benefit-Cost Rule, the EPA is already required by statute to provide ''[g]eneral notice of proposed rulemaking'' in ''the **Federal Register**,'' including the legal authority under which the rule is proposed and the terms or substance of the proposed rule.[69] Moreover, the EPA must give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments.[70] For many rules promulgated under the

[61] 85 FR 84138.

[62] *See Am. Textile Mfrs. Inst., Inc.* v. *Donovan,* 452 U.S. 490, 508 (1981); *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 223 (2009).

[63] *Circular A–4* at p. 2.

[64] *Id.* at p. 10.

[65] *See, e.g., Natl. Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1157 (D.C. Cir. 2013).

[66] *See* 40 CFR 83.2(b).

[67] 85 FR 35623.

[68] *See* 40 CFR 83.2(b); 40 CFR 83.4(d).

[69] 5 U.S.C. 553(b); CAA section 307(d)(3).

[70] 5 U.S.C. 553(c); CAA section 307(d)(5).

CAA, including those designated by the Administrator, CAA section 307(d) further requires the establishment of a rulemaking docket,[71] and specifies that the notice of proposed rulemaking must include a summary of ''the factual data on which the proposed rule is based,'' [72] ''the methodology used in obtaining the data and in analyzing the data,'' [73] and ''the major interpretations and policy considerations underlying the proposed rule.'' [74] CAA section 307(d)(2) also requires the EPA to ''set forth and summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee . . . and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences.''

The EPA must respond to all significant comments it receives on its proposed regulations before issuing a final rule, including contentions from stakeholders that the EPA has failed to reasonably consider the costs or benefits of an action. *See Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 35–36 (D.C. Cir. 1977) (''[t]he opportunity to comment is meaningless unless the agency responds to significant points raised by the public); *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402, 416 (1971) (requiring reviewing court to assure itself that all relevant factors have been considered by the agency). Such comments can encompass arguments that by failing to conduct a BCA, the EPA has contravened the CAA or complaints that its data or analysis is flawed or arbitrary. Where the EPA promulgates a final CAA section 307(d) rule, the EPA is required to provide ''a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.'' [75] The EPA is forbidden from promulgating a rule based on ''any information or data which has not been placed in the docket as of the date of . . . promulgation.'' [76]

While ''agencies should be free to fashion their own rules of procedure,'' [77] and ''are free to grant additional procedural rights in the exercise of their discretion,'' [78] where Congress so carefully specified the procedural requirements for CAA rules (at least those enumerated in section 307(d)), we question the wisdom of adding to those procedures an additional BCA requirement, particularly where the EPA did not show that statutory procedures were deficient.[79]

The Benefit-Cost Rule did not explain how the pre-existing ample public process was inadequate to accomplish the rule's stated goals of promoting consistency and transparency. The existing process already requires the EPA to present in a proposed notice published in the **Federal Register** its relevant interpretations of a particular statutory provision regarding whether and how it considers costs and benefits. The existing process already permits interested parties to promote during the public comment period a view that weighing the results of a BCA is a valuable or appropriate way for the EPA to consider costs, benefits, or other factors specified in the provision of the Act under which a rule is promulgated; any views asserting that the agency has not been transparent in providing factual data, methodologies, legal interpretations, and policy considerations; or any views asserting that the agency has been inconsistent in its interpretations. The existing process, under CAA section 307(b), already subjects any failure on the EPA's part to grapple with significant comments to review by the U.S. Courts of Appeals.[80]

Therefore, the EPA has determined that the existing process already provides sufficient consistency and transparency.

IV. Rulemaking Procedures, Procedural Rule Exemption, and Request for Comment

In this action, the EPA is issuing an interim final rule to rescind the Benefit-Cost Rule in its entirety and requesting comment on that action. We intend to follow this interim final rule with a final rule that responds to comments received during this public comment period, if any, and reflects any accompanying changes to the Agency's approach. This interim final rule will stay in place until it is replaced by the final rule that responds to any public comments and makes any warranted changes. This interim final rule will become effective 30 days after publication.

Like the Benefit-Cost Rule that this rule rescinds, this interim final rule is a rule of agency organization, procedure, or practice. This procedural rule does not regulate any party outside of the EPA but instead exclusively governs the EPA's internal process for conducting benefit-cost analysis. This interim final rule does not regulate the rights and obligations of any party outside of the EPA nor does it have any legal force and effect on them. Any incidental impacts on voluntary behavior outside of the EPA do not render this a substantive rule.

While procedural rules are exempt from the APA's notice and public comment requirements, *see* 5 U.S.C. 553(b)(A), the EPA has nonetheless decided to voluntarily seek post-promulgation public comment on this procedural interim final rule and follow it with a final rule because the information and opinions the public may provide could inform the Agency's decision-making.[81] By electing to proceed with an interim final rule rather than a final rule, the EPA is acting consistently with Administrative Conference of the United States Recommendation 95–4, which recommends that agencies consider providing post-promulgation notice and comment even where an exemption is justified, be it a substantive rule relying on the ''good cause'' exception to notice and comment, 5 U.S.C. 553(b)(B), or a procedural rule such as this one.[82]

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0044, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

[71] CAA 307(d)(2).

[72] CAA section 307(d)(2)(A).

[73] CAA section 307(d)(2)(B).

[74] CAA section 307(d)(2)(C).

[75] CAA section 307(d)(6)(B).

[76] CAA section 307(d)(6)(C).

[77] *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.,* 435 U.S. 519, 544 (1978).

[78] *Id.* at 524.

[79] *See NRDC* v. *Reilly,* 976 F.2d 36, 41 (D.C. Cir. 1992) (EPA cannot use its general rulemaking authority as justification for adding to a statutorily specified list); *NRDC* v. *EPA,* 749 F.3d at 1064 (''EPA cannot rely on its gap-filling authority to supplement the Clean Air Act's provisions when Congress has not left the agency a gap to fill.'').

[80] Outside parties regularly exercise their right to challenge the EPA's actions under the CAA. In a 2011 report, the Government Accountability Office found that during a 16-year period between 1995 and 2010, about 2,500 environmental cases were brought against the EPA. Of those challenges, CAA cases were more than twice as common as cases brought under any other statute (*i.e.,* comparing the three most litigated groups of actions: 59% of cases were brought under the CAA, 20% under the Clean Water Act, and 6% under Resource Conservation and Recovery Act). *Environmental Litigation: Cases against EPA and Associated Costs over Time,* GAO–11–650, August 2011, *available at https://www.gao.gov/assets/gao-11-650.pdf.*

[81] *Vt. Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.,* 435 U.S. 519, 524 (1978) (''Agencies are free to grant additional procedural rights in the exercise of their discretion.'').

[82] *See* ACUS Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking* (1995).

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov.* For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

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

B. Participating in a Virtual Public Hearing

If a member of the public requests one, the EPA will hold a virtual public hearing on this interim final rulemaking on Wednesday, June 9, 2021. Please note that any hearing would be a deviation from the EPA's typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

Upon publication of this document in the **Federal Register**, the EPA will accept requests for a public hearing. If a hearing is requested, the EPA will also begin pre-registering speakers and attendees for the requested hearing. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, individuals may use the online registration form available via the EPA's Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process web page for this hearing (*https://www.epa.gov/air-and-radiation/rescission-2020-benefit-cost-rule*) or contact Leif Hockstad at (202) 343–9432 or *hockstad.leif@epa.gov.* The last day to pre-register to speak at the hearing will be Wednesday, June 2, 2021. On Monday, June 7, 2021, if a hearing has been requested, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/air-and-radiation/rescission-2020-benefit-cost-rule.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing, if held; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the end of each session as timing allows. The EPA will make every effort to accommodate all speakers.

Each commenter will have 3 minutes to provide oral testimony. The EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

The EPA is also asking hearing attendees to pre-register for the hearing, if held, even those who do not intend to provide testimony. This will help the EPA ensure that sufficient phone lines will be available.

Please note that any updates made to any aspect of the hearing logistics, including potential additional sessions, will be posted online at the EPA's Rescission of the Benefit-Cost Rule website (*https://www.epa.gov/air-and-radiation/rescission-2020-benefit-cost-rule*). While the EPA expects the hearing, if held, to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by Wednesday, June 2, 2021. The EPA may not be able to arrange accommodations without advanced notice.

V. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice.

B. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This action would not regulate any entity outside the federal government and is a rule of agency procedure and practice.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' within the meaning of Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution or use of energy, and it has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs (OIRA).

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard that results in disproportionate impacts on minority and low-income populations.

K. Congressional Review Act (CRA)

This rule is exempt from CRA because it is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.

List of Subjects in 40 CFR Part 83

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

PART 83—[REMOVED AND RESERVED]

■ For the reasons stated in the preamble, and under the authority of 42 U.S.C. 7601, the EPA removes and reserves 40 CFR part 83.

[FR Doc. 2021–10216 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; EPA–HQ–SFUND–1989–0008; EPA–HQ–SFUND–1986–0005; EPA–HQ–SFUND–1990–0010; FRL–10023–78–OLEM]

Deletions From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) announces the partial deletion of five sites from the Superfund National Priorities List (NPL). The NPL, created under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated state agencies, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, where applicable, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: The document is effective on May 14, 2021.

ADDRESSES: *Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the corresponding Regional Records Centers. Locations, addresses, and phone numbers of the Regional Records Centers follow.

Regional Records Centers:

- Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA Superfund Records Center, 1650 Arch Street, Mail code 3SD42, Philadelphia, PA 19103; 215/814–3024.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail code SFD 6–1, San Francisco, CA 94105; 415/972–3160.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. Information in these repositories, including the deletion docket, may not be updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

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

FOR FURTHER INFORMATION CONTACT:

- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), *hass.andrew@epa.gov,* 215/814–2049
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), *cibulskis.karen@epa.gov,* 312/886–1843
- David Wennerstrom, U.S. EPA Region 7 (IA, KS, MO, NE), *wennerstrom.david@epa.gov,* 913/551–7996
- Eric Canteenwala, U.S. EPA Region 9 (AZ, CA, HI, NV, AS, GU, MP), *Canteenwala.eric@epa.gov,* 415/972–3932
- Chuck Sands, U.S. EPA Headquarters, *sands.charles@epa.gov,* 703/603–8857

SUPPLEMENTARY INFORMATION: Table 1 includes the portions of the site (media and areas) to be partially deleted from the NPL.

TABLE 1

Site name	City/county, state	Media/parcels for partial deletion	Docket No. EPA–HQ–SFUND-year-docket ID
Palmerton Zinc Pile	Palmerton, PA	117 parcels in OU3	1983–0002
North Penn—Area 6	Lansdale, PA	1.66-acres soil and groundwater of the Second Administrative Parcel, 135 East Hancock Street.	1989–0008
Lake Sandy Jo (M&M Landfill)	Gary, IN	Soil media of Landfill Property and identified adjacent parcels of OU1 land.	1983–0002
Midwest Manufacturing/North Farm.	Kellogg, IA	OU 1 North Farm	1986–0005
Fort Ord	Marina, CA	Soil media of approximately 11,934 acres[1]	1990–0010

Footnote 1 for Table 1: The acreage of the partial deletion for the Fort Ord Superfund site was incorrectly reported in the proposed rule as 11,961-acres due to an administrative error. The correct acreage is 11,934-acres. The names and descriptions of all parcels identified for partial deletion were correct and remain unchanged.

The sites to be partially deleted from the NPL, information concerning the proposed rule for the partial deletion including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete, public comment and Responsiveness Summary (RS) (if applicable) are included in Table 2.

TABLE 2

Site name	Date, proposed rule	FR citation	Public comment	RS	Footnote
Palmerton Zinc Pile	11/20/2020	85 FR 74306	No	No	
North Penn—Area 6	12/30/2020	85 FR 86525	Yes	Yes	1, 2, 3
Lake Sandy Jo (M&M Landfill)	11/20/2020	85 FR 74306	Yes	Yes	1, 2, 3
Midwest Manufacturing/North Farm.	11/20/2020	85 FR 74306	No	No	1, 3
Fort Ord	11/20/2020	85 FR 74306	Yes	Yes	1, 2, 3

The NCP permits activities to occur at a deleted site or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 2 above, if applicable, under Footnote such that; 1 = site has continued operation and maintenance of the remedy, 2 = site receives continued monitoring, and 3 = site five-year reviews are conducted. All other Superfund site areas and media will remain on the NPL and are not being considered for deletion as part of this action.

The EPA received comments on three of the sites included for partial deletion in this final rule. EPA did not receive adverse comments on the Palmerton Zinc Pile and Midwest Manufacturing/North Farm sites, therefore EPA will proceed with the partial deletions. For the North Penn—Area 6 site, the closing date for comments on the Notice of Intent to Delete was January 29, 2021. Three public comments were received. One comment supported the proposed deletion. One comment was not related to the proposed rulemaking partially deleting the site from the NPL. The third commentor questioned EPA's technical rationale for the proposed partial deletion. EPA has determined that all appropriate Fund-financed responses under CERCLA have been implemented at the 1.66-acre portion of the approximately 650-acre North Penn—Area 6 site proposed for deletion, and this forms the basis for deciding that the Second Administrative Parcel is eligible for deletion. Response actions continue for other portions of the site which remain on the NPL. Further details of the technical basis for partial deletion are provided within documents in the docket. EPA reviewed soil and groundwater data, which indicate that soil and groundwater contamination levels do not warrant further response actions within the Second Administrative Parcel. Remedial Action completion reports for soils (Operable Unit 1) and groundwater (Operable Unit 3) are both included in the deletion docket. EPA still believes the deletion action is appropriate. A responsiveness summary was prepared and placed in the docket, EPA–HQ–SFUND–1989–0008, on *https://www.regulations.gov,* and in the Regional repository listed in the **ADDRESSES** section.

For the Lake Sandy Jo (M&M Landfill) site, the closing date for comments on the Notice of Intent to Delete was December 21, 2020. Three public comments were received. Two residents living near the site submitted comments. A third comment from *Regulations.gov* included general comments on the content and wording of EPA's November 20, 2020 **Federal Register** notice. The two residents commented on multiple issues and expressed community concerns that the site was still contaminated, and EPA was proposing to delete the site to eliminate EPA responsibility. EPA contacted the residents, provided additional information, and conducted a virtual meeting to further explain the proposed partial deletion of the land/soil portion of the Landfill Property and identified adjacent parcels. Continued response actions will occur at portions of the site which remain on the NPL. EPA has determined that it is appropriate to proceed with the deletion because all response actions at the portion of the Lake Sandy Jo site proposed for deletion are complete and the criteria for deletion have been met. A responsiveness summary was prepared and placed in the docket, EPA–HQ–SFUND–1983–0002, on *https://www.regulations.gov,* and in the Regional repository listed in the **ADDRESSES** section.

For the Fort Ord site, the closing date for comments on the Notice of Intent to Delete was December 21, 2020. Seven submissions from five commenters opposing the partial deletion were received. Several comments questioned the timing of the partial deletion proposal at the end of the previous Administration, subsequent to the sunset of the Fort Ord Reuse Authority in June 2020, and questioned the utility of a partial deletion rather than a full site deletion after all response work would be complete at the site. EPA is deleting portions of Fort Ord from the NPL because they meet the-criteria for site deletion, that all appropriate response actions have been implemented. EPA determined the partial deletion was appropriate in consultation with state agencies including the California Department of Toxic Substances Control and the Central Coast Regional Water Quality Control Board. The Fort Ord Reuse Authority completed their clean-up responsibilities and the sunset of the Authority does not impact future clean-up. The Army will remain responsible for the remaining site clean-up with EPA and state oversight. Other comments questioned the public outreach activities at the site for the partial deletion and dissemination of information to new residents. The site has robust public outreach activities, even though COVID restrictions recently imposed by the State impacted in-person community outreach activities at Fort Ord. Several submissions from commentors were received which included historic information and information about other sites which were not accurate or germane for current clean-up actions at portions of the Fort Ord site proposed for partial deletion. Comments included concerns about residual munitions remaining after clean-up and contamination from lead. Lead contamination at the site is primarily found at former small arms training ranges; 162,800 cubic yards of soil and 719,000 pounds of spent ammunition were removed from the former Site 3 Beach Trainfire Ranges, now Fort Ord Dunes State Park. After clean-up, bullets are occasionally found. The Fort Ord Dunes State Park personnel collect bullets as required by state deed covenants and transfer them to the Army for disposal. If suspected munitions or explosives of concern are found at Fort Ord Dunes State Park, personnel notify the County bomb squad and the Army. Several additional small areas of lead contamination that have not yet been addressed remain on the NPL. Concerns were expressed about per- and polyfluoroalkyl substances (PFAS) compound contamination. The following media remain on the NPL: Groundwater, soil gas and surface areas impacted by soil gas, and all soil and groundwater media associated with areas under evaluation for the potential presence of contamination from per- and polyfluoroalkyl substances (PFAS) compounds. A responsiveness summary was prepared and placed in the docket, EPA–HQ–SFUND–1990–0010, on *https://www.regulations.gov,* and in the Regional repository listed in the **ADDRESSES** section.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Larry Douchand,

Director, Office of Superfund Remediation and Technology Innovation.

For reasons set out in the preamble, the EPA amends 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend appendix B to part 300:

■ a. In Table 1 by revising the entries for ''IA, Midwest Manufacturing/North Farm, Kellogg''; ''IN, Lake Sandy Jo (M&M Landfill), Gary''; and ''PA, Palmerton Zinc Pile, Palmerton''; and

■ b. In Table 2 by revising the entry for ''CA, Fort Ord, Marina''.

The revisions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
IA	Midwest Manufacturing/North Farm	Kellogg	P
*	* * *	* *	*
IN	Lake Sandy Jo (M&M Landfill)	Gary	P
*	* * *	* *	*
PA	Palmerton Zinc Pile	Palmerton	P
*	* * *	* *	*

[a] * * *

P = Sites with partial deletion(s).

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes [a]
*	* * *	* *	*
CA	Fort Ord	Marina	P

TABLE 2—FEDERAL FACILITIES SECTION—Continued

State	Site name	City/county	Notes [a]
*	*	*	*

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. 2021–10133 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–49; RM–11874; DA 21–524; FR ID 26159]

Television Broadcasting Services Augusta, Georgia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by Gray Licensee, LLC (Licensee), the licensee of WRDW–TV, channel 12 (CBS), Augusta, Georgia, requesting the substitution of channel 27 for channel 12 at Augusta in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 27 for channel 12 at Augusta.

DATES: Effective May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Manley, Media Bureau, at (202) 418–0596 or *Andrew Manley@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 13278 on March 8, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to applying for channel 27. No other comments were received. In support, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, that the reception of VHF signals require larger antennas relative to UHF channels, and that many of the WRDW–TV viewers experience difficulty receiving its signal. In addition, operation on channel 27 will not result in any predicted loss of service.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–49; RM–11874; DA 21–524, adopted May 5, 2021, and released May 5, 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, 339.

■ 2. Amend § 73.622, in the table in paragraph (i) (Post-Transition Table of DTV Allotments), under Georgia, by revising the entry for Augusta to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * *	* *
GEORGIA	
* * *	* *
Augusta	27, 30, 31, 42
* * *	* *

[FR Doc. 2021–10162 Filed 5–13–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–50; RM–11875; DA 21–523; FR ID 26168]

Television Broadcasting Services Cape Girardeau, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a notice of proposed rulemaking in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), the licensee of KFVS–TV, channel 11 (CBS), Cape Girardeau, Missouri, requesting the substitution of channel 32 for channel 11 at Cape Girardeau in the DTV Table of Allotments. As a result of the Commission's Incentive Auction and repacking process, KFVS was repacked from channel 12 to channel 11. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 32 for channel 11 at Cape Girardeau.

DATES: Effective May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Manley, Media Bureau, at (202) 418–0596 or *Andrew.Manley@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 13516 on March 9, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to applying for channel 32. No other comments were received. In support,

the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, that the reception of VHF signals require larger antennas relative to UHF channels, and that many of the KFVS viewers experience difficulty receiving its signal. In addition, operation on channel 32 will not result in any predicted loss of service.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–50; RM–11875; DA 21–523, adopted May 5, 2021, and released May 5, 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, 339.

■ 2. Amend § 73.622, in the table in paragraph (i) (Post-Transition Table of DTV Allotments), under Missouri, by revising the entry for ''Cape Girardeau'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
MISSOURI	
Cape Girardeau	22, 32.
* * * * *	

[FR Doc. 2021–10161 Filed 5–13–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; FCC 21–41; FR ID 26200]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) brings the Commission's 800 MHz rebanding program to a conclusion, eliminates rules that are now unnecessary, and terminates this proceeding. The rebanding process is now essentially complete: Over 2,100 800 MHz licensees have successfully relocated to new channels in the band and the few licensing and administrative matters remaining can be completed outside the rebanding program.

DATES: Effective June 14, 2021.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's Order, in WT Docket No. 02–55 (Terminated); FCC 21–41, adopted and released on April 22, 2021. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/FCC-21-41A1.pdf.*

In 2004, the Commission's Report and Order (800 MHz Report and Order) (69 FR 67823, November 22, 2004) initiated the 800 MHz rebanding program to alleviate harmful interference to 800 MHz public safety radio systems caused by their proximity in the band to the 800 MHz commercial cellular architecture systems, principally those operated by Sprint. To alleviate the interference, the Commission reconfigured the 800 MHz band to increase the spectral separation between cellular architecture systems and so-called, high site systems occupying the band. The Commission adopted a band plan that required the relocation of the bulk of Sprint's system (and the other similarly situated cellular-based licensees) to spectrum at the upper end of the band, and the relocation of public safety licensees (and the other similarly situated high site system operators) to spectrum at the lower end of the band. The Commission further required Sprint to pay the accumulated relocation costs incurred by public safety and other high-site licensees in addition to its own relocation costs, in exchange for which the Commission awarded Sprint 10 megahertz of spectrum rights in the 1.9 GHz band. The 800 MHz Report and Order required that ''at the conclusion of band reconfiguration, the Transition Administrator shall provide an accounting of the funds spent to reconfigure the systems of incumbent operators in the 800 MHz band. This accounting shall include certifications from each relocated licensee that all necessary reconfiguration work has been completed and that Nextel and said licensee agree on the sum paid for such work.'' Those requirements have been either complied with or waived.

Nearly seventeen years after the 800 MHz Report and Order, the 800 MHz band reconfiguration program has achieved its objective—substantially alleviating the interference risk to public safety in the 800 MHz band. The 800 MHz Transition Administrator, LLC (Transition Administrator) reports that 2,169 licensees have successfully completed physical reconfiguration of their systems, and that only two licensees remain with unresolved administrative matters.

In the 800 MHz Report and Order, the Commission adopted certain rules specifically relating to implementation of the rebanding program. With termination of the rebanding program, there is no continued need for these rules and we therefore delete them. We conclude that this deletion does not require notice and comment. An agency may forego notice and comment rulemaking ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Here, notice and comment is unnecessary and contrary to the public

interest because the termination of the rebanding program has rendered the rules moot in accordance with the Commission's rules and the foregoing waivers. As the rules no longer have any practical or legal effect, deleting them from the Code of Federal Regulations will avoid any potential confusion about their continuing applicability.

Paperwork Reduction Act

This document does not contain proposed 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).

Congressional Review Act

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

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Common carriers, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

§ 90.674 Interference Resolution Procedures.

■ 2. Revise the heading of § 90.674 to read as set forth above:

§§ 90.676 and 90.677 [Removed and Reserved]

■ 3. Sections 90.676 and 90.677 are removed and reserved.

[FR Doc. 2021–10229 Filed 5–13–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB082]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule.

SUMMARY: NMFS closes the Angling category northern area fishery for large medium and giant Atlantic bluefin tuna (BFT) (*i.e.,* ''trophy'' fish measuring 73 inches (185 cm) curved fork length or greater). This action is being taken to prevent further overharvest of the Angling category northern area trophy BFT subquota.

DATES: Effective 11:30 p.m., local time, May 11, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–675–2168, or Lauren Latchford, *lauren.latchford@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS publishes a closure notice in the **Federal Register** when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the relevant subsequent quota period or until a specified date.

Angling Category Large Medium and Giant Northern Area ''Trophy'' Fishery Closure

The Angling category season opened January 1, 2021, and continues through December 31, 2021. The current Angling category quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Based on reported landings from the NMFS Automated Catch Reporting System, NMFS has determined that the codified Angling category northern area trophy BFT subquota of 1.8 mt has been reached and exceeded and that a closure of the northern area trophy BFT fishery is warranted. Therefore, retaining, possessing, or landing large medium or giant BFT north of 39°18′ N lat., by persons aboard vessels with HMS Angling category permits and HMS Charter/Headboat-permitted vessels (when fishing recreationally) must cease fishing at 11:30 p.m. local time on May 11, 2021. This closure will remain effective through December 31, 2021. This action is intended to prevent further overharvest of the Angling category northern area trophy BFT subquota and is taken consistent with the regulations at § 635.28(a)(1). NMFS previously closed the 2021 trophy BFT fishery in the southern area on March 1, 2021 (86 FR 12548, March 4, 2021) and in the Gulf of Mexico area on May 4, 2021 (86 FR 24359, May 6, 2021). Therefore, with this closure of the northern area trophy BFT fishery, the Angling category trophy BFT fishery will be closed in all areas for 2021.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches and any further Angling category

adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling category and HMS Charter/Headboat permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure.*

HMS Angling category and HMS Charter/Headboat permitted vessel owners are also reminded that they are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with regulations at 50 CFR part 635, which were issued pursuant to section 304(c) of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act, and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons: The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the Angling category northern area trophy fishery is necessary to prevent any further overharvest of the northern area trophy subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the northern area trophy BFT fishery to prevent any additional landings of large medium and giant BFT. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 11, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–10253 Filed 5–11–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210505–0101]

RIN 0648–BJ97

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2021 Management Measures

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS establishes fishery management measures for the 2021 ocean salmon fisheries off Washington, Oregon, and California and the 2022 salmon seasons opening earlier than May 16, 2022, under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Specific fishery management measures vary by fishery and by area, and establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. Exclusive Economic Zone (EEZ) (3–200 nautical miles (nmi)) (5.6–370.4 kilometers (km)) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-Indian commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement, comply with applicable law, and to provide fishing opportunity for inside fisheries (fisheries occurring in state waters).

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 16, 2021, until the effective date of the 2022 management measures, as published in the **Federal Register**.

ADDRESSES: The documents cited in this document are available on the Pacific Fishery Management Council's (Council's) website (*www.pcouncil.org*).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off the coasts of Washington, Oregon, and California are managed under a ''framework'' Fishery Management Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**. Regulations at 50 CFR 660.408 govern the establishment of annual management measures.

The management measures for the 2021 and early 2022 ocean salmon fisheries that are implemented in this final rule were recommended by the Council at its April 6 to 15, 2021, meeting.

Process Used To Establish 2021 Management Measures

The Council announced its annual preseason management process for the 2021 ocean salmon fisheries in the **Federal Register** on December 23, 2020 (85 FR 83896), and on the Council's website at *www.pcouncil.org.* NMFS published an additional notice of opportunity to submit public comments on the 2021 ocean salmon fisheries in the **Federal Register** on January 18, 2021 (86 FR 5143). These notices announced the availability of Council documents, the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on the development of the 2021 ocean salmon fisheries. The agendas for the March and April

Council meetings were published in the **Federal Register** (86 FR 2641, January 13, 2021, and 86 FR 14878, March 19, 2021, respectively), and posted on the Council's website prior to the actual meetings.

In accordance with the FMP, the Council's Salmon Technical Team (STT) and economist prepared four reports for the Council, its advisors, and the public. All four reports were made available on the Council's website upon their completion. The first of the reports, ''Review of 2020 Ocean Salmon Fisheries,'' was prepared in February when the first increment of scientific information necessary for crafting management measures for the 2021 and early 2022 ocean salmon fisheries became available. The first report summarizes biological and socio-economic data from the 2020 ocean salmon fisheries and assesses the performance of the fisheries with respect to the Council's 2020 management objectives as well as providing historical information for comparison. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2021 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2021 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2020 regulations and regulatory procedures were applied to the projected 2021 stock abundances. The completion of PRE I is the initial step in developing and evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met via webinar from March 2 to 11, 2021, to develop 2021 management alternatives for proposal to the public. The Council proposed three alternatives for commercial and recreational fisheries management, and six alternatives for treaty Indian fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to ensure that stocks of coho and Chinook salmon meet conservation goals, and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2021 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2021 management alternatives.

The Council sponsored public hearings via webinar to receive testimony on the proposed alternatives on March 23, 2021, for Washington and California, and on March 24, 2021, for Oregon. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office and electronic submissions via the Council's electronic portal.

The Council met from April 6 to 15, 2021, via webinar, to adopt its final 2021 ocean salmon management recommendations. Following the April Council meeting, the Council's STT and economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2021 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it transmitted the recommended management measures to NMFS, published them in its newsletter, and posted them on the Council website (*www.pcouncil.org*).

Historically, the annual salmon management cycle began May 1 and continued through April 30 of the following year. The Council adopted Amendment 20 to the FMP in September 2020 (86 FR 8750, February 9, 2021). This amendment, in part, changed the preseason schedule. NMFS approved Amendment 20 to the FMP on April 22, 2021 (86 FR 22622, April 22, 2012). Under the newly amended FMP, the management cycle now begins May 16 and continues through May 15 of the following year. This final rule is effective on May 16, 2021, consistent with the FMP as amended under Amendment 20. Fisheries that begin prior to May 16, 2021 are governed by the rule implementing the salmon fishery management measures for the 2020 ocean salmon season (85 FR 27317, May 8, 2020). The majority of fisheries recommended by the Council for 2021 begin May 16, 2021 and are authorized under this rule. Fisheries scheduled to begin before May 16, 2021, which were authorized under the 2020 rule, are the commercial fisheries from the U.S./Mexico border to Humboldt South Jetty, CA, and from Horse Mountain, CA, to the U.S./Mexico border, recreational fisheries from Cape Falcon, OR, to Humbug Mountain, OR, and from Horse Mountain, CA, to the U.S./Mexico border, and treaty Indian troll fisheries north of Cape Falcon. For purposes of analyzing the impacts of these fisheries on individual stocks relative to the applicable objectives in the FMP, Council analysts assumed fisheries prior to May 16, 2021, would be conducted under the 2020 management measures for the March 15 to May 15 time period, consistent with the effective date of the 2020 salmon management measures rule and subsequent inseason actions under 50 CFR 660.409. Several fisheries scheduled to open between March 15, 2021 and May 15, 2021, were modified through inseason action to shorten or delay the fisheries in response to updated salmon stock forecast information for 2021.

National Environmental Policy Act (NEPA)

The environmental assessment (EA) for this action comprises the Council's documents described above (PRE I, PRE II, and PRE III), providing analysis of environmental and socioeconomic effects under NEPA. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*).

Resource Status

Stocks of Concern

The FMP requires that the fisheries be shaped to meet escapement-based Annual Catch Limits (ACLs), Endangered Species Act (ESA) consultation requirements, obligations of the Pacific Salmon Treaty (PST) between the United States and Canada, and other conservation objectives detailed in the FMP. In addition, under the MSA, all regulations must be consistent with other applicable law. Because the ocean salmon fisheries are mixed-stock fisheries, this requires ''weak stock'' management to avoid exceeding limits for the stocks with the most constraining limits. Abundance forecasts for individual salmon stocks can vary significantly from one year to the next; therefore, the stocks that constrain the fishery in one year may differ from those that constrain the fishery in the next. For 2021, several stocks will constrain fisheries; these are described below.

Fisheries south of Cape Falcon are limited in 2021 primarily by conservation concerns for Klamath River fall-run Chinook salmon (KRFC). NMFS determined in 2018 that the KRFC stock was overfished, as defined under the MSA and the FMP. The

Council developed a rebuilding plan for KRFC which NMFS has approved (85 FR 75920, November 27, 2020). Fisheries north of Cape Falcon are limited by conservation concerns for Washington coastal coho salmon stocks—primarily Queets River natural (Queets) and ESA conservation requirements for the Lower Columbia River natural (LCR) Chinook salmon evolutionarily significant unit (ESU)—primarily the tule component of the LCR Chinook salmon ESU. Queets coho salmon was determined in 2018 to be overfished; the Council has developed a rebuilding plan which NMFS has approved (86 FR 9301, February 12, 2021). The limitations imposed in order to protect these stocks are described below. The alternatives and the Council's recommended management measures for 2021 were designed to avoid exceeding these limitations. In addition to KRFC and Queets coho salmon, three other salmon stocks (Sacramento River fall-run Chinook salmon (SRFC), Strait of Juan de Fuca natural coho salmon, and Snohomish River natural coho salmon) were also determined in 2018 to be overfished, and the Council has recommended rebuilding plans for these stocks. NMFS has approved the rebuilding plan for SRFC (85 FR 75920, November 27, 2020) and the rebuilding plans for the Strait of Juan de Fuca and Snohomish River natural coho salmon stocks (86 FR 9301, February 12, 2021). Meeting conservation objectives for these three stocks being managed under rebuilding plans (SRFC, Strait of Juan de Fuca, and Snohomish River natural coho salmon) will not constrain fisheries in 2021.

KRFC (not ESA-listed): Abundance for this non-ESA-listed stock in recent years has been historically low, and the stock is currently overfished based on spawning escapement in 2015, 2016, and 2017. The FMP defines ''overfished'' status in terms of a three-year geometric mean escapement level and whether it is below the minimum stock size threshold (MSST). Forecast abundance for KRFC in 2021 is 181,508. This KRFC forecast is the seventh lowest on record and three percent lower than in 2020; the record low abundance forecast, 54,246, was in 2017. Fisheries in 2021 will be constrained in Oregon and California to meet the requirements of the KRFC harvest control rule in the FMP and the rebuilding plan, to meet a 25.0 percent *de minimis* exploitation rate, which results in a natural-area spawning escapement projection of 31,574, which is greater than the MSST (30,525 spawners), but below the maximum sustainable yield spawner escapement (S_{MSY}) (40,700 spawners). Fisheries south of Cape Falcon, particularly in the Klamath Management Zone (KMZ) from Humbug Mountain, OR, to Horse Mountain, CA, will be constrained to meet this goal.

Queets natural coho (not ESA-listed): The Queets coho salmon stock is managed in Council-area and in northern fisheries, subject to the provisions of the PST. In 2018, NMFS determined that Queets coho salmon was overfished, based on escapements in 2014, 2015, and 2016. Under the FMP and the Council's rebuilding plan, Queets coho salmon is managed for an escapement of 5,800 (S_{MSY}) natural adult spawners. However, the FMP provides that annual natural spawning escapement targets may vary from FMP conservation objectives if agreed to by WDFW and treaty tribes under the provisions of *Hoh Indian Tribe* v. *Baldrige* and *United States* v. *Washington.* The forecast abundance of Queets natural coho salmon in 2021, prior to any fishing impacts, is 3,919 adult coho, 50 percent of the 2020 forecast of 7,834 thousand adult coho salmon. The average preseason abundance forecast for Queets coho salmon over the past decade (2011–2020) was 12,873 adult coho salmon. The 2021 Queets coho salmon forecast is, therefore, well below the S_{MSY} goal of 5,800 spawners. Under the criteria of the PST's Southern Coho Management Plan, Queets coho salmon abundance is in the ''low'' category in 2021 and subject to a total exploitation rate limit of 20 percent. The WDFW and treaty tribe co-managers have agreed to a spawning escapement goal of 3,150 spawners for Queets coho salmon in 2021. Both the exploitation rate limit and the derivation of the escapement goal account for salmon fishery impacts outside of Council-area salmon fisheries. Meeting the escapement goal of 3,150 spawners is expected to achieve salmon fishery impacts on Queets coho salmon that are consistent with limits required by the PST.

LCR Chinook salmon (ESA-listed threatened): The LCR Chinook salmon ESU comprises a spring component, a ''far-north'' migrating bright component, and a component of north migrating tules. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon. Under the provisions of NMFS' 2012 biological opinion on the impact of Council-area salmon fisheries on LCR Chinook salmon, Council fisheries must be managed subject to an abundance-based management (ABM) framework, after accounting for anticipated impacts in northern fisheries and freshwater fisheries that are outside the action area. Applying the ABM framework to the 2021 preseason abundance forecast, the total LCR tule exploitation rate for all salmon fisheries is limited to a maximum of 38 percent. Fisheries will be constrained north of Cape Falcon in 2021 such that, when combined with all other salmon fisheries in the ocean and in the Columbia River below Bonneville Dam, the ESA requirement is met.

Other Resource Issues

Southern Resident Killer Whale (SRKW) (ESA-listed endangered): The SRKW distinct population segment (DPS) was listed under the ESA as endangered in 2005 (70 FR 69903, November 18, 2005). NMFS issued a biological opinion analyzing the effects of the ocean salmon fisheries on SRKW in 2009 which concluded that these fisheries are not likely to jeopardize SRKW. NMFS reinitiated consultation on the effects of the ocean salmon fisheries on SRKW on April 12, 2019. To inform the new consultation, the Council formed an *ad hoc* workgroup (SRKW Workgroup), including salmon and SRKW experts, at its April 2019 meeting. The SRKW Workgroup was tasked to develop a long-term approach that included proposed conservation measures and management tools that would limit PFMC fishery impacts to prey availability for SRKW relative to implementing the FMP.

The SRKW workgroup developed a risk assessment report which suggests that Chinook salmon abundance north of Cape Falcon is consistently more important to SRKW than abundance in areas south of Cape Falcon. The report noted that the SRKW DPS is observed north of Cape Falcon in all seasons and likely has some direct overlap with the salmon fisheries every year, whereas there is likely limited overlap with the salmon fisheries in some years south of Cape Falcon. Furthermore, the contribution of Chinook salmon south of Cape Falcon to SRKW diet may also be largely confined to the winter/spring season, after maturing fall-run Chinook salmon adults that escaped the current year's fishery leave the ocean. The report also provided evidence that, after executing Council-area salmon fisheries, the percent of prey remaining and

available to SRKW has increased coastwide over the last several decades. The SRKW Workgroup's risk assessment report provides the most current information on SRKW and their predator-prey interaction with Pacific salmon.

Based largely on the SRKW Workgroup's risk assessment report, the Council developed an approach to set a Chinook salmon annual abundance management threshold below which the Council and NMFS would implement specific measures to limit ocean salmon fishery impacts on Chinook salmon in order to increase salmon prey availability for SRKW. These measures include time and area closures, a quota limitation for the North of Falcon area, and temporal shifts in fishing. At its November 2020 meeting, the Council adopted this approach as an amendment to the FMP for recommendation to NMFS (if approved, this will be Amendment 21 to the FMP). NMFS has completed an ESA consultation on authorization of the ocean salmon fishery in the west coast EEZ through approval of the FMP and promulgation of regulations implementing the plan, including approval and implementation of Amendment 21. NMFS' biological opinion (WCRO–2019–04072, April 21, 2021) concluded that authorization of the ocean salmon fishery in the west coast EEZ through approval of the FMP and promulgation of regulations implementing the plan, including approval and implementation of Amendment 21, is not likely to jeopardize the continued existence of the SRKW DPS or destroy or adversely modify its designated or proposed critical habitat. The Council and NMFS considered the Chinook salmon abundance threshold approach in proposed Amendment 21, as analyzed in the 2021 biological opinion, when developing 2021 annual management measures. Because the pre-season estimate of the abundance of Chinook salmon in 2021 exceeds the threshold in the proposed amendment, the Council did not recommend implementation of the additional management measures included in Amendment 21. The 2021 management measures are consistent with the proposed action analyzed in the 2021 biological opinion.

Oregon Production Index area (OPI) coho salmon: The abundance forecast for OPI coho salmon in 2021, 1.73 million adult salmon, is the second largest on record (the 2001 abundance forecast for OPI coho was 1.76 million). The large forecast for OPI coho salmon, dominated by hatchery coho from the Columbia River Basin, will provide additional salmon fishery opportunities in the Columbia River management area, while salmon fisheries along the remainder of the coast are significantly constrained to protect KRFC and Washington coastal coho salmon stocks.

Annual Catch Limits and Status Determination Criteria

Annual Catch Limits (ACLs) are set for two Chinook salmon stocks, SRFC and KRFC, and one coho salmon stock, Willapa Bay natural coho salmon. The Chinook salmon stocks are indicator stocks for the Central Valley Fall Chinook salmon complex, and the Southern Oregon/Northern California Chinook salmon complex, respectively. The Far North Migrating Coastal Chinook salmon complex (FNMC) includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon and other fisheries that occur north of the U.S./Canada border. No ACL is set for FNMC stocks because they are managed subject to provisions of the PST between the U.S. and Canada (the MSA provides an international exception from ACL requirements that applies to stocks or stock complexes subject to management under an international agreement, which is defined as ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party'' (50 CFR 600.310(h)(1)(ii)). Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced, and are managed consistent with ESA consultations or hatchery goals. Willapa Bay natural coho salmon is the only coho salmon stock for which an ACL is set, as the other coho salmon stocks in the FMP are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual potential spawner abundance forecast and a fishing rate reduced to account for scientific uncertainty. For SRFC in 2021, the overfishing limit (OFL) is S_{OFL} = 270,958 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.78)$ or 59,611 returning spawners (F_{MSY} is the fishing mortality rate that would result in maximum sustainable yield—MSY). S_{ABC} (the spawner escapement that is associated with the acceptable biological catch) is 270,958 multiplied by $1 - F_{ABC}$ $(1 - 0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 81,287. The S_{ACL} is set equal to S_{ABC}, *i.e.,* 81,287 spawners. The adopted management measures provide for a projected SRFC spawning escapement of 133,913. For KRFC in 2021, S_{OFL} is 42,098 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.71)$, or 12,208 returning spawners. S_{ABC} is 42,098 multiplied by $1 - F_{ABC}$ $(1 - 0.68)$ (F_{MSY} reduced for scientific uncertainty = 0.68) or 13,471 returning spawners. S_{ACL} is set equal to S_{ABC}, *i.e.,* 13,471 spawners. When KRFC potential spawner abundance is projected to be less than 54,267 natural-area adults, fisheries are managed under the de minimis portion of the control rule, which allows for some fishing opportunity but results in the expected escapement falling below 40,700 natural-area adult spawners (S_{MSY}). The adopted management measures provide for a projected KRFC spawning escapement of 31,574. For Willapa Bay natural coho in 2021, S_{OFL} = 36,908 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ $(1 - 0.74)$ or 9,596 returning spawners. S_{ABC} is 36,908 multiplied by $1 - F_{ABC}$ $(1 - 0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 11,072. S_{ACL} is set equal to S_{ABC}, *i.e.,* 11,072 spawners. The adopted management measures provide for a projected Willapa Bay natural coho ocean escapement of 23,452. In summary, for 2021, projected abundance of the three stocks with ACLs (SRFC, KRFC, and Willapa Bay natural coho salmon), in combination with the constraints for ESA-listed and non-ESA-listed stocks, are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

As explained in more detail above under ''Stocks of Concern,'' fisheries north and south of Cape Falcon are constrained by impact limits necessary to protect ESA-listed LCR Chinook salmon, and to meet the management targets for non-ESA listed Queets natural coho salmon and KRFC. The management measures recommended by the Council are anticipated to result in spawning escapements for KRFC, SRFC, and Willapa Bay natural coho that are higher than the respective 2021 ACLs for these stocks.

Public Comments

The Council invited written comments on developing 2021 salmon management measures in their notice announcing public meetings and hearings (85 FR 83896, December 23, 2020). At its March meeting, the Council developed three alternatives for 2021 commercial and recreational salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in Alternative I to the most restrictive in Alternative

III, as well as six alternatives for 2021 North of Cape Falcon treaty Indian troll salmon management measures. These alternatives are described in detail in PRE II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council and NMFS. The Council received 253 written comments on 2021 ocean salmon fisheries via their electronic portal. The three public hearings were attended by a total of 158 people; 30 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, processors, the general public, and conservation organizations. Written and oral comments addressed the 2021 management alternatives described in PRE II, and generally expressed preferences for a specific alternative or for particular season structures. Approximately half of the written comments that were submitted focused on fishery effects on ESA-listed SRKW. All comments were made available via the Council's online briefing book for the April 2021 Council meeting and were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 22, 2021. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the April 2021 Council meeting. NMFS also invited comments to be submitted directly to the Council or to NMFS, via the Federal Rulemaking Portal (*www.regulations.gov*) in a notice (86 FR 5143, January 18, 2021); NMFS received no comments via the Federal Rulemaking Portal.

Comments on alternatives for commercial salmon fisheries. Many written comments did not identify the fishery being commented on, either by geography or sector. Relatively few written comments specifically addressed commercial salmon fisheries. Of those that did submit written comments specifically on commercial fisheries, eight supported Alternative III. Alternatives I and II each received one written comment of support. Those testifying on north of Cape Falcon commercial salmon fisheries at the Washington hearing supported the total allowable catch for Chinook salmon in Alternative I and the total allowable catch for coho salmon in Alternative II. Those testifying on south of Cape Falcon commercial salmon fisheries at the Oregon hearing divided their support among the three alternatives. Those testifying on south of Cape Falcon commercial salmon fisheries at the California hearing largely supported Alternative I. The Council adopted commercial fishing alternatives north and south of Cape Falcon that are within the range of the alternatives considered.

Comments on alternatives for recreational fisheries. As mentioned above, many written comments did not identify the fishery being commented on, either by geography or sector. Those that did submit written comments specifically on recreational fisheries supported Alternative I almost unanimously. Most spoke to maximizing fishing opportunity, which would be consistent with Alternative I. Many spoke to the economic benefit to businesses and communities from recreational fisheries. A few comments addressed water management as a key concern. Several written comments on the recreational salmon fishery in the Klamath Management Zone objected to what appeared to be a loss of recreational fishing days to the benefit of the commercial sector. In-person testimony on recreational fisheries at the three public hearings was similar to the written comments—support for maximizing fishing opportunity. The Council adopted recreational fishing alternatives north and south of Cape Falcon that are within the range of alternatives considered.

Comments from federally recognized tribes, including treaty tribe representatives. At its March and April meetings, the Council heard testimony from members of several federally recognized tribes including tribes with treaty rights for salmon harvest; additional comments were submitted in writing. Tribes expressed concern over the low forecasts for some stocks in 2021 and the ramifications for tribal fisheries. Tribes also expressed concern over a pattern of overforecasting abundance of OPI coho in recent years and the impact such forecasts have on ocean fishing opportunity, stocks of concern, and the preseason modeling process.

Comments on SRKW. The Council received 128 written comments for the April Council meeting on potential fishery effects on SRKW. Many comments were identical. Specific comments were made regarding reducing or closing ocean salmon fisheries, moving ocean salmon fisheries closer to terminal areas, and dam impacts on salmon abundance.

The Council, including the NMFS representative, took all of these comments into consideration. The Council's final recommendation generally includes aspects of all three alternatives, while taking into account the best available scientific information and ensuring that fisheries are consistent with impact limits for ESA-listed stocks, ACLs, PST obligations, other ESA requirements, MSA requirements, and tribal fishing rights. The Council and NMFS also considered comments on the NEPA analysis in preparing the final EA.

Management Measures

The Council's recommended ocean harvest levels and management measures for the 2021 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations to be responsive to the goals of the FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the MSA, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. The Council's recommended management measures are consistent with the proposed actions analyzed in NMFS' ESA consultations for those ESA-listed species that may be affected by Council fisheries, and are otherwise consistent with ESA obligations. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

North of Cape Falcon, 2021 management measures for non-Indian commercial troll and recreational fisheries have somewhat increased quotas for Chinook salmon compared to 2020; coho salmon quotas are substantially higher than in 2020, with most of the coho salmon quota dedicated to the Columbia River management area to access the abundant OPI coho salmon forecast. Overall north of Cape Falcon non-Indian commercial and recreational total allowable catch in 2021 is 58,000 Chinook salmon and 75,000 coho salmon marked with a healed adipose fin clip. The commercial troll fishery, north of Cape Falcon, will have a May–June Chinook salmon only fishery with a quota of 15,375 Chinook salmon, and a July–September fishery with a quota of 15,375 Chinook salmon or 5,000 marked coho salmon. The recreational fishery, north of Cape Falcon, will have a July–September fishery with a total allowable catch of 27,250 Chinook salmon and 70,000

marked coho salmon, with subarea quotas.

Quotas for the 2021 treaty-Indian commercial troll fishery North of Cape Falcon are 40,000 Chinook salmon and 26,500 coho in ocean management areas and Washington State Statistical Area 4B combined. These quotas provide more Chinook salmon and substantially more coho than in 2020. The treaty-Indian commercial fisheries include a May–June fishery with a quota of 20,000 Chinook salmon, and a July–September fishery, with quotas of 20,000 Chinook salmon and 26,500 coho salmon.

South of Cape Falcon, commercial troll and recreational fishery management measures are shaped to meet conservation and management goals for KRFC spawning escapement.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May of the same year. Therefore, this action also establishes the 2022 fishing seasons that open earlier than May 16. The Council recommended, and NMFS concurs, that the commercial and recreational seasons will open in 2022 as indicated in the ''Season Description'' section of this document. At the March and/or April 2022 meeting, NMFS may take inseason action, if recommended by the Council, to adjust the commercial and recreational seasons prior to the effective date of the 2022 management measures which are expected to be effective in mid-May 2022.

The following sections set out the management regime for the ocean salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2020 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard (USCG) Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council, approved, and implemented here for 2021 and, as specified, for 2022. Dates in the management measures that precede May 16, 2021, were promulgated in our 2020 rule (85 FR 27317, May 8, 2020) and modified by inseason action at the March and April 2021 Council meetings (86 FR 16540, March 30, 2021, and 86 FR 23872, May 5, 2021). These dates are included for information only and to provide continuity for the public and for states adopting conforming regulations each May that refer to the Federal rule for the same year.

Section 1. Commercial Management Measures for 2021 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions, and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Falcon

May 1–15;

May 16 through the earlier of June 29, or 15,375 Chinook salmon quota.

May–June quota of 15,375 Chinook salmon, no more than 5,680 of which may be caught in the area between the U.S./Canada border and the Queets River, and no more than 4,195 of which may be caught in the area between Leadbetter Point and Cape Falcon (C.8). In the area between the U.S./Canada border and the Queets River, the landing and possession limit is 75 Chinook salmon per vessel per landing week (Thursday–Wednesday) (C.1, C.6). In the area between Leadbetter Point and Cape Falcon, the landing and possession limit is 75 Chinook salmon per vessel per landing week (Thursday–Wednesday) (C.1, C.6). Open seven days per week (C.1). All salmon, except coho salmon (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length (B). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). When it is projected that approximately 75 percent of the overall Chinook salmon guideline has been landed, or approximately 75 percent of any of the individual Chinook salmon subarea guidelines have been landed, inseason action will be considered to ensure the guideline is not exceeded. In 2022, the season will open May 1 consistent with all preseason regulations in place in this area and subareas during May 16–June 30, 2021, including subarea salmon guidelines and quotas, and weekly vessel limits, except as described below for vessels fishing or in possession of salmon north of Leadbetter Point. This opening could be modified following Council review at its March and/or April 2022 meetings.

July 1 through the earlier of September 30, or 15,375 Chinook salmon or 5,000 coho salmon (C.8).

Landing and possession limit of 20 marked coho salmon per vessel per landing week (Thursday–Wednesday) (C.1). Open seven days per week. All salmon, except no chum salmon retention north of Cape Alava, Washington in August and September (C.4, C.7). Chinook salmon minimum size limit 27 inches total length and coho salmon minimum size limit 16 inches total length (B, C.1). All coho salmon must be marked with a healed adipose fin clip (C.8.d). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

For all commercial troll fisheries north of Cape Falcon: Mandatory closed areas include: Salmon troll Yelloweye Rockfish Conservation (YRCA) Area, Cape Flattery, and Columbia Control Zones, and beginning August 9, Grays Harbor Control Zone (C.5). Vessels must land and deliver their salmon within 24 hours of any closure of this fishery. Vessels fishing or in possession of salmon north of the Queet River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination (C.11). In 2021, vessels may not land any species of fish east of Port Angeles or east of the Megler-Astoria Bridge. For delivery to Washington ports east of the Sekiu River, vessels must notify WDFW at 360–249–1215 prior to crossing the Bonilla-Tatoosh line with the area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery. In 2022, vessels may not land any species of fish east of the Sekiu River or east of the Megler-Astoria Bridge. Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license. For delivery to Washington ports south of Leadbetter Point, vessels must notify the WDFW at 360–249–1215 prior to crossing the Leadbetter Point line with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery. During any single trip, only one side of the Leadbetter Point line may be fished (C.11). Vessels fishing or in possession

of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land all species of fish in Garibaldi, Oregon. Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon to notify ODFW within one hour of delivery or prior to transport away from the port of landing by either calling 541–857–2546 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

South of Cape Falcon, OR

—Cape Falcon to Heceta Bank Line

March 20–April 30 (C.9.a).

All salmon except coho salmon, except as described below (C.4, C.7). Chinook salmon minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their salmon in the state of Oregon. See gear restrictions and definitions (C.2, C.3). In 2022, the season will open March 15 for all salmon except coho salmon. Chinook salmon minimum size limit of 28 inches total length. Gear restrictions same as in 2021. This opening could be modified following Council review at its March 2022 meeting.

—Cape Falcon to Humbug Mountain

May 1–5, 10–15;

May 16–21, 26–31;

June 5–7, 12–14, 19–21, 26–28;

September 1–October 31 (C.9.a).

All salmon except coho salmon, except as described below (C.4, C.7). Beginning September 1, no more than 75 Chinook salmon allowed per vessel per landing week (Thursday–Wednesday). Chinook salmon minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their salmon in the state of Oregon. See gear restrictions and definitions (C.2, C.3).

July 5–7, 12–14, 19–21, 26–28;

August 1–4, 8–10, 15–17 (C.9.a).

All salmon. All retained coho salmon must be marked with a healed adipose fin clip (C.4, C.7). If the coho quota for the combined area from Cape Falcon to Humbug Mountain of 10,000 marked coho is met, then the season continues for all salmon except coho on the remaining open days. Salmon trollers may take and retain or possess on board a fishing vessel no more than 20 coho per vessel per week (Thursday–Wednesday). All coho salmon retained, possessed on a vessel, and landed must not exceed a 1:1 ratio with Chinook salmon that are retained and landed at the same time. Coho salmon minimum size limit of 16 inches total length, and Chinook salmon minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their salmon in the state of Oregon. See gear restrictions and definitions (C.2, C.3). In 2022, the season will open March 15 for all salmon except coho. Chinook salmon minimum size limit of 28 inches total length. Gear restrictions same as in 2021. This opening could be modified following Council review at its March 2022 meeting.

—Humbug Mountain to OR/CA Border (Oregon KMZ)

March 20–May 5, May 10–15;

May 16–21, 26–31;

June 1 through the earlier of June 30, or a 300 Chinook salmon quota;

July 1 through the earlier of July 31, or a 200 Chinook salmon quota (C.9.a).

June 1–July 31 weekly landing and possession limit of 20 Chinook salmon per vessel per week (Thursday–Wednesday). All salmon except coho salmon (C.4, C.7). Chinook salmon minimum size limit of 28 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Prior to June 1, all salmon caught in this area must be landed and delivered in the state of Oregon. Any remaining portion of Chinook salmon quotas may be transferred inseason on an impact neutral basis to the next open quota period (C.8.b). All vessels fishing in this area during June and July must land and deliver all salmon within this area or into Port Orford within 24 hours of any closure of this fishery and prior to fishing outside of this area. For all quota managed seasons (June and July), Oregon state regulations require fishers to notify ODFW within one hour of landing and prior to transport away from the port of landing by calling 541–857–2538 or sending notification via email to *kmzor.trollreport@state.or.us,* with vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

In 2022, the season will open March 15 for all salmon except coho salmon. Chinook salmon minimum size limit of 28 inches total length. Gear restrictions same as in 2021. This opening could be modified following Council review at its March 2022 meeting.

—Oregon/California Border to Humboldt South Jetty (California KMZ)

Closed in 2021 (C.9).

In 2022, the season will open May 1 through the earlier of May 31, or a 3,000 Chinook salmon quota. Chinook salmon minimum size limit of 27 inches total length (B, C.1). Landing and possession limit of 20 Chinook salmon per vessel per day (C.8.f). Open five days per week (Friday–Tuesday). All salmon except coho (C.4, C.7). Any remaining portion of Chinook salmon quotas may be transferred inseason on an impact neutral basis to the next open quota period (C.8.b). All fish caught in this area must be landed within the area, within 24 hours of any closure of the fishery (C.6), and prior to fishing outside the area (C.10). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed (C.5.e). See California State regulations for an additional closure adjacent to the Smith River. This opening could be modified following Council review at its March or April 2022 meetings.

—Humboldt South Jetty to Latitude 40°10′0″ N

Closed.

For all commercial fisheries south of Cape Falcon: When the fishery is closed between the Oregon/California border and Humbug Mountain and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival (C.6).

—Latitude 40°10′0″ N to Point Arena (Fort Bragg)

August 1–17;

September 1–30 (C.9.b).

All salmon except coho (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California and north of Point Arena (C.6, C.11).

In 2022, the season will open April 16 for all salmon except coho salmon. Chinook salmon minimum size limit of 27 inches total length (B, C.1). Gear restrictions same as in 2021. This opening could be modified following Council review at its March 2022 meeting.

—Point Arena to Pigeon Point (San Francisco)

June 16–30;
July 17–22;
August 1–17;
September 1–30 (C.9.b).

All salmon except coho salmon (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length through August, then 26 inches thereafter (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California. During September, all salmon must be landed south of Point Arena (C.6, C.11).

In 2022, the season will open May 1 for all salmon except coho (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length (B, C.1). Gear restrictions same as in 2021 (C.2, C.3). This opening could be modified following Council review at its March or April 2022 meetings.

—Point Reyes to Point San Pedro (Fall Area Target Zone)

October 1, 4–8, 11–15.

Open five days per week (Monday–Friday). All salmon except coho salmon (C.4, C.7). Chinook salmon minimum size limit of 26 inches total length (B, C.1). All salmon caught in this area must be landed between Point Arena and Pigeon Point (C.6, C.11). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

—Pigeon Point to U.S./Mexico border (Monterey)

May 1–12;
May 20–27;
June 16–30;
July 17–22;
August 1–17 (C.9.b).

All salmon except coho salmon (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California (C.6).

In 2022, the season will open May 1 for all salmon except coho (C.4, C.7). Chinook salmon minimum size limit of 27 inches total length (B, C.1). Gear restrictions same as in 2021 (C.2, C.3). This opening could be modified following Council review at its March or April 2022 meetings.

For all commercial troll fisheries in California: California State regulations require all salmon be made available to a California Department of Fish and Wildlife (CDFW) representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Inches) (See C.1)

TABLE 1—MINIMUM SIZE LIMITS FOR SALMON IN THE 2021 COMMERCIAL OCEAN SALMON FISHERIES

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	27.0	20.5	16	12	None.
Cape Falcon to Humbug Mountain	28.0	21.5	16	12	None.
Humbug Mountain to OR/CA border	28.0	21.5			None.
OR/CA border to Humboldt South Jetty	Closed				
Latitude 40°10′0″ N to Point Arena	27.0	20.5			27.
Point Arena to Pigeon Point (through August)	27.0	20.5			27.
Point Arena to Pigeon Point (September–October)	26.0	19.5			26.
Pigeon Point to U.S./Mexico border	27.0	20.5			27.

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.5 cm, 26 in = 66 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 19.5 in = 49.5 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon, OR, to the Oregon/California border: No more than 4 spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear defined: One or more lines that drag hooks behind a moving fishing vessel engaged in trolling. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread defined: A single leader connected to an individual lure and/or bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. It is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

C.5. Control Zone Definitions

a. *Cape Flattery Control Zone*—The area from Cape Flattery (48°23′00″ N lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N lat.) and east of 125°05′00″ W long.

b. *Salmon Troll YRCA (50 CFR 660.70(c))*—The area in Washington Marine Catch Area 3 from 48°00.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°16.50′ W long. to 48°00.00′ N lat.; 125°16.50′ W long. and connecting back to 48°00.00′ N lat.; 125°14.00′ W long.

c. *Grays Harbor Control Zone*—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

d. *Columbia Control Zone*—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09′ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nautical miles north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nautical miles off shore); and on the south by 41°26′48″ N lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate number of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within one hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

License applications for incidental harvest for halibut during commercial salmon fishing must be obtained from the International Pacific Halibut Commission (IPHC).

During the 2021 salmon troll season, incidental harvest is authorized only during April, May, and June, and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 206–526–6667). WDFW, Oregon Department of Fish and Wildlife (ODFW), and CDFW will monitor landings. If the landings are projected to exceed the IPHC's 45,198 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Prior to May 16, 2021, consistent with the 2020 annual management measures (85 FR 27317, May 8, 2020), IPHC license holders may land no more than one Pacific halibut per each two Chinook salmon, except one Pacific halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Beginning May 16, 2021, through the end of the 2021 salmon troll fishery, and beginning April 1, 2021, until modified through inseason action or superseded by the 2022 management measures the following applies: License holders may land no more than one Pacific halibut per each two Chinook salmon, except one Pacific halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip.

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2021, prior to any 2021 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2022, unless otherwise modified by inseason action at the March 2022 Council meeting.

a. ''C-shaped'' YRCA is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N lat.; 125°18′ W long.;
48°18′ N lat.; 124°59′ W long.;
48°11′ N lat.; 124°59′ W long.;
48°11′ N lat.; 125°11′ W long.;
48°04′ N lat.; 125°11′ W long.;
48°04′ N lat.; 124°59′ W long.;
48°00′ N lat.; 124°59′ W long.;
48°00′ N lat.; 125°18′ W long.;
and connecting back to 48°18′ N lat.;
125°18′ W long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook salmon remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook salmon remaining from May, June, and/or July non-Indian commercial troll quotas in the Oregon or California KMZ may be transferred to the Chinook salmon quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. The Council will consider insesason recommendations for special regulations for any experimental fisheries annually in March; proposals must meet Council protocol and be received in November the year prior.

e. If retention of unmarked coho salmon (adipose fin intact) is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

g. Inseason modifications to salmon management areas (*e.g.,* establishing a sub-area boundary) is allowed if the

boundary is described as a landmark in Section C.11 of this document, and if the change would not result in exceeding preseason impact expectations on any stocks.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The state of Oregon may establish additional late-season fisheries in state waters.

b. The state of California may establish limited fisheries in selected state waters.

Check state regulations for details.

C.10. For the Purposes of California Fish and Game Code, Section 8232.5, the Definition of the KMZ for the Ocean Salmon Season Shall Be That Area From Humbug Mountain, Oregon, to Latitude 40°10′0″ N

C.11. Latitudes for Geographical Reference of Major Landmarks Along the West Coast, Including Those Used for Inseason Modifications to Salmon Management Areas (C.8.g.), Are Listed in Section 5 of This Rule

Section 2. Recreational Management Measures for 2021 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Alava (Neah Bay Subarea)

June 19–July 3.

Open seven days per week. All salmon except coho salmon; one salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

July 4 through the earlier of September 15 or 5,730 marked coho salmon subarea quota, with a subarea guideline of 5,825 Chinook salmon (C.5).

Open seven days per week. All salmon, except no chum beginning August 1; two salmon per day. All coho salmon must be marked with a healed adipose fin clip (C.1). Chinook salmon minimum size limit of 24 inches total length; coho salmon minimum size limit 16 inches total length (C.4.a) during Council managed ocean fishery.

—Cape Alava to Queets River (La Push Subarea)

June 19–July 3 (C.5).

Open seven days per week. All salmon, except coho; two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

July 4 through the earlier of September 15 or 1,430 marked coho salmon subarea quota with a subarea guideline of 1,300 Chinook salmon (C.5).

Open seven days per week. All salmon, except no chum salmon beginning August 1; two salmon per day. All coho salmon must be marked with a healed adipose fin clip (C.1). Chinook salmon minimum size limit of 24 inches total length, coho salmon minimum size limit of 16 inches total length (B). See gear restrictions and definitions (C.2, C.3).

—Queets River to Leadbetter Point (Westport Subarea)

June 19–26 (C.5).

Open seven days per week. All salmon, except coho salmon; one salmon per day (C.1). Chinook salmon minimum size limit of 22 inches total length (B). See gear restrictions and definitions (C.2, C.3).

June 27 through the earlier of September 15, or 20,440 marked coho salmon subarea quota, with a subarea guideline of 12,925 Chinook salmon (C.5).

Open five days per week (Sunday–Thursday). All salmon; two salmon per day, no more than one of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip (C.1). Chinook salmon minimum size limit of 22 inches total length; coho salmon minimum size limit 16 inches total length (B). See gear restrictions and definitions (C.2, C.3). Grays Harbor Control Zone closed beginning August 9 (C.4.b).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 19–26 (C.5).

Open seven days per week. All salmon, except coho salmon; one salmon per day (C.1). Chinook salmon minimum size limit of 22 inches total length (B). See gear restrictions and definitions (C.2, C.3).

June 27 through the earlier of September 15, or 42,400 marked coho salmon subarea quota, with a subarea guideline of 7.200 Chinook salmon (C.5).

Open seven days per week. All salmon; two salmon per day, no more than one of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip (C.1). Chinook salmon minimum size limit of 22 inches total length; coho salmon minimum size limit of 16 inches total length (B). See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4.c).

For all Recreational fisheries north of Cape Falcon: Inseason management may be used to sustain season length and keep harvest within the overall Chinook salmon and coho salmon recreational total allowable catches TACs for north of Cape Falcon (C.5).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

March 15–May 15. Open for all salmon exept coho salmon, except as listed below for mark selective and non-mark selective coho salmon seasons;

May 16–October 31. Open for all salmon except coho salmon, except as listed below for mark selective and non-mark selective coho salmon seasons;

Mark selective coho salmon season: June 12–August 28 or 120,000 marked coho salmon quota. Open area extends to the Oregon/California border. Open for all salmon, all retained coho salmon must be marked with a healed adipose fin clip;

Non-mark selective coho salmon season: September 10–12, and each Friday, Saturday, and Sunday through the earlier of September 30, or 14,000 non-mark selective coho quota. Open for all salmon (C.5, C.6). Open days may be modified inseason.

Two salmon per day (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3). Any remainder of the mark selective coho salmon quota may be transferred inseason on an impact neutral basis to the non-mark selective coho quota (C.5).

In 2022, the season will open March 15 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This opening could be modified following Council review at its March 2022 meeting.

—Humbug Mountain to Oregon/California border (Oregon KMZ)

June 12–18. Open for all salmon except Chinook salmon, all coho salmon must be marked with a healed adipose fin clip;

June 19–August 15. Open for all salmon, all coho salmon must be marked with a healed adipose fin clip.

Coho salmon retention closes when the Cape Falcon to Oregon/California border quota of 120,000 coho salmon is attained.

August 16–28. Open for all salmon except Chinook salmon, all coho salmon must be marked with a healed adipose fin clip. All salmon fishing closes in this area the earlier of August 28 or the Cape Falcon to Oregon/California border quota of 120,000 coho salmon.

Open seven days per week. Two salmon per day (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

For recreational fisheries from Cape Falcon to Humbug Mountain: Fishing in the Stonewall Bank YRCA restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 for specific dates) (C.3.b, C.4.d).

—Oregon/California border to Latitude 40°10′0″ N (California KMZ)

June 29–August 1 (C.6).

Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

Klamath Control Zone closed in August (C.4.e). See California State regulations for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

In 2022, season opens May 1 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This opening could be modified following Council review at its March or April 2022 meetings.

—Latitude 40°10′0″ N to Point Arena (Fort Bragg)

June 29–October 31 (C.6). Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2022, season opens April 2 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This opening could be modified following Council review at its March 2022 meeting.

—Point Arena to Pigeon Point (San Francisco)

June 26–October 31 (C.6). Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2022, season opens April 2 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This opening could be modified following Council review at its March 2022 meeting.

—Pigeon Point to U.S./Mexico border (Monterey)

April 3–May 15 (C.6). Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2022, season opens April 2 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting.

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Code of Regulations Title 14 Section 1.73).

B. Minimum Size (Total Length in Inches) (See C.1)

TABLE 2—MINIMUM SIZE LIMITS FOR SALMON IN THE 2021 RECREATIONAL SALMON FISHERIES

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon (Westport and Columbia River)	22.0	16.0	None.
North of Cape Falcon (Neah Bay and La Push)	24.0	16.0	None.
Cape Falcon to Humbug Mountain	24.0	16.0	None.
Humbug Mt. to OR/CA border	24.0	16.0	None.
OR/CA border to Latitude 40°10′0″ N	20.0	.....	20.0.
Latitude 40°10′0″ N to Pt. Arena	20.0	.....	20.0.
Pt. Arena to Pigeon Pt	20.0	.....	20.0.
Pigeon Pt. to U.S./Mexico border (before May 16)	24.0	.....	24.0.
Pigeon Pt. to U.S./Mexico border (beginning May 16)	20.0	.....	20.0.

Metric equivalents: 24.0 in = 61.0 cm, 22.0 in = 55.9 cm, 20.0 in = 50.8 cm, and 16.0 in = 40.6 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada border to Point Conception, CA: No more than one rod may be used per angler; and no more than two single point, single shank barbless hooks are required for all fishing gear.

b. Latitude 40°10′0″ N to Point Conception, CA: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. Recreational fishing gear defined: Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line: A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N lat., 124°44′12″ W long.) to the buoy adjacent to Duntze Rock (48°24′37″ N lat., 124°44′37″ W long.), then in a straight line to Bonilla Point (48°35′39″ N lat., 124°42′58″ W long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone: The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

c. Columbia Control Zone: An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank YRCA: The area defined by the following coordinates in the order listed:

44°37.46′ N lat.; 124°24.92′ W long.
44°37.46′ N lat.; 124°23.63′ W long.
44°28.71′ N lat.; 124°21.80′ W long.
44°28.71′ N lat.; 124°24.10′ W long.
44°31.42′ N lat.; 124°25.47′ W long.
and connecting back to 44°37.46′ N lat.; 124°24.92′ W long.

e. Klamath Control Zone: The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nautical miles north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nautical miles off shore); and, on the south by 41°26′48″ N lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook and coho salmon may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked (adipose fin intact) coho salmon. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted (adipose-clipped) mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho.

e. Marked coho salmon remaining from the Cape Falcon to the Oregon/California border: Recreational mark selective coho salmon quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark selective recreational fishery, if the transfer would not result in exceeding preseason impact expectations on any stocks.

f. Inseason modifications to salmon management areas (*e.g.,* establishing a sub-area boundary) is allowed if the boundary is described as a landmark in section C.7, and if the change would not result in exceeding preseason impact expectations on any stocks.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the states of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

C.7. Latitudes for Geographical Reference of Major Landmarks Along the West Coast, Including Those Used for Inseason Modifications to Salmon Management Areas (C.5.f.) Are Listed in Section 5 of This Rule

Section 3. Treaty Indian Management Measures for 2021 Ocean Salmon Fisheries

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

A. Season Descriptions

May 1 through the earlier of June 30 or 20,000 Chinook salmon quota.

All salmon may be retained except coho. If the Chinook salmon quota is exceeded, the excess will be deducted

from the later all salmon season (C.5). See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 20,000 Chinook salmon quota, or 26,500 coho salmon quota.

All Salmon. See size limit (B) and other restrictions (C).

In 2022, the season will open May 1, consistent with all preseason regulations in place for Treaty Indian troll fisheries during May 16–June 30, 2021. All catch in May 2022 applies against the 2022 Treaty Indian Troll fisheries quota. This opening could be modified following Council review at its March and/or April 2022 meetings.

B. Minimum Size (Inches)

TABLE 3—MINIMUM SIZE LIMITS FOR SALMON IN THE 2021 TREATY INDIAN OCEAN SALMON FISHERIES

Area (when open)	Chinook		Coho		
	Total	Head-off	Total	Head-off	Pink
North of Cape Falcon	24.0	18.0	16.0	12.0	None

Metric equivalents: 24.0 in = 61.0 cm, 18.0 in = 45.7 cm, 16.0in = 40.6 cm, 12.0 in = 30.5 cm.

C. Requirements, Restrictions, and Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (defined to include those waters of Puget Sound easterly of a line projected from the Bonilla Point Light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery, and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River [WAC 220–301–030]).

MAKAH—Washington State Statistical Area 4B and that portion of the fishery management area (FMA) north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.

QUILEUTE—A polygon commencing at Cape Alava, located at latitude 48°10′00″ north, longitude 124°43′56.9″ west; then proceeding west approximately forty nautical miles at that latitude to a northwestern point located at latitude 48°10′00″ north, longitude 125°44′00″ west; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nmi from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at latitude 47°31′42″ north, longitude 125°20′26″ west; then proceeding east along that line of latitude to the Pacific coast shoreline at latitude 47°31′42″ north, longitude 124°21′9.0″ west (per court order dated March 5, 2018, Federal District Court for the Western District of Washington).

HOH—That portion of the FMA between 47°54′18″ N lat. (Quillayute River) and 47°21′00″ N lat. (Quinault River) and east of 125°44′00″ W long.

QUINAULT—A polygon commencing at the Pacific coast shoreline near Destruction Island, located at latitude 47°40′06″ north, longitude 124°23′51.362″ west; then proceeding west approximately 30 nmi at that latitude to a northwestern point located at latitude 47°40′06″ north, longitude 125°08′30″ west; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nmi from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at latitude 46°53′18″ north, longitude 124°53′53″ west; then proceeding east along that line of latitude to the Pacific coast shoreline at latitude 46°53′18″ north, longitude 124°7′36.6″ west (per court order dated March 5, 2018, Federal District Court for the Western District of Washington).

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.).

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of October 1 through October 15 in the same manner as in 2004–2015. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2021 season (estimated harvest during the October ceremonial and subsistence fishery: 20 Chinook salmon; 40 coho salmon).

C.4. Area Closures

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31′42″ N lat.) and the Hoh River (47°45′12″ N lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21′00″ N lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management: In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook salmon remaining from the May through June treaty Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On March 9, 2021, NMFS published a final rule announcing the IPHC's regulations, including season dates, management measures, TACs for each IPHC management area including the U.S. West Coast (Area 2A) and Catch Sharing Plan for the U.S. waters off of Alaska (86 FR 13475, March 9, 2021). The Area 2A Catch Sharing Plan, in combination with the IPHC regulations, provides that vessels participating in the salmon troll fishery in Area 2A, which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

License applications for incidental harvest must be obtained from the IPHC (phone: 206–634–1838). Applicants must apply prior to mid-March 2022 for 2022 permits (exact date to be set by the IPHC in early 2022). Incidental harvest is authorized only during April, May, and June of the 2021 troll seasons and after June 30 in 2021 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 800–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 44,899 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

From May 16, 2021, until the end of the 2021 salmon troll season, and beginning April 1, 2022, until modified through insesason action or superseded by the 2022 management measures, license holders may land or possess no more than one Pacific halibut per each two Chinook salmon, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on). IPHC license holders must comply with all applicable IPHC regulations.

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2021, prior to any 2021 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2022, unless otherwise modified by inseason action at the March 2022 Council meeting.

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' YRCA (also known as the Salmon Troll YRCA) in order to protect yelloweye rockfish. Coordinates for the Salmon Troll YRCA are defined at 50 CFR 660.70(a) in the North Coast subarea (Washington marine area 3). See Section 1.C.7 in this document for the coordinates.

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

U.S./Canada border 49°00′00″ N lat.
Cape Flattery, WA 48°23′00″ N lat.
Cape Alava, WA 48°10′00″ N lat.
Queets River, WA 47°31′42″ N lat.
Leadbetter Point, WA 46°38′10″ N lat.
Cape Falcon, OR 45°46′00″ N lat.
South end Heceta Bank Line, OR 43°58′00″ N lat.
Florence South Jetty, OR 44°00′54″ N lat.
Humbug Mountain, OR 42°40′30″ N lat.
Oregon-California border 42°00′00″ N lat.
Humboldt South Jetty, CA 40°45′53″ N lat.
40°10′ line (near Cape Mendicino, CA) 40°10′00″ N lat.
Horse Mountain, CA 40°05′00″ N lat.
Point Arena, CA 38°57′30″ N lat.
Point Reyes, CA 37°59′44″ N lat.
Point San Pedro, CA 37°35′40″ N lat.
Pigeon Point, CA 37°11′00″ N lat.
Point Sur, CA 36°18′00″ N lat.
Point Conception, CA 34°27′00″ N lat.
U.S./Mexico border 34°27′00″ N lat.

Section 6. Inseason Notice Procedures

Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, 800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or USCG broadcasts for current information for the area in which they are fishing.

Classification

NMFS is issuing this rule pursuant to 305(d) of the MSA. In a previous action taken pursuant to section 304(b), the Council designed the FMP to authorize NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 660.408. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

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

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures would be impracticable and contrary to the public interest.

The annual salmon management cycle begins May 16 and continues through April 30 of the following year. May 16 was chosen because it provides the miniminally necessary time required to complete the necessary environmental and economic analyses and regulatory documentation following the April Council meeting in time for the Secretary of Commerce to approve and implement the Council's annual recommendation. In addition, these harvests constitute a relatively small portion of the annual catch, allowing for the majority of the season to be governed by the new management measures rule. Analysis by the Council's Salmon Technical Team determined that the pre-May 16 salmon harvests would constitute a relatively small portion of the annual catch. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from previous years' observed spawning escapement, vary substantially from year to year, and are not available until January or February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a two-month period culminating with the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval, and implementation of fishing regulations effective on May 16. Providing opportunity for prior notice and public comments on the Council's recommended measures through a

proposed and final rulemaking process would require 30 to 60 days in addition to the two-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock abundance. For the 2021 fishing regulations, the current stock abundance was not available to the Council until February. In addition, information related to northern fisheries and stock status in Alaska and Canada which is important to assessing the amount of available salmon in southern U.S. ocean fisheries is not available until mid- to late-March. Because a substantial amount of fishing normally occurs during late-May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May 16 are managed under measures developed the previous year, as modified by the Council at its March and April meetings, relatively little harvest occurs during that period (*e.g.,* on average, 10 percent of commercial and recreational harvest occurred prior to May 1 during the years 2011 through 2018). Allowing the much more substantial harvest levels normally associated with the late-May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks, and to provide harvest opportunity where appropriate. The choice of May 16 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the need to manage the fishery using the best available scientific information.

If the 2021 measures are not in place on May 16, salmon fisheries will not open as scheduled. This would result in lost fishing opportunity, negative economic impacts, and confusion for the public as the state fisheries adopt concurrent regulations that conform to the Federal management measures.

In addition, these measures were developed with significant public input. Public comment was received and considered by the Council and NMFS throughout the process of developing these management measures. As described above, the Council took comment at its March and April meetings, and heard summaries of comments received at public meetings held between the March and April meetings for each of the coastal states. NMFS also invited comments in a notice published prior to the March Council meeting, and considered comments received by the Council through its representative on the Council.

Based upon the above-described need to have these measures effective on May 16, and the fact that there is limited time available to implement these new measures after the final Council meeting in April, and before the commencement of the 2021 ocean salmon fishing year on May 16, NMFS has concluded it would be impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data were not available until February and management measures were not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks as well as potentially overfished stocks, and to provide for harvest of more abundant stocks. Delaying the effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the MSA.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is posting the regulations on its West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*). NMFS is also advising the states of Washington, Oregon, and California of the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The current information collection approval expires on February 29, 2024. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes 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.

This final rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 7, 2021.

Samuel D. Rauch, III,

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

[FR Doc. 2021–10035 Filed 5–13–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210430–0093]

RIN 0648–BK52

Fisheries Off West Coast States; Emergency Action to Temporarily Remove 2021 Seasonal Processing Limitations for Pacific Whiting Motherships and Catcher-Processors

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily allows at-sea Pacific whiting processing vessels to operate as

both a mothership and a catcher-processor during the 2021 Pacific whiting fishery. This action is necessary to ensure catcher vessels in the at-sea whiting sector are able to fully harvest sector allocations. Emergency measures under this rule will allow catcher-processors to operate as motherships and replace mothership processing vessels that are unable to operate in the at-sea whiting sector during the ongoing COVID–19 pandemic and resulting high economic uncertainty in 2021.

DATES:

Effective date: Effective May 14, 2021 until November 10, 2021.

Comment date: Comments must be submitted by June 14, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0035 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0035 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule is accessible via the internet at the Office of the Federal Register website at *https://ecfr.federalregister.gov/.* Background information and analytical documents are available at the NMFS West Coast Region website at: *http://www. https://www.fisheries.noaa.gov/species/west-coast-groundfish.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, or email: *colin.sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) prohibits processing vessels in the at-sea Pacific whiting fishery from operating as both a mothership (MS) and catcher processor (C/P) during the same calendar year. C/P vessels are capable of both harvesting and processing catch at-sea, while MS vessels solely process catch delivered by other vessels (referred to as catcher vessels). By design, some MS vessels are built solely to process catch delivered by other vessels while at-sea, whereas C/P vessels are capable of harvesting catch, and receiving deliveries from catcher vessels. Because of this, some processing vessels are able to switch between the C/P and MS sectors, while other vessels are not. To help ensure market stability in the separate sectors, current regulations do not allow processing vessels to switch between the MS and C/P sectors in a single calendar year. Under existing restrictions, a decision to operate a processing vessel as a C/P in response to the ongoing pandemic would preclude the vessels from operating as an MS for the remainder of the 2021 fishing year, and vice versa. Catcher vessels in the at-sea whiting sector rely on MS vessels to accept delivery of their catch and, as a result, the amount of whiting these vessels can harvest is limited by the availability of at-sea processing vessels in the MS sector. Losing an MS processing vessel would prevent catcher vessels from harvesting their 2021 Pacific whiting allocations. The remaining processing vessels participating in the MS sector would not possess the capacity to receive deliveries from all catcher vessels for the 2021 Pacific whiting season.

During the March 2021, Pacific Fishery Management Council (Council) meeting, industry members from the MS cooperative submitted a letter to the Council requesting action to address this issue. In their letter, industry members estimated that the loss of one MS processing vessel would leave approximately 24 percent of the MS sector allocation unharvested. The Council Groundfish Advisory Panel (GAP) supported the industry statement, and estimated economic impacts that would result from lost at-sea processing capacity. The Councils Groundfish Management Team (GMT) provided additional analysis showing that compared to 2016–2019 fishing years, the proportion of whiting harvested in 2020 decreased by 13 percent in the MS sector and 2 percent in the C/P sector. The GMT stated these decreases likely reflect COVID–19 impacts, including a lack of processing vessels available to catcher vessels due to attempts to minimize the spread COVID–19.

In 2020, NMFS issued an emergency rule (85 FR 37027, June 19, 2020) to allow vessels to operate as an MS and a C/P in the same year in response to industry requests and Council recommendation. During the 2020 whiting season, several at-sea processing vessels experienced COVID–19 outbreaks, forcing them to halt operations to prevent spreading infection to additional vessels and shorebased facilities. COVID–19 outbreaks and resulting shutdowns increased operational costs and caused foregone opportunities in the at-sea whiting fishery. In 2020, five MS permits were used to process MS allocations. The 2020 emergency action (85 FR 37027, June 19, 2020) provided temporary operational flexibility for the at-sea sector for 180 days. However, it was unforeseen when the Council made its recommendation in 2020 how long the COVID–19 pandemic would last, how COVID–19 disease variants would emerge, and when vaccination efforts would be complete.

On March 9, 2021, the Council voted to request that NMFS initiate an emergency action to temporarily allow any eligible MS and C/P to operate as both types of processing vessel during the 2021 Pacific whiting season. This action would not be an extension of the 2020 emergency rule (85 FR 37027, June 19, 2020). Vessels would not be required to declare which sector they will operate in for the year at the beginning of the season. This emergency action would allow at-sea Pacific whiting processing vessels to switch operations for 180 days after publication. Additionally, these temporary measures can be extended for 186 days if the COVID–19 health emergency persists. There is continued risk to at-sea whiting vessels and loss of processing capacity should a COVID–19 outbreak occur onboard a processing vessel. Because of this risk and uncertainty, members of industry and the Council GAP and GMT advisory bodies recommended the Council take emergency action to allow available vessels to operate as both types of processing vessels for the 2021 fishing year to avoid potential economic hardship. In the event of a COVID–19 outbreak onboard a processing vessel, flexibility provided by removing seasonal processing restrictions under these emergency measures could allow other vessels to process MS sector whiting allocations that at-sea whiting catcher vessels would not otherwise be able to deliver. Therefore, the Council

has recommended that NMFS initiate emergency action in 2021 to provide operational flexibility to the at-sea sectors by temporarily allow processing vessels to operate as both an MS and a C/P in the same calendar year.

Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS policy guidelines for the use of emergency rules define criteria for determining whether an emergency exists under section 305(c) of the Magnuson-Stevens Act (62 FR 44451; August 21, 1997). Under NMFS' Policy Guidelines for the Use of Emergency Rules, the phrase ''an emergency exists involving any fishery'' is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

In addition, the Magnuson-Stevens Act section 305(c)(3) can allow for an extension of an emergency rule for an additional 186 days if the public has had the opportunity to comment and, in the case of a Council recommendation for emergency regulations or interim measures, the council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

Rationale and Effects

At the March 2021 meeting, the Council addressed requests from whiting fishery stakeholders after considering a range of factors. These factors include, but are not limited to:

- At the time of the emergency rule request in 2020, the state of knowledge of the coronavirus and potential impacts of the COVID–19 pandemic was limited.
- It was unforeseen that whiting fishery participants would still be dealing with the reduced fishing capacity and operational shutdowns due to COVID–19 one year later.
- It was unforeseen that the fishing industry would not be vaccinated for COVID–19 by the start of the 2021 fishing season. Ready access to vaccinations is unknown throughout the duration of the whiting season.
- The increase and spread of COVID–19 variants is recent and unforeseen.
- It was unforeseen how the development and implementation of local, State and national health directives would impact the fishing industry in response to a vessel outbreak in the fishing industry.

Under these emergency measures, temporarily lifting the restriction on MS and C/P operations would increase the likelihood that MS catcher vessels have markets to which to deliver catch throughout the 2021 fishing season. The operational flexibility provided in this emergency action would prevent significant direct economic loss to at-sea whiting fishery participants and fishing communities. These measures will allow catcher vessels to harvest MS sector allocations and provide catch revenue to the respective vessel crews. In the event that additional processing vessels cannot commit to taking deliveries from catcher vessels for the remainder of the 2021 Pacific whiting season (due to changes in business plans or because a processing vessel is rendered inoperable due to COVID–19 outbreaks, for example) this emergency rule may provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants. This action would help promote health and human safety by allowing processing vessels to quarantine while minimizing economic harm to at-sea whiting catcher vessels. This action would provide operational flexibility for up to six MS permits that would allow processing vessel owners and operators to plan and make decisions that do not require a tradeoff in health and human safety for economic opportunity.

In light of best available information, the status of the whiting resource, and the potential social and economic costs of maintaining the existing permit transfer restrictions, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.

Emergency Measures

This emergency action removes restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or C/P in the same calendar year, effective May 14, 2021. This action temporarily (for 180 days) allows a processing vessel to operate as both an MS and C/P in the same calendar year, but not on the same trip. This action does not modify or change any other aspects of the at-sea Pacific whiting fishery. Owners of processing vessels that intend to operate as both an MS and a C/P during the 2021 Pacific whiting season must follow this procedure:

(1) *Submit a request to register for both processing permits.* The vessel may be registered under both an MS permit and a C/P endorsed permit simultaneously for the duration of the emergency rule. The owner of a processing vessel currently registered under a C/P endorsed permit may also operate as an MS by submitting a request to NMFS Permits to register the processing vessel under a valid MS permit per regulations in 50 CFR 660.25(b). The owner of a processing vessel currently registered under an MS permit may also operate as a C/P by submitting a request to NMFS Permits to register the processing vessel under a valid C/P endorsed permit per regulations in 50 CFR 660.25(b).

(2) *Submit a notification of a material change to coop agreement within 7 days.* To operate in the MS fishery (*i.e.,* receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS coop agreement. To operate in the C/P fishery (*i.e.,* catch and process C/P sector allocations at-sea) the vessel must be included in the C/P coop agreement. Including a new vessel in either the MS or C/P coop agreement constitutes a material change to the coop agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the 2021 MS coop fishery or the 2021 C/P coop fishery, the respective coop manager must notify NMFS in writing of such change to the coop agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 50 CFR 660.160(d)(1)(iii)(B)(*4*).

(3) *Submit a revised coop agreement within 30 days of material change to the coop agreement.* Within 30 days of a new vessel participating in a coop fishery, the MS or C/P coop manager must submit a revised coop agreement to NMFS that lists all vessels and/or processing vessels operating in the respective coop and includes the new processing vessel, along with a letter describing the change to the coop agreement, as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 50 CFR 660.160(d)(1)(iii)(B)(*4*).

(4) *Change vessel declaration before each fishing trip.* For each trip, the vessel must update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The declaration is binding for the duration of the trip and

may not be changed until completion of the trip. A processing vessel must submit one of the following declarations: (a) Limited entry midwater trawl, Pacific whiting catcher/processor sector; or (b) Limited entry midwater trawl, Pacific whiting mothership sector (mothership).

(5) *Economic Data Collection (EDC) Program.* A separate EDC form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a C/P-endorsed limited entry permit. If a vessel holds both types of permit in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114.

(6) *Expiration of Emergency Measures.* Vessels that have operated as both an MS and C/P in 2021 would be required to cease operations for the remainder of the year following expiration of these emergency measures, unless otherwise extended. NMFS will notify any such vessels, prior to expiration, to limit the potential impact of expiration of these measures.

Renewal of Emergency Regulations

The Magnuson-Stevens Act limits NMFS's emergency action authority to an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial emergency action (see **ADDRESSES**). After considering public comments on this emergency rule, NMFS may take action to extend the emergency measures before expiration.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Pacific Coast Groundfish FMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds prior notice and public comment is not required because it would be impracticable and contrary to the public interest. This emergency action was recommended by the Council following a letter and comments from members of the public representing the at-sea whiting industry during the March 2021 Council meeting. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for a time sensitive management problem. Implementing this action as soon as possible maximizes the time available for the at-sea industry to adjust business plans for the year. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior notice and public comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it alleviates a restriction that would place MS-dependent catcher vessels at an economic disadvantage in the 2021 Pacific whiting fishery. Immediate implementation of this rule is necessary to allow the at-sea sectors sufficient time to plan operations and maximize flexibility provided by this action. Maintaining the prohibition on vessels operating as both an MS and C/P in the same calendar year would present immediate serious economic impacts without contributing to the economic goals of the Catch Share Program, at-sea MS cooperative or C/P cooperative.

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

The Regulatory Flexibility Act does not apply to this emergency rule because prior notice and opportunity for public comment is not required.

Recordkeeping and Reporting Requirements

This emergency action includes record keeping and reporting requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery. Prior to leaving port, an at-sea Pacific whiting processing vessel must declare whether it will be operating in the MS sector or the C/P sector for each trip. Vessels in fisheries off West Coast states must declare through VMS the gear type and sector in which they will participate, including the limited entry midwater trawl and Pacific whiting MS and C/P sectors, as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The number of declaration reports the vessel operator is required to submit to NMFS would not change under this action. In addition, this action does not change existing recordkeeping and reporting requirements. Therefore, no entity would be subject new reporting requirements under this emergency action.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: May 3, 2021.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C 7001 *et seq.*

■ 2. In § 660.25, add paragraph (b)(4)(vii)(D) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(vii) * * *

(D) *Emergency rule creating season flexibility on at-sea processing restrictions.* Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, vessels may be registered to both a limited entry MS permit and limited entry trawl permit with a C/P endorsement during the same calendar year. Vessels registered to both an MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both an MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

* * * * *

■ 3. In § 660.112, add paragraphs (d)(3)(i) through (ii) and (e)(3)(i) through (ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(d) * * *

(3) * * *

(i) Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, a vessel that was used to fish in the C/P fishery may be used to receive and process catch as mothership in the same calendar year, but not on the same fishing trip.

(ii) [Reserved]

* * * * *

(e) * * *

(3) * * *

(i) Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, catcher-processor vessels and motherships are exempt from this prohibition.

(ii) [Reserved]

* * * * *

■ 4. In § 660.150, add paragraphs (b)(1)(i)(D), (b)(2)(ii)(B)(*1*) through (*2*), (f)(1)(iii), and (f)(2)(i)(A) through (B) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Under emergency measures effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) Under emergency measures effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(*2*) [Reserved]

* * * * *

(f) * * *

(1) * * *

(iii) *Emergency rule creating seasonal flexibility on at-sea processor restrictions.* Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

* * * * *

(2) * * *

(i) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processing restrictions. Effective May 14, 2021 until November 10, 2021, a vessel registered to an MS permit is exempt from this declaration and may also operate as a C/P during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a mothership.

(B) [Reserved]

* * * * *

■ 5. In § 660.160, add paragraphs (b)(1)(i)(D), (b)(1)(ii)(A)(*1*) through (*2*), (e)(1)(iii)(A) through (B), and (e)(2)(i)(A) through (B) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary fishing season, but not on the same fishing trip.

* * * * *

(ii) * * *

(A) * * *

(*1*) Under emergency measures effective May 14, 2021 until November 10, 2021, a vessel may operate as both a mothership and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(*2*) [Reserved]

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processor restrictions. Effective May 14, 2021 until November 10, 2021, notwithstanding any other section of these regulations, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

(B) [Reserved]

* * * * *

(2) * * *

(i) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processing restrictions. Effective May 14, 2021 until November 10, 2021, a vessel registered to a C/P endorsed permit is exempt from this declaration and may also operate as an MS during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a C/P.

(B) [Reserved]

* * * * *

[FR Doc. 2021–09558 Filed 5–13–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 92
Friday, May 14, 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 DEFENSE

Office of the Secretary

32 CFR Part 97

[Docket ID: DOD–2018–OS–0103]

RIN 0790–AK11

Release of Official Information in Litigation and Presentation of Witness Testimony by DoD Personnel (Touhy Regulation)

AGENCY: Office of the General Counsel of the Department of Defense (DoD), DoD.

ACTION: Proposed rule.

SUMMARY: Commonly known as the *Touhy* regulation, this rule prescribes the requirements for submitting subpoenas and litigation requests to the Department as well as the procedures that its personnel will follow to respond. The Department proposes to amend and consolidate component-level requirements and procedures into a single Department-level *Touhy* rule.

DATES: Comments must be received by July 13, 2021.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Shellman, 703–571–0793, *denise.v.shellman.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

A. Summary of New and Amended Regulatory Provisions and Their Impact

DoD's longstanding policy—that official information should be made reasonably available for use in litigation, as long as the information is not classified, privileged, or otherwise protected—is unchanged. This proposed rule modifies existing regulations at 32 CFR part 97 primarily to clarify and streamline the requirements for the proper submission of subpoenas and litigation requests, the factors that chief legal advisors will consider when responding, and the fees that may be collected to cover associated expenses.

The modifications include:

- Adding in § 97.1 references to 5 U.S.C. 301 and the Supreme Court's decision in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), to note the legal basis for this rule's purpose.
- Reorganizing the subsections in § 97.2 to provide a more practical order of categories covered by and excluded from the rule.
- Revising in § 97.3 the definition of ''personnel'' to make clear that the rule covers not only Service members and civilian employees of every DoD component, but also employees of other federal agencies who are assigned to, detailed to, or otherwise affiliated with a DoD component.
- Adding in § 97.3 the defined term ''chief legal advisors'' to replace the phrases ''appropriate DoD official designated in paragraph (a) of this section'' and ''appropriate DoD official designated in § 97.6(a),'' which are used awkwardly throughout the current rule to refer to a component's chief attorney. Also adding in § 97.3 the defined term ''court'' to replace the awkward phrase ''court of competent jurisdiction or other appropriate authority'' throughout the rule. These changes allow for cleaner sentences and result in a more straightforward rule that is easier to follow.
- Moving the definition of ''disclosure'' from § 97.6 to § 97.3, the Definitions section, so that the reader may find it easily. For the same reason, separating the defined terms ''litigation'' and ''litigation request,'' which appear together in the current rule under the definition of ''litigation.''
- Dividing the Responsibilities section into two separate sections (GC DoD and DoD Component heads); dividing the Procedures section into five separate sections (authorities, factors to consider, requirements and determinations, fees, and expert or opinion testimony); and subdividing the five new Procedures sections to list separately each item that requesting parties, personnel, and chief legal advisors must take into account. These formatting changes result in a more streamlined rule that is easier to use.

The proposed revisions will also consolidate four existing and one proposed component-level rules, which are redundant, into the existing Department-level rule. When this proposed rule is finalized, DoD will rescind:

- The National Security Agency's *Touhy* regulation at 32 CFR part 93, ''Acceptance of Service of Process; Release of Official Information in Litigation; and Testimony by NSA Personnel as Witnesses'';
- the Department of the Army's *Touhy* regulation at 32 CFR part 516, ''Litigation'';
- the Department of the Navy's *Touhy* regulation at 32 CFR part 725, ''Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel''; and
- the Department of the Navy's additional rules on delivery of personnel and production of official records at 32 CFR part 720, ''Delivery of Personnel; Service of Process and Subpoenas; Production of Official Records''.

In addition, DoD will not finalize the National Reconnaissance Office's proposed *Touhy* regulation published in the **Federal Register** on November 25, 2016 (81 FR 85196–85201), ''Production of Official Records or Disclosure of Official Information in Proceedings Before Federal, State or Local Governmental Entities of Competent Jurisdiction,'' which would appear at 32 CFR part 267. This consolidation will further streamline the litigation-request process and promote uniformity across the Department in the release of information to third-party litigants.

B. Background and Legal Basis for This Rule

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing ''the custody, use, and preservation of its records, papers, and property.''

The Supreme Court held in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), that under such authority, agency heads may establish procedures for determining whether to release official information and allow personnel testimony sought through a subpoena or other litigation request. This regulation sets forth DoD's procedures, which as the Supreme Court explained, are useful and necessary as a matter of internal administration to prevent possible harm from unrestricted disclosures in court. In DoD Directive 5145.01, ''General Counsel of the Department of Defense (GC DoD),'' December 2, 2013, as amended (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/514501p.pdf*), and pursuant to 10 U.S.C. 113, the Secretary of Defense has delegated the authority to establish those procedures to the General Counsel.

This rule's corresponding internal issuance is DoD Directive 5405.2, ''Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses,'' July 23, 1985 (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540502p.pdf*). When this rule is finalized, DoD Directive 5405.2 will be reissued as DoD Instruction 5405.02, ''Release of Official Information in Litigation and Presentation of Witness Testimony by DoD Personnel,'' which will be made available at *https://www.esd.whs.mil/Directives/issuances/dodi/.*

C. Expected Impact of the Proposed Rule

This rule action will not impose any new costs. Consolidating *Touhy* requirements into a single rule, along with updating the rule to make it clearer and more streamlined, will produce efficiencies and uniformity to the public's benefit. Less attorney time will be spent searching for only one rule and complying with its requirements. After consulting with subject matter experts in the DoD Office of the General Counsel and offices of the chief legal counsels of various components, the Department concluded that attorneys for third-party litigants will save an estimated 30 minutes of research, review, and compliance time per subpoena or litigation request when referring to the CFR for guidance.

For purposes of estimating the cost savings, the Department's subject matter experts deemed it reasonable to use the mean hourly wage for lawyers as informed by the Bureau of Labor and Statistics, $69.86.[1] Subject matter experts further advised that at least 80% of subpoenas and litigation requests submitted to DoD involve consultation of the various rules in the CFR.[2] An average of 1,405 requests are received annually across the entire Department, according to Fiscal Year 2016 data. When finalized, this rule should result in an annual cost savings of approximately $39,261.32, which is the impacted percentage (80%) of total annual requests (1,405) multiplied by the attorney hours saved per request (0.5) and the mean hourly wage ($69.86)—in other words, 0.8*1,405*0.5*69.86 = $39,261.32. These savings are reflected in the chart below.

Rules	Components	Litigation requests in 2016		Impacted requests (%)		Hours saved per request		Lawyers' hourly wage		Projected cost savings to public
93	NSA	35	×	80	×	0.5	×	69.86	=	$978.04
97	DoD	20	×	80	×	0.5	×	69.86	=	558.88
267	NRO	10	×	80	×	0.5	×	69.86	=	279.44
516	Army	400	×	80	×	0.5	×	69.86	=	11,177.60
720, 725	Navy	940	×	80	×	0.5	×	69.86	=	26,267.36
Total									=	39,261.32

In addition to these cost savings, there will be an unquantified benefit of transparency through access to official information, while safeguarding classified, privileged, and personally identifiable information.

D. Executive Order 12866, ''Regulatory Planning and Review,'' Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Congressional Review Act (5 U.S.C. 801–08)

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these Executive Orders, the Office of Management and Budget has determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 nor a ''major rule'' as defined by 5 U.S.C. 804(2).

DoD estimates that the rule would generate $9,309.05 in annualized cost savings at the 7% discount rate, discounted to a 2016 equivalent, over a perpetual time as discussed in the Expected Impact of the Proposed Rule section. The present value savings are estimated at $51,463.58.

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

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

F. Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. 1532)

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of $100 million

[1] This information can be found in the website of the Bureau of Labor Statistics under National Wage Data for Lawyers, Occupation Code 23–1011 (available at *https://www.bls.gov/oes/current/oes231011.htm*), last updated in May 2019.

[2] The Department consulted with subject matter experts in the DoD Office of the General Counsel and offices of chief legal counsels of various components, who provided the estimates of impacted percentage of total requests and of the attorney hours saved per request.

or more (in 1995 dollars, adjusted annually for inflation) in any one year. This proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

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

It has been determined that 32 CFR part 97 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 97

Archives and records, Courts, Information.

■ Accordingly, 32 CFR part 97 is proposed to be revised to read as follows:

PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND PRESENTATION OF WITNESS TESTIMONY BY DOD PERSONNEL (*TOUHY* REGULATION)

Sec.
97.1 Purpose.
97.2 Applicability.
97.3 Definitions.
97.4 Policy.
97.5 Responsibilities—GC DoD.
97.6 Responsibilities—DoD Component heads.
97.7 Procedures—authorities.
97.8 Procedures—factors to consider.
97.9 Procedures—requirements and determinations.
97.10 Procedures—fees.
97.11 Procedures—expert or opinion testimony.
Appendix A to part 97—Litigation Requests and Demands to the Department of the Navy.

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 97.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official information in litigation and the presentation of witness testimony by Department of Defense (DoD) personnel pursuant to 5 U.S.C. 301 and the Supreme Court's decision in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 97.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

(b) Is intended only to provide guidance for the internal operations of the DoD, without displacing the responsibility of the Department of Justice to represent the United States in litigation.

(c) Does not preclude official comments on matters in litigation.

(d) Does not apply to the release of official information or the presentation of witness testimony in connection with:

(1) Courts-martial convened by the authority of a Military Department.

(2) Administrative proceedings or investigations conducted by or for a DoD Component.

(3) Security-clearance adjudicative proceedings, including those conducted pursuant to DoD Directive 5220.6, ''Defense Industrial Personnel Security Clearance Review Program,'' January 2, 1992, as amended (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/522006p.pdf*).

(4) Administrative proceedings conducted by or for the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

(5) Negotiated grievance proceedings conducted in accordance with a collective bargaining agreement.

(6) Requests by government counsel representing the United States or a federal agency in litigation.

(7) Disclosures to federal, State, local, or foreign authorities related to investigations or other law-enforcement activities conducted by a DoD law-enforcement officer, agent, or organization.

(e) Does not affect in any way existing laws or DoD programs governing:

(1) The release of official information or the presentation of witness testimony in grand jury proceedings.

(2) Freedom of Information Act requests submitted pursuant to 32 CFR part 286, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant to 32 CFR part 310, even if the records sought are related to litigation.

(4) The release of official information outside of litigation.

(f) Does not create any right or benefit (substantive or procedural) enforceable at law against the DoD or the United States.

§ 97.3 Definitions.

These terms and their definitions are for the purpose of this part.

Chief legal advisors. (1) The General Counsel of the Department of Defense (GC DoD).

(2) The General Counsel of a Military Department.

(3) The Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(4) The Judge Advocate General of a Military Service.

(5) The Staff Judge Advocate to the Commandant of the Marine Corps.

(6) The Staff Judge Advocate to a Combatant Commander.

(7) The General Counsel to the Inspector General of the Department of Defense.

(8) The General Counsel of a Defense Agency.

(9) The General Counsel of a DoD Field Activity.

(10) The chief legal advisor of any other organizational entity within the DoD.

Court. A federal, State, or local court, tribunal, commission, board, or other adjudicative body of competent jurisdiction.

Demand. An order or subpoena by a court of competent jurisdiction for the production or release of official information or for the presentation of witness testimony by DoD personnel at deposition or trial.

Disclosure. The release of official information in litigation or the presentation of witness testimony by DoD personnel.

Litigation. All pretrial (*e.g.,* discovery), trial, and post-trial stages of existing judicial or administrative actions, hearings, investigations, or similar proceedings before a civilian court, whether foreign or domestic.

Litigation request. Any written request by a party in litigation or the party's attorney for the production or release of official information or for the presentation of witness testimony by DoD personnel at deposition, trial, or similar proceeding.

Official information. All information of any kind and however stored that is in the custody and control of the DoD, relates to information in the custody and control of the DoD, or was acquired by DoD personnel due to their official duties or status.

Personnel. (1) Present and former (*e.g.,* retired, separated) Service

members, including Service academy cadets and midshipmen.

(2) Present and former (*e.g.,* retired, separated) civilian employees of a DoD Component, including non-appropriated fund activity employees.

(3) Present and former (*e.g.,* retired, separated) employees of another federal agency assigned to, detailed to, or otherwise affiliated with a DoD Component.

(4) Non-U.S. nationals who perform or have performed services overseas for any of the Military Services in accordance with a status of forces agreement.

(5) Any individuals who perform or have performed services for a DoD Component through a contractual arrangement.

§ 97.4 Policy.

The DoD generally should make official information reasonably available for use in federal, State, and foreign courts and other adjudicative bodies if the information is not classified, privileged, or otherwise protected from public disclosure.

§ 97.5 Responsibilities—GC DoD.

The GC DoD has overall responsibility for the policy in this part, oversees the implementation of its procedures throughout the DoD, and provides supplemental guidance as appropriate.

§ 97.6 Responsibilities—DoD Component heads.

The DoD Component heads:

(a) Implement the policy and procedures in this part and, through their chief legal advisors, provide guidance for their respective components.

(b) Must issue or update, as appropriate, their respective components' implementing regulations within 180 days of this part's effective date.

§ 97.7 Procedures—authorities.

(a) In response to a litigation request or demand, and after any required coordination with the Department of Justice, the chief legal advisors (see § 97.3) are authorized to:

(1) Determine whether their respective DoD Components may release official information originated by or in the custody of such components.

(2) Determine whether personnel assigned to, detailed to, or affiliated with their respective DoD Components may be contacted, interviewed, or used as witnesses concerning official information or, in exceptional circumstances, as expert witnesses.

(3) Impose conditions or limitations on disclosures approved pursuant to this paragraph (*e.g.,* approve the release of official information only to a federal judge for in camera review).

(4) Assert claims of privilege or protection before any court or adjudicative body.

(b) The GC DoD may assume primary responsibility for responding to any litigation request or demand, particularly if it involves terrorism, espionage, nuclear weapons, or intelligence means or sources.

§ 97.8 Procedures—factors to consider.

In making a determination pursuant to § 97.7(a), the chief legal advisors will consider whether:

(a) The litigation request or demand is overbroad, unduly burdensome, or otherwise inappropriate under applicable law or court rules.

(b) The disclosure would be improper (*e.g.,* the information is irrelevant, cumulative, or disproportional to the needs of the case) under the rules of procedure governing the litigation from which the request or demand arose.

(c) The official information or witness testimony is privileged or otherwise protected from disclosure under applicable law.

(d) The disclosure would violate a statute, Executive order, regulation, or policy.

(e) The disclosure would reveal:

(1) Information properly classified pursuant to Volume 1 of DoD Manual 5200.01, ''DoD Information Security Program: Overview, Classification, and Declassification,'' February 24, 2012, as amended (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520001m_vol1.pdf?ver=2018-05-04-091448-843*).

(2) Controlled Unclassified Information pursuant to Volume 4 of DoD Manual 5200.01, ''DoD Information Security Program: Controlled Unclassified Information (CUI),'' February 24, 2012, as amended (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520001-V4p.PDF?ver=2018-05-09-115318-927*).

(3) Technical data withheld pursuant to 32 CFR part 250.

(4) Information otherwise exempt from unrestricted disclosure.

(f) The disclosure would:

(1) Interfere with an ongoing enforcement proceeding.

(2) Compromise a constitutional right.

(3) Expose an intelligence source or confidential informant.

(4) Divulge a trade secret or similar confidential information.

(5) Be otherwise inappropriate.

§ 97.9 Procedures—requirements and determinations.

(a) A litigation request or demand must describe, in writing and with specificity, the nature of the official information or witness testimony sought, its relevance to the litigation, and other pertinent details addressing the factors in § 97.8.

(b) Personnel who receive a litigation request or demand must notify their DoD Component's chief legal advisor immediately. Former personnel (*e.g.,* retired Service members, separated employees, past contractors) must notify the chief legal advisor of the component to which they were last assigned.

(c) If another DoD Component or federal agency originated the responsive information or otherwise has the primary equity with respect to that information, the chief legal advisor will:

(1) Transfer the litigation request or demand (or the appropriate portions) to such other component or agency for action.

(2) Inform the requesting party or issuing court.

(3) In case of conflict, elevate to the GC DoD for resolution.

(d) If the litigation request or demand requires a response before a determination can be made, the chief legal advisor will inform the requesting party or the issuing court that the request or demand is still under consideration. The chief legal advisor also may seek a stay from the court in question until a final determination is made.

(e) Upon making a final determination pursuant to § 97.7(a), the chief legal advisor will inform the requesting party or issuing court.

(f) If the chief legal advisor approves the release of official information or the presentation of witness testimony, personnel will limit the disclosure to those matters specified in the litigation request or demand, subject to any conditions imposed by the chief legal advisor. Personnel may not release, produce, comment on, or testify about any official information without the chief legal advisor's prior written approval.

(g) If a court orders a disclosure that the chief legal advisor previously disapproved or has yet to approve, personnel must respectfully decline to comply with the court's order unless the chief legal advisor directs otherwise.

§ 97.10 Procedures—fees.

Parties seeking official information by litigation request or demand may be charged reasonable fees in accordance with Volume 11A, Chapter 4 of DoD 7000.14–R, ''Department of Defense

Financial Management Regulation: Reimbursable Operations Policy: User Fees,'' July 2016 (available at *http://comptroller.defense.gov/Portals/45/documents/fmr/current/11a/11a_04.pdf*), to reimburse expenses associated with the government's response. These reimbursable expenses may include the cost of:

(a) Materials and equipment used to search for, copy, and produce responsive information.

(b) Personnel time spent processing and responding to the request or demand.

(c) Attorney time spent assisting with the government's response, to include reviewing the request or demand and the potentially responsive information.

§ 97.11 Procedures—expert or opinion testimony.

(a) Personnel may not present expert or opinion testimony involving official information, except when:

(1) The testimony is presented on behalf of the United States, a federal agency, or any party represented by the Department of Justice.

(2) The chief legal advisor of the DoD Component with primary equity has granted special written approval upon a showing of exceptional need or unique circumstances, but only if the anticipated testimony is not adverse to the interests of the DoD or the United States and is presented at no expense to the government.

(b) If a court orders the presentation of testimony disallowed by § 97.11(a), personnel must respectfully decline to comply with the court's order unless the chief legal advisor directs otherwise.

Appendix A to part 97—Litigation Requests and Demands to the Department of the Navy

A litigation request to the Department of the Navy must be submitted to the appropriate determining authority as defined in Secretary of the Navy Instruction 5820.8_, ''Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel,'' August 27, 1991, as amended (available at *https://www.secnav.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-800%20Laws%20and%20Legal%20Services/5820.8A%20CH-1.pdf*).

As with all service of process on the Department of the Navy, a demand (subpoena or court order) must be delivered to the Naval Litigation Office using registered or certified mail, a commercial courier service, or a process server. The address for all service of process is: General Counsel of the Department of the Navy, Naval Litigation Office, 720 Kennon St. SE, Room 233, Washington Navy Yard, DC 20374–5013.

Answers to frequently asked questions on *Touhy* requests are available at *https://www.jag.navy.mil/organization/documents/Touhy_Requests.pdf*. Contact the Office of the General Counsel at 202–685–7039 or the Office of the Judge Advocate General at 202–685–5450 with any additional questions.

Appendix B to Part 97—Litigation Requests and Demands to the Department of the Air Force

A litigation request or demand to the Department of the Air Force must be submitted to the base-level or servicing Staff Judge Advocate for the installation or organization where the official information or witness is located.

Should the information or witness be located in a Headquarters-level office, the request or demand must be submitted to the Commercial Litigation Field Support Center (for matters involving contracts, acquisition, and procurement) or to the Air Force General Litigation Division (for all other matters). Their addresses are: Commercial Litigation Field Support Center, AFLOA/JAQC, 1500 W Perimeter Rd., Suite 4100, Joint Base Andrews, MD 20762; Air Force General Litigation Division, AFLOA/JACL, 1500 W Perimeter Rd., Suite 1370, 1st Floor, Joint Base Andrews, MD 20762.

Dated: May 7, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–10077 Filed 5–13–21; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0706; FRL–10023–22–Region 3]

Air Plan Approval; Pennsylvania; Emissions Statement Rule Certification for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision fulfills Pennsylvania's emissions statement requirement for the 2015 ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 14, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0706 at *https://www.regulations.gov,* or via email to *Talley.David@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 23, 2020, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania SIP intended to satisfy the Commonwealth's obligations under the CAA related to emissions statements for the 2015 ozone NAAQS.

I. Background

On October 26, 2015, EPA revised the ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm. See 80 FR 65291. Subsequently, on June 4, 2018, EPA designated the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area as a marginal nonattainment area for the 2015 ozone NAAQS. See 83 FR 25776. Pennsylvania's portion of this area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. See 40 CFR 81.339.

Section 182 of the CAA identifies plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires

that states develop and submit rules which establish annual reporting requirements for certain stationary sources. Sources that are within marginal (or worse) ozone nonattainment areas must annually report the actual emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) to the state. However, states may waive reporting requirements for sources that emit under 25 tons per year (tpy) of NO_X and VOC if the state provides an inventory of emissions from such class or category of sources. See CAA section 182(a)(3)(B)(ii).

Additionally, Pennsylvania is located in the ozone transport region (OTR) established by Congress in section 184 of the CAA. Pursuant to section 184(b)(2), any stationary source that emits or has the potential to emit at least 50 tpy of VOC shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. See CAA section 184. Thus, states within the OTR are subject to plan requirements in CAA section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of NO_X for states with moderate (or worse) ozone nonattainment areas. A major stationary source of NO_X is defined as a stationary facility or source of air pollutants which directly emits or has the potential to emit 100 tpy or more of NO_X. See CAA section 302(j). Because Pennsylvania is located in the OTR, Pennsylvania sources that are located in ozone attainment areas and emit above 50 tpy of VOC or 100 tpy of NO_X are considered major sources and also subject to the requirements of major stationary sources in moderate (or worse) nonattainment area, such as an emissions statement submission required by CAA section 182(a)(3)(B). See CAA sections 182(f) and 184(b)(2).

II. Summary of SIP Revision and EPA Analysis

Pennsylvania's emissions statement requirements are codified at 25 Pa Code chapter 135. Specifically, section 135.21, in accordance with CAA section 182(a)(3)(B), applies to NO_X and VOC sources within marginal (or worse) nonattainment areas, as well as major NO_X and VOC sources located in attainment areas located within the OTR (*i.e.,* the remainder of the Commonwealth). Affected sources are required annually to provide PADEP with a statement containing the source's actual NO_X and VOC emissions, the method used to calculate those emissions, the time period over which the calculations are based, and a certification by an appropriate company officer that the statement is accurate. 25 Pa Code 135.21 also contains a waiver for sources emitting less than 25 tpy, in accordance with CAA section182(a)(3)(B)(ii). Additionally, 25 Pa Code 135.5 contains recordkeeping requirements necessary to document the data presented in the annual emissions statements.

On January 12, 1995, EPA determined that 25 Pa Code sections 135.5 and 135.21 were adequate for purposes of implementing the requirements of CAA section 182(a)(3)(B) and took final action to incorporate those sections into the Pennsylvania SIP. See 60 FR 2881. Additionally, on June 6, 2018, EPA took final action to approve a SIP submittal from the Commonwealth of Pennsylvania in which PADEP certified that its existing emissions statement regulations remained adequate to implement the requirements of CAA section 182(a)(3)(B) as they pertained to the 2008 ozone NAAQS. Similarly, PADEP's April 23, 2020 submittal contains a certification that the existing emissions statement program remains adequate under the revised, 2015 ozone NAAQS.

III. Proposed Action

EPA finds that PADEP's existing SIP-approved emissions statement regulations continue to satisfy CAA section 182(a)(3)(B) because the existing rules are applicable to the entire Commonwealth of Pennsylvania and require stationary sources that emit NO_X or VOC (at required thresholds above 25 tpy in designated ozone nonattainment areas and above 50 tpy VOC or 100 tpy NO_X in ozone attainment areas in the OTR) to submit an emissions statement to PADEP detailing the sources' emissions. Therefore, EPA is proposing to approve PADEP's April 23, 2020 submittal as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Pennsylvania's SIP-approved emissions statement regulations, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: May 6, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2021–10203 Filed 5–13–21; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0332; FRL–10023–72–Region 7]

Air Plan Approval; Missouri; Removal of Control of Emissions From the Application of Deadeners and Adhesives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on January 15, 2019, and supplemented by letter on July 11, 2019. Missouri requests that the EPA remove a rule related to control of emissions from the application of deadeners and adhesives in the St. Louis, Missouri area from its SIP. This rescission does not have an adverse effect on air quality and meets the requirements of the Clean Air Act (CAA). The EPA's proposed approval of this rule revision is in accordance with the requirements of the CAA.

DATES: Comments must be received on or before June 14, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0332 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ashley Keas, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7629; email address: *keas.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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VIII. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0332 at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve the removal of 10 Code of State Regulations (CSR) 10–5.370, *Control of Emissions from the Application of Deadeners and Adhesives,* from the Missouri SIP.

According to the July 11, 2019 letter from the Missouri Department of Natural Resources, available in the docket for this proposed action, Missouri rescinded the rule because the only source once subject to the rule ceased operations in 2009. Therefore, the rule is no longer necessary for attainment and maintenance of the 1979, 1997, 2008 or 2015 National Ambient Air Quality Standards (NAAQS) for Ozone.

III. Background

The EPA established a 1-hour ozone NAAQS in 1971 (36 FR 8186, April 30, 1971). On March 3, 1978, the entire St. Louis Air Quality Control Region (AQCR) (070) was identified as being in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977 (43 FR 8962, March 3, 1978). On the Missouri side, the St. Louis nonattainment area included the St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties (hereinafter referred to in this document as the ''St. Louis Area''). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS (44 FR 8202, February 8, 1979). On May 26, 1988, the EPA notified Missouri that the SIP was substantially inadequate (hereinafter referred to as the ''SIP Call'') to attain the 1-hour ozone NAAQS in the St. Louis Area (*see* 54 FR 43183, October 23, 1989). To address the inadequacies identified in the SIP Call, Missouri submitted volatile organic compound (VOC) control regulations on June 14, 1985; November 19, 1986; and March 30, 1989. The EPA subsequently approved the revised control regulations for the St. Louis Area on March 5, 1990 and February 17, 2000. The VOC control regulations approved by the EPA into the SIP included reasonably available control technology (RACT) rules as required by CAA section 172(b)(2), including 10–5.370, *Control of Emissions from the Application of Deadeners and Adhesives.*

The EPA redesignated the St. Louis Area to attainment of the 1979 1-hour ozone standard on May 12, 2003 (68 FR 25418). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on May 12, 2003, the effective date of the redesignation approval. On April 30, 2004, the EPA published a final rule in the **Federal Register** stating the 1-hour ozone NAAQS would no longer apply (*i.e.,* would be revoked) for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS (69 FR 23951, April 30, 2004). The effective date of the revocation of the 1979 1-hour ozone standard for the St. Louis Area was June 15, 2005 (*see* 70 FR 44470, August 3, 2005).

As noted previously, 10 CSR 10–5.370, *Control of Emissions from the Application of Deadeners and Adhesives,* was approved into the Missouri SIP as a RACT rule on March 5, 1990 (55 FR 7712, March 5, 1990). At the time that the rule was approved into the SIP, 10 CSR 10–5.370 applied to all installations in St. Louis City and Franklin, Jefferson, St. Charles, and St. Louis Counties in Missouri that had the

uncontrolled potential to emit more than 100 tons per year or 250 kilograms per day of VOCs from the application of deadeners and adhesives.

By letter dated January 15, 2019, Missouri requested that the EPA remove 10 CSR 10–5.370 from the SIP. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. The State supplemented its SIP revision with a July 11, 2019 letter in order to address the requirements of section 110(l) of the CAA.

IV. Have the requirements for approval of a SIP revision been met?

In its July 11, 2019 letter, Missouri states that it intended its RACT rules, such as 10 CSR 10–5.370, to solely apply to existing sources in accordance with section 172(c)(1) of the CAA.[1] Missouri states that although the applicability section of 10 CSR 10–5.370 states that the rule applies to all installations (located within the St. Louis area), the rule applied to a single existing source, the Chrysler Corporation, consisting of the north and south assembly plants, as indicated in the general provisions and emission limit sections of the rule. In addition, Missouri states that the rule does not impose an emission limit for any other source besides the Chrysler Corporation.

Missouri, in its July 11, 2019 letter, indicates that the Chrysler north plant (189–0231) ceased operations in 2009 with demolition of structures occuring between 2010 and 2011; and the Chrysler south plant (189–0002) similarly ceased operations in 2009 and was demolished in 2010. The EPA has confirmed that the facility is decommissioned and is not subject to 10 CSR 10–5.370.

As stated previously, Missouri asserts that 10 CSR 10–5.370 may be removed from the SIP because section 172(c)(1) of the CAA requires RACT for existing sources, and because 10 CSR 10–5.370 was applicable to a single source that has permanently ceased operations and therefore the rule no longer reduces VOC emissions. Because the Chrysler Corporation was the only source that was subject to the rule, and because the facility has been shut-down and dismantled since 2011, the EPA is proposing to find that the rule no longer provides an emission reduction benefit to the St. Louis Area and is proposing to remove it from the SIP.

Missouri's July 11, 2019 letter states that any new sources or major modifications of existing sources are subject to new source review (NSR) permitting. Under NSR, a new major source or major modification of an existing source with a potential to emit (PTE) of 250 tons per year (tpy)[2] or more of any NAAQS pollutant is required to obtain a Prevention of Significant Deterioration (PSD) permit when the area is in attainment or unclassifiable, which requires an analysis of Best Available Control Technology (BACT) in addition to an air quality analysis and an additional impacts analysis. Sources with a PTE greater than 100 tpy, but less than 250 tpy,[3] are required to obtain a minor permit in accordance with Missouri's New Source Review permitting program, which is approved into the SIP.[4] Further, a new major source or major modification of an existing source with a PTE of 100 tpy or more of any NAAQS pollutant is required to obtain a nonattainment (NA) NSR permit when the area is in nonattainment, which requires an analysis of Lowest Achievable Emission Rate (LAER) in addition to an air quality analysis, an additional impacts analysis and emission offsets. The EPA agrees with this analysis.

Missouri has demonstrated that removal of 10 CSR 10–5.370 will not interfere with attainment of the NAAQS, RFP[5] or any other applicable requirement of the CAA because the single source subject to the rule has permanently ceased operations and removal of the rule will not cause VOC emissions to increase. Therefore, the EPA proposes to approve removal of 10 CSR 10–5.370 from the Missouri SIP.

V. What is the EPA's analysis of Missouri's SIP revision request?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 25, 2018, to August 2, 2018, and held a public hearing on July 26, 2018. Missouri received five comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(l) of the CAA. Missouri's July 11, 2019 letter addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to rescind 10 CSR 10–5.370 from the SIP because the rule applied to a single source that has permanently ceased operations and because the rule was not applicable to additional sources, it no longer serves to reduce emissions in the St. Louis Area. Furthermore, any new sources or major modifications of existing sources in the St. Louis Area are subject to NSR permitting.[6] We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of

[1] The EPA agrees with Missouri's interpretation of CAA section 172(c)(1) in regards to whether RACT is required for existing sources, but also notes that the State regulation establishing RACT may apply to new sources as well, dependent upon the State regulation's language.

[2] The PSD major source threshold for certain sources is 100 tpy rather than 250 tpy (see 40 CFR 52.21(b)(1)(i)(*a*) and 10 C.S.R. 10–6.060(8)(A)).

[3] Except for those sources with a PSD major source threshold of 100 tpy.

[4] The EPA's latest approval of Missouri's NSR permitting program rule was published in the **Federal Register** on October 11, 2016 (81 FR 70025).

[5] RFP is not applicable to the St. Louis Area because for Marginal ozone nonattainment areas, such as the St. Louis Area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9).

[6] ''NSR Permitting'' includes PSD permitting in areas designated attainment and unclassifiable, NA NSR in areas designated nonattainment and minor source permitting.

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: May 7, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–5.370'' under the heading ''Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area''.

[FR Doc. 2021–10124 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002, EPA–HQ–SFUND–1986–0005, EPA–HQ–SFUND–1987–0002, EPA–HQ–SFUND–1989–0011, EPA–HQ–SFUND–1990–0010, EPA–HQ–SFUND–1990–0011, EPA–HQ–SFUND–1993–0001, EPA–HQ–SFUND–2000–0004, EPA–HQ–SFUND–2002–0008, EPA–HQ–SFUND–2003–0010, EPA–HQ–SFUND–2005–0011, EPA–HQ–SFUND–2006–0759, EPA–HQ–SFUND–2009–0587, EPA–HQ–SFUND–2011–0076, EPA–HQ–SFUND–2011–0077; FRL–10023–77–OLEM]

Proposed Deletion From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a Notice of Intent to delete nine sites and partially delete eleven sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state, through its designated state agency, have determined that all appropriate response actions under CERCLA, other than operations and maintenance of the remedy, monitoring and five-year reviews, where applicable, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments regarding this proposed action must be submitted on or before June 14, 2021.

ADDRESSES: EPA has established a docket for this action under the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. Submit your comments, identified by the appropriate Docket ID number, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Table 2 in the **SUPPLEMENTARY INFORMATION** section of this document provides an email address to submit public comments for the proposed deletion action.

Instructions: Direct your comments to the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the corresponding Regional Records Center. Location, address, and phone number of the Regional Records Centers follows.

Regional Records Center:

- Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4308.
- Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA Superfund Records Center, 1650 Arch Street, Mail code 3SD42, Philadelphia, PA 19103; 215/814–3024.
- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303; 404/562–8637.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202–1129; 303/312–7273.
- Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mail stop OMP–161, Seattle, WA 98101; 206/553–4494.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. Information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT:

- Mabel Garcia, U.S. EPA Region 2 (NJ, NY, PR, VI), *garcia.mabel@epa.gov,* 212/637–4356
- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), *hass.andrew@epa.gov,* 215/814–2049
- Leigh Lattimore or Brian Farrier, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), *lattimore.leigh@epa.gov* or *farrier.brian@epa.gov,* 404/562–8768 or 404/562–8952
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), *cibulskis.karen@epa.gov,* 312/886–1843
- David Wennerstrom, U.S. EPA Region 7 (IA, KS, MO, NE), *wennerstrom.david@epa.gov,* 913/551–7996
- Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), *kiefer.linda@epa.gov,* 303/312–6689
- Linda Meyer, U.S. EPA Region 10 (AK, ID, OR, WA), *meyer.linda@epa.gov,* 206/553–6636
- Chuck Sands, U.S. EPA Headquarters, *sands.charles@epa.gov,* 703/603–8857

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

EPA is issuing a Notice of Intent to delete nine sites and partially delete eleven sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA created under section 105 of the CERCLA statute of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). These partial deletions are proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466, (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that EPA is using for this action. Section IV of this document discusses the portion of the site proposed for deletion and demonstrates how it meets the deletion criteria, including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and

unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion or partial deletion of the sites in this proposed rule:

(1) EPA consulted with the respective state before developing this Notice of Intent for deletion.

(2) EPA has provided the state 30 working days for review of this proposed action prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The state, through their designated state agency, has concurred with the proposed deletion action.

(5) Concurrently, with the publication of this Notice of Intent for deletion in the **Federal Register**, a notice is being published in a major local newspaper of general circulation near the site. The newspaper announces the 30-day public comment period concerning the Notice of Intent for deletion.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket, made these items available for public inspection, and copying at the Regional Records Center identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete or partially delete the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete or partially delete the site, the EPA will publish a final Notice of Deletion or Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a site or a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site or a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Full Site or Partial Site Deletion

The site to be deleted or partially deleted from the NPL, the location of the site, and docket number with information including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete are specified in Table 1. The NCP permits activities to occur at a deleted site or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1, if applicable, under Footnote such that; 1 = site has continued operation and maintenance of the remedy, 2 = site receives continued monitoring, and 3 = site five-year reviews are conducted.

TABLE 1

Site name	City/county, state	Type	Docket No.	Footnote
Reich Farms	Pleasant Plains, NJ	Full	EPA–HQ–SFUND–1983–0002	2, 3.
Butler Mine Tunnel	Pittston, PA	Full	EPA–HQ–SFUND–1987–0002	
Airco	Calvert City, KY	Full	EPA–HQ–SFUND–2005–0011	1, 2, 3.
Chemfax, Inc	Gulfport, MS	Partial	EPA–HQ–SFUND–1993–0001	1, 2, 3.
Kerr-McGee Chemical Corp-Navassa	Navassa, NC	Partial	EPA–HQ–SFUND–2009–0587	
T.H. Agriculture & Nutrition (Montgomery)	Montgomery, AL	Partial	EPA–HQ–SFUND–1990–0011	1, 2, 3.
US Finishing/Cone Mills	Greenville, SC	Partial	EPA–HQ–SFUND–2011–0077	
Arrowhead Refinery Co	Hermantown, MN	Full	EPA–HQ–SFUND–2005–0011	2, 3.
Barrels, Inc	Lansing, MI	Full	EPA–HQ–SFUND–1989–0011	1, 3.
Bennett Stone Quarry	Bloomington, IN	Full	EPA–HQ–SFUND–2005–0011	1, 2, 3.
Lemon Lane Landfill	Bloomington, IN	Full	EPA–HQ–SFUND–1983–0002	1, 2, 3.
South Minneapolis Residential Soil Contamination	Minneapolis, MN	Partial	EPA–HQ–SFUND–2006–0759	
United Scrap Lead Co., Inc	Troy, OH	Full	EPA–HQ–SFUND–2005–0011	1, 3.
Neal's Landfill (Bloomington)	Bloomington, IN	Full	EPA–HQ–SFUND–1983–0002	1, 2, 3.
Missouri Electric Works	Cape Girardeau, MO	Partial	EPA–HQ–SFUND–1990–0010	1, 3.
Omaha Lead	Omaha, NE	Partial	EPA–HQ–SFUND–2003–0010	1, 3.
Riverfront	New Haven, MO	Partial	EPA–HQ–SFUND–2000–0004	1, 2, 3.
Libby Asbestos	Libby, MT	Partial	EPA–HQ–SFUND–2002–0008	1, 3.
Eagle Mine	Minturn/Redcliff, CO	Partial	EPA–HQ–SFUND–1986–0005	1, 3.
North Ridge Estates	Klamath Falls, OR	Partial	EPA–HQ–SFUND–2011–0076	1, 3.

Table 2 includes information concerning whether the full site is proposed for deletion from the NPL or a description of the area, media or Operable Units (OUs) of the NPL site proposed for partial deletion from the NPL, and an email address to which public comments may be submitted if the commenter does not comment using *https://www.regulations.gov.*

TABLE 2

Site name	Full site deletion (full) or media/parcels/description for partial deletion	Email address for public comments
Reich Farms	Full	*gorin.jonathan@epa.gov.*
Butler Mine Tunnel	Full	*cron.mitch@epa.gov.*
Airco	Full	*jackson.brad@epa.gov.*
Chemfax, Inc	11 acres of soils, sediments	*farrier.brian@epa.gov.*
Kerr-McGee Chemical Corp-Navassa	20.2 acres of OU1 soils	*spalvins.erik@epa.gov.*
T.H. Agriculture & Nutrition (Montgomery)	16.4 acres of soils and sediments	*farrier.brian@epa.gov.*
US Finishing/Cone Mills	150 acres of OU2 soils, sediments and surface water.	*martin.scott@epa.gov.*
Arrowhead Refinery Co	Full	*Deletions@usepa.onmicrosoft.com.*
Barrels, Inc	Full	*Deletions@usepa.onmicrosoft.com.*
Bennett Stone Quarry	Full	*Deletions@usepa.onmicrosoft.com.*
Lemon Lane Landfill	Full	*Deletions@usepa.onmicrosoft.com.*
South Minneapolis Residential Soil Contamination.	Five properties	*Deletions@usepa.onmicrosoft.com.*
United Scrap Lead Co., Inc	Full	*Deletions@usepa.onmicrosoft.com.*
Neal's Landfill (Bloomington)	Full	*Deletions@usepa.onmicrosoft.com.*
Missouri Electric Works	6.4-acre site property, OU 1 soils and OU3 sediments.	*wennerstrom.david@epa.gov.*
Omaha Lead	96 residential parcels	*wennerstrom.david@epa.gov.*
Riverfront	1.4-acre OU 3 Old City Dump soil, groundwater, surface water, seeps.	*wennerstrom.david@epa.gov.*
Libby Asbestos	OU 8 Roads and Highways (30 miles of roads and right-of-way).	*zinner.dania@epa.gov.*
Eagle Mine	50 acres of OU 2 Town of Gilman soils	*miller.jamie@epa.gov.*
North Ridge Estates	125-acre OU 1 includes Northridge Estates and former Marine Recuperation Barracks soils.	*meyer.linda@epa.gov.*

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Larry Douchand,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2021–10132 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–90, 301–74, and Appendix E to Chapter 301

[FTR Case 2021–301–01; Docket No. GSA–FTR–2021–0011, Sequence No. 1]

RIN 3090–AK41

Federal Travel Regulation; Removal and Reservation of Part 300–90—Telework Travel Expenses Test Programs and Appendix E to Chapter 301—Suggested Guidance for Conference Planning

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the Federal Travel Regulation (FTR) to remove and reserve the regulations implementing GSA's authority to conduct telework travel expenses test programs. GSA's authority to authorize agencies to conduct such test programs expired in accordance with the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. GSA is also proposing to remove and reserve Appendix E to Chapter 301, which contains suggested guidance for conference planning.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before July 13, 2021 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FTR case 2021–301–01 to: *Regulations.gov: https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FTR Case 2021–301–01''. Select the link ''Comment Now'' that corresponds with FTR Case 2021–301–01. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FTR Case 2021–301–01'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FTR Case 2021–301–01, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Denning, Program Analyst, at 202–208–7642 or *travelpolicy@gsa.gov* for

clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FTR Case 2021–301–01.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule first amends the FTR to remove and reserve part 300–90. Originally, this part was included in the FTR due to the enactment of Public Law (Pub. L.) 111–292, the ''Telework Enhancement Act of 2010,'' codified at 5 U.S.C. 5711, which authorized the creation of agency telework travel expenses test programs managed by GSA.

When submitting a test program proposal to GSA, agencies were directed to include an analysis of the expected cost and benefits and a set of criteria for evaluating the effectiveness of the program. Once approved, participating agencies were required to submit an annual report on the results of the test program, including overall costs and benefits.

Only one Federal agency, the United States Patent and Trademark Office (USPTO), ever requested and then implemented a telework travel test program under this authority. When Public Law 116–283 became effective on January 1, 2021, it made the USPTO telework travel expenses program permanent. At the same time, the law also removed GSA's authority to implement telework travel expenses test programs, making part 300–90 no longer necessary.

GSA is also proposing to remove and reserve Appendix E to Chapter 301 of the FTR, ''Suggested Guidance for Conference Planning,'' first published January 10, 2000 (65 FR 1329). As noted in the title, the guidance is suggested, not a mandatory set of instructions agencies must follow when planning a conference. Some readers have found the word ''suggested'' in the title confusing and duplicative, considering similar regulatory instructions regarding conference planning are located in FTR part 301–74. GSA believes that general information on how to plan a conference, the focus of Appendix E, is now more widely available through non-Governmental and professional resources than it was when the appendix was first published.

Finally, one reference to Appendix E that was in regulatory text is also proposed for removal.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not anticipated to be a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the changes are administrative in nature and only affect Government employees.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FTR Case 2021–301–01), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Parts 300–90 and 301–74, and Appendix E to Chapter 301

Government employees, Reporting and recordkeeping requirements, Travel and transportation expenses.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

Under 5 U.S.C. 5707 and 5711 and discussed in the preamble, GSA proposes to amend 41 CFR parts 300–90, 301–74, and Appendix E to part 301 as set forth below:

PART 300–90—TELEWORK EXPENSES TEST PROGRAMS [REMOVED AND RESERVED]

■ 1. Remove and reserve part 300–90.

PART 301–74—CONFERENCE PLANNING

■ 2. The authority citation for 41 CFR 301–74 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–74.4 [Amended]

■ 3. Amend § 301–74.4 by removing the last sentence.

Appendix E to Chapter 301 [Removed and Reserved]

■ 4. Remove and reserve appendix E to Chapter 301.

[FR Doc. 2021–09303 Filed 5–13–21; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 86, No. 92

Friday, May 14, 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

Forest Service

Directive Publication Notice

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The USDA Forest Service provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide notice of and opportunity for the public to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next 3 months and notice of recently issued final directives.

DATES: This notice identifies proposed and interim directives that will be published for public comment between June 1, 2021 and September 13, 2021 and final directives that were issued since October 1, 2020.

ADDRESSES: Questions or comments may be provided by email to *SM.FS.woDirectives@usda.gov* or in writing to 201 14th Street SW, Washington, DC 20250, Attn: Directives and Regulations staff, Mail 1132.

FOR FURTHER INFORMATION CONTACT: Ann Goode at 202–740–6286 or *ann.goode@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired may call the Federal Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday. You may sign up to receive email alerts at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION: Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, ''Public Notice and Comment for Standards, Criteria and Guidance Applicable to Forest Service Programs,'' the Forest Service publishes for public notice and comment Agency directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook 1109.12, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The following proposed directives are planned for publication for public comment during the next 3 months:

1. Forest Service Manual 1820, Public Lands Corps and Resource Assistants Program.
2. Forest Service Handbook 5509.11, Title Claims, Sales, and Grants Handbook, Chapter 20, Sales.
3. Region 10 Supplement to Forest Service Manual 2720, Special Uses; Management of Point-To-Point Transport Under Special Use Authorization to National Forest System Lands within the Visitor Center Subunit of Mendenhall Glacier Recreation Area.

The primary method of public outreach for each of these proposed directives is publication on the Forest Service website (*https://www.fs.usda.gov/about-agency/regulations-policies*), publication in the **Federal Register**, use of the GovDelivery email service, and other Agency communications resources, which may include a press release, blog post, or social media resources.

The following proposed or interim directives have been published for public comment but not yet finalized:

1. Proposed Forest Service Manual 2200, Rangeland Management, Chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; Forest Service Handbook 2209.13, Grazing Permit Administration Handbook, Chapters 10, Term Grazing Permits; 20, Grazing Agreements; 30, Temporary Grazing and Livestock Use Permits; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; 60, Records; 70, Compensation for Permittee Interests in Rangeland Improvements; 80, Grazing Fees; and 90, Rangeland Management Decision Making; and Forest Service Handbook 2209.16, Allotment Management Handbook, Chapter 10, Allotment Management and Administration.
2. Proposed Forest Service Handbook 1109.12, Forest Service Directives, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.
3. Interim Forest Service Manual 2719, Special Use Authorizations Involving Storage and Use of Explosives and Magazine Security, and FSH 2709.11, Special Uses Handbook, Chapter 50, Standard Forms and Supplemental Clauses.
4. Forest Service Handbook 2309.13, Recreation Site Handbook, Chapter 50, Forest Service Operation and Maintenance of Developed Recreation Sites.
5. Forest Service Handbook 5309.11, Law Enforcement Handbook, Chapter 30, Violations, Section 34, Closure of National Forest System Lands to Hunting, Fishing, or Recreational Shooting.
6. Forest Service Manual 7700, Travel Management, Chapters Zero and 10, Travel Planning.
7. Forest Service Manual 2400, Timber Management, Chapters Zero, 2430, Commercial Timber Sales; 2440, Designating, Cruising, Scaling, and Accountability; 2450, Timber Sale Contract Administration; and 2460, Uses of Timber Other Than Commercial Timber Sales; Forest Service Handbook 2409.15, Timber Sale Administration, Chapters Zero, 10, Fundamentals of Timber Sale Contracting; 30, Change in Status of Contracts; 50, Specified Transportation Facilities; and 70, Contract Claims and Disputes; Forest Service Handbook 2409.18a, Timber Sale Debarment and Suspension Procedures, Chapters Zero, 10, Non-procurement Debarment and Suspension; and 20, Debarment and Export Violations.
8. Forest Service Manual 3800, Landscape Scale Restoration Program.
9. Forest Service Manual 2700, Special Uses Management, Chapter 40, Vegetation Management Pilot Projects, and FSH 2709.11, Special Uses Handbook, Chapter 50, Standard Forms and Supplemental Clauses.
10. Forest Service Handbook 2709.11, Special Uses Handbook, Chapter 80, Operating Plans and Agreements for Powerline Facilities.
11. Forest Service Manual 2400, Timber Management, Chapter 2420, Timber Appraisal; Forest Service Handbook 2409.19, Renewable Resources Handbook, Chapters 10, Knutson-Vandenberg Sale Area Program Management Handbook; 20, Knutson-Vandenberg Forest and Regional Program Management; 60, Stewardship Contracting; and 80, Good Neighbor Authority.

The following final directives were issued in the Directive System since October 1, 2020:

1. Forest Service Manual 2700, Special Uses Management, Chapter 2750, Leasing Forest Service Administrative Sites, was issued October 13, 2020. See *https://www.fs.fed.us/im/directives/fsm/2700/FSM%202750-2020_Leasing%20Forest%20Service%20Administrative%20Sites.docx.*

2. Forest Service Handbook 2709.11, Special Uses Handbook, Chapter 90, Communications Site Management, was issued October 13, 2020. See *https://www.fs.fed.us/im/directives/fsh/2709.11/wo_2709.11_90_Amend-2020-6_final_1062020_mmzCorrected.docx.*

Dated: May 11, 2021.

Amelia Steed,

Acting Assistant Director, Strategic Planning and Budget Accountability.

[FR Doc. 2021–10202 Filed 5–13–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of the Charter Re-Establishment for the Advisory Committee on Agriculture Statistics.

SUMMARY: The U.S. Department of Agriculture (USDA) is seeking to re-establish the committee for 2 years as a discretionary committee, the Advisory Committee on Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee and was established by agency authority, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

Authority: The Advisory Committee on Agriculture Statistics was originally established by the Secretary of Commerce on July 16, 1962. The Committee is also established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.2.

FOR FURTHER INFORMATION CONTACT: Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707, or email *SM.NASS.OA@usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the Committee is to advise the Secretary on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports and presents the views and needs for data of major suppliers and users of agriculture statistics. The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by the National Agricultural Statistics Service (NASS).

Description of Duties: The duties of the Committee are solely advisory in nature. The Committee makes recommendations to the Secretary of Agriculture with regard to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. Agency or Official to Whom the Committee Reports: The Committee reports to the Secretary of Agriculture through the Under Secretary for Research, Education, and Economics.

Committee Membership: The Secretary of Agriculture will appoint the membership of the Committee. Furthermore, members will serve for two-year terms, and can serve no more than three consecutive terms for a total of six consecutive years. Membership will consist of 22 individuals with diverse capabilities distinguished by their broad range of knowledge and interest in, though not limited to, agricultural economics, rural sociology, farm policy analysis, and agricultural education. Members will also be drawn from Educational & Research Organizations; Farm Service and Marketing Organizations; State Government Agricultural Agencies; and Farm, Ranch and Agriculture Producers. A representative from the Bureau of the Census, U.S. Department of Commerce, and a representative from the Economic Research Service, USDA, shall serve as ex officio members of the Committee.

This Committee will be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. Steps will be taken to encourage fresh points of view, such as establishing staggered membership terms and limiting the number of renewed memberships.

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program.

Ethics Statement: To maintain the highest levels of honesty, integrity and ethical conduct, no Committee or subcommittee member shall participate in any ''specific party matters'' (*i.e.,* matters are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with the Department in which the member has a direct or indirect financial interest. This includes the requirement for Committee or Subcommittee members to immediately disclose to the Designated Federal Officer (DFO) any specific party matter in which the member's immediate family, relatives, business partners or employer would be directly seeking to financially benefit from the Committee's recommendations.

All members will receive ethics training to identify and avoid any actions that would cause the public to question the integrity of the Committee's advice and recommendations. Members who are appointed as ''Representatives'' are not subject to Federal ethics laws because such appointment allows them to represent the point(s) of view of a particular group, business sector or segment of the public.

Members appointed as ''Special Government Employees'' (SGEs) are considered intermittent Federal employees and are subject to Federal ethics laws. SGE's are appointed due to their personal knowledge, academic scholarship, background or expertise. No SGE may participate in any activity in which the member has a prohibited financial interest. Appointees who are SGEs are required to complete and submit a Confidential Financial Disclosure Report (OGE–450 form) and, upon request, USDA will assist SGEs in preparing these financial reports. To ensure the highest level of compliance with applicable ethical standards USDA will provide ethics training to SGEs on an annual basis. The provisions of these paragraphs are not meant to exhaustively cover all Federal ethics laws and do not affect any other

statutory or regulatory obligations to which advisory committee members are subject.

Recordkeeping: The records of this Committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552. Information about this Committee is available online at: *https://www.nass.usda.gov/About_NASS/Advisory_Committee_on_Agriculture_Statistics/*.

Signed at Washington, DC, May 10, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–10199 Filed 5–13–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Advisory Committee on Beginning Farmers and Ranchers (ACBFR)

ACTION: Public meeting of the Advisory Committee on Beginning Farmers and Ranchers.

SUMMARY: Pursuant to the rules and regulations of the Department of Agriculture (USDA) and the Federal Advisory Committee Act, the Advisory Committee; the purpose of the Advisory Committee on Beginning Farmers and Ranchers meeting is to advice the Secretary on matters concerning beginning farmers and ranchers including but not limited to, the following: The development of the program of coordinated assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act; methods of maximizing the number of new farming and ranching opportunities created through the program; methods of encouraging States to participate in the program; the administration of the program; and other methods of creating new farming or ranching opportunities.

DATES: Wednesday, June 2, 2021, 1:00 p.m. to 5:00 p.m. (Eastern Time Zone) and Thursday, June 3, 2021, 1:00 p.m. to 5:00 p.m. (Eastern Time Zone).

ADDRESSES: Virtual; The most up-to-date agenda details and documents will be made available at: *https://www.usda.gov/partnerships/advisory-committee-on-beginning-farmers-and-ranchers.*

FOR FURTHER INFORMATION CONTACT: Maria Goldberg, Designated Federal Officer, Office of Partnerships and Public Engagement (OPPE), 202–720–6350, or email: *maria.goldberg@usda.gov.*

SUPPLEMENTARY INFORMATION: Public participation will be limited to written statements and interested parties who have registered to present comments orally to the Advisory Committee. Written comments may be submitted to email address: *ACBeginningFarmersandRanchers@usda.gov.* Written comments must be received by OPPE within 15 days after the scheduled meeting. If interested in presenting comments orally, please contact Maria Goldberg at the telephone or email address listed above. Opportunities to provide oral comments will be given in the order the requests to speak are received. The meeting will be open to the public.

Accommodations: USDA is committed to ensuring that all persons are included in our programs and events. Please contact Maria Goldberg, 202–720- 6350 or email: *maria.goldberg@usda.gov,* if you require reasonable accommodations to participate in this meeting.

Dated: May 6, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–10198 Filed 5–13–21; 8:45 am]

BILLING CODE 3412–88–P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Minnesota Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Minnesota Advisory Committee. The meeting scheduled for Thursday, May 13, 2021 at 12:00 p.m. (CST) is cancelled. The notice is in the **Federal Register** of Tuesday, May 4, 2021, in FR Doc. 2021–09269, on page 23671.

FOR FURTHER INFORMATION CONTACT: David Barreras, (202) 499–4066, *dbarreras@usccr.gov*.

Dated: May 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–10197 Filed 5–13–21; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Tuesday, June 8, 2021 at 12:00 p.m. Eastern time. The Committee will discuss civil rights concerns in the state.

DATES: The meeting will take place on Tuesday, June 8, 2021 at 12:00 p.m. Eastern time.

Online Registration (Audio/Visual) https://bit.ly/3eQ4Mg0.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 199 828 7147.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the

Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights in Pennsylvania
Future Plans and Actions
Public Comment
Adjournment

Dated: May 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–10160 Filed 5–13–21; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, May 14, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202–376–7700; *publicaffairs@usccr.gov.*

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556–2439, Conference ID #: 977–0757. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, May 14th, 2021 is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
  A. Discussion and Vote on North Carolina Advisory Committee Appointments;
  B. Presentations from TBD Advisory Committees to the Commission on Recent Reports
  C. Management and Operations
  • Staff Director's Report
III. Adjourn Meeting

Dated: May 12, 2021.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2021–10365 Filed 5–12–21; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2021]

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

Volkswagen Group of America Chattanooga Operations, LLC (Volkswagen), submitted a notification of proposed production activity to the FTZ Board for its facility in Chattanooga, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 6, 2021.

Volkswagen already has authority to produce passenger motor vehicles within within FTZ 134. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Volkswagen from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Volkswagen would be able to choose the duty rates during customs entry procedures that applies to passenger motor vehicles (duty rate 2.5%). Volkswagen would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Sound absorbers (bitumen film hot melt adhesive); polycrystalline fiber nonwoven mats; and, steel seal gaskets (duty rate ranges from 2.7% to 4.3%). The request indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 23, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: May 11, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–10240 Filed 5–13–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–555–001, A–560–836, A–557–818, A–801–002, A–549–841, A–489–841, A–552–827]

Mattresses From Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders and Amended Final Affirmative Antidumping Determination for Cambodia

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

SUMMARY: Based on the final affirmative determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey (Turkey), and the Socialist Republic of Vietnam (Vietnam). In addition, Commerce is amending its final affirmative determination on mattresses from Cambodia.

DATES: Applicable May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Preston Cox at (202) 482–5041 (Cambodia); Janae Martin at (202) 482–0239 (Indonesia); Dennis McClure at (202) 482–5973 (Malaysia); Joshua DeMoss (202) 482–3362 (Serbia); Paola Aleman Ordaz at (202) 482–4031 (Thailand); Jacob Keller at (202) 482–4849 or Theodore Pearson at (202) 482–2631 (Turkey); and Dakota Potts at (202) 482–0223 (Vietnam), AD/CVD

Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 771(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), Commerce published its affirmative final determinations in the less-than-fair-value investigations of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam on March 25, 2021.[1] On May 10, 2021, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the less-than-fair-value imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam.[2]

Scope of the Orders

The merchandise covered by these orders are mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. For a complete description of the scope of the orders, *see* the Appendix to this notice.

Amendment to Final Determination; Mattresses From Cambodia

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.[3]

Pursuant to sections 735(e) of the Act and 19 CFR 351.224(e) and (f), Commerce is amending the *Cambodia Final Determination* to reflect the correction of two ministerial errors in the final estimated weighted-average dumping margin calculated for the collapsed entity, Best Mattresses International Company Limited (Best Mattresses)/Rose Lion Furniture International Company Limited (Rose Lion). In addition, because Best Mattresses/Rose Lion's estimated weighted-average dumping margin is the basis for the estimated weighted-average dumping margin for all other Cambodian producers and exporters of subject merchandise, we also are revising the all-others rate in the *Cambodia Final Determination*.[4] The amended estimated weighted-average dumping margins are listed in the ''Estimated Weighted-Average Dumping Margins'' section below.

Antidumping Duty Orders

On May 10, 2021, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam.[5] Therefore, in accordance with sections 735(c)(2) and 736 of the Act, we are issuing these antidumping duty orders. Because the ITC determined that imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final affirmative determinations, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. Antidumping duties will be assessed on unliquidated entries of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of the *Preliminary Determinations,*[6] but will not include entries occurring after the expiration of the provisional measures period and before the publication in the **Federal Register** of the ITC's injury determination, as further described below.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam), effective the date of publication of the ITC final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which normal value of the merchandise exceeds the export price or constructed export price of the merchandise. We intend to instruct CBP to 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

[1] *See Mattresses from Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 86 FR 15894 (March 25, 2021) (*Cambodia Final Determination*); *Mattresses from Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 15899 (March 25, 2021); *Mattresses from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 15901 (March 25, 2021); *Mattresses from Serbia: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Finding of Critical Circumstances,* 86 FR 15892 (March 25, 2021); *Mattresses from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 15928 (March 25, 2021); *Mattresses from the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 86 FR 15917 (March 25, 2021); and *Mattresses from the Socialist Republic of Vietnam; Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 15889 (March 25, 2021).

[2] *See* ITC Letter, dated May 10, 2021 (ITC Letter).

[3] *See* section 735(e) of the Act and 19 CFR 351.224(f).

[4] *See* Memorandum, ''Antidumping Duty Investigation of Mattresses from Cambodia: Allegations of Ministerial Errors in Final Determination,'' dated April 19, 2021 (Ministerial Error Memorandum).

[5] *See* ITC Letter.

[6] *See Mattresses from Cambodia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69594 (November 3, 2020); *Mattresses from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69597 (November 3, 2020); *Mattresses from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69574 (November 3, 2020); *Mattresses from Serbia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69589 (November 3, 2020); *Mattresses from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69568 (November 3, 2020); *Mattresses from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69571 (November 3, 2020); and *Mattresses from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69591 (November 3, 2020).

liquidation will remain in effect until further notice. The all-others rates listed below apply to all other producers or exporters not specifically listed. The Vietnam-wide entity rate listed below applies to all exporters not specifically listed.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for each antidumping duty order are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Cambodia	
Best Mattresses International Company Limited/Rose Lion Furniture International Company Limited	[7] 52.41
All Others	[8] 52.41
Indonesia	
PT Zinus Global Indonesia	2.22
All Others	2.22
Malaysia	
Delandis Furniture (M) Sdn Bhd	42.92
Far East Foam Industries Sdn Bhd	42.92
Vision Foam Ind. Sdn Bhd	42.92
All Others	42.92
Serbia	
Healthcare Europe DOO Ruma	112.11
All Others	112.11
Thailand	
Nisco (Thailand) Co., Ltd	763.28
Saffron Living Co., Ltd	37.48
All Others	37.48
Turkey	
BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S	20.03
All Others	20.03

Vietnam

Producer	Exporter	
Cong Ty Tnhn Nem Thien Kim (a.k.a. Better Z's, Ltd.)	Dockter China Limited	144.92
Hava's Co., Ltd	Hava's Co., Ltd	144.92
Cong Ty Tnhn Nem Thien Kim (a.k.a. Better Z's, Ltd.)	Healthcare Sleep Products Limited	144.92
Gesin Vietnam Co., Ltd	Hong Kong Gesin Technology Limited	144.92
Sinomax (Vietnam) Household Products Limited	Sinomax International Trading Limited	144.92
Sinomax (Vietnam) Household Products Limited	Sinomax Macao Commercial Offshore Limited	144.92
Super Foam Vietnam Ltd	Super Foam Vietnam Ltd	144.92
Taimei Company Limited (a.k.a. Taimei Co., Ltd)	Taimei Company Limited (a.k.a. Taimei Co., Ltd)	144.92
Tong Li Vietnam Industrial Co., LTD	Tong Li Vietnam Industrial Co., LTD	144.92
Vietnam Glory Home Furnishings Co., Ltd./Glory (Viet Nam) Industry Co., Ltd.	Vietnam Glory Home Furnishings Co., Ltd./Glory (Viet Nam) Industry Co., Ltd.	668.38
Wanek Furniture Co., Ltd./Millennium Furniture Co., Ltd./ Comfort Bedding Company Limited.	Wanek Furniture Co., Ltd./Millennium Furniture Co., Ltd./ Comfort Bedding Company Limited.	144.92
Vietnam-Wide Entity		668.38

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than six months. Commerce published its affirmative *Preliminary Determinations* on November 3, 2020. Therefore, the six-month period beginning on the date of publication of the *Preliminary Determinations* ended on May 1, 2021. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register**.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand,

[7] *See* Ministerial Error Memorandum.

[8] *Id.*

Turkey, and Vietnam entered, or withdrawn from warehouse, for consumption after May 1, 2021, the final day on which the provisional measures were in effect, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section and 736(a) of the Act and 19 CFR 351.211(b).

Dated: May 10, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The products covered by these orders are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''Upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of these orders is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of these orders may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of these orders are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of these orders are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of these orders are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of these orders are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to these orders are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to these orders may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

[FR Doc. 2021–10238 Filed 5–13–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–128]

Mattresses From the People's Republic of China: 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 (CVD) order on mattresses from the People's Republic of China (China).

DATES: Applicable May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson or Mary Kolberg, 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) 482–2631 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published its affirmative final determination in the countervailing duty investigation of mattresses from China.[1] On May 10, 2021, the ITC notified Commerce of its affirmative final determination that pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Act, that an industry in the United States is materially injured by reason of

[1] *See Mattresses from the People's Republic of China; Final Affirmative Countervailing Duty Determination,* 86 FR 15910 (March 25, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum.

subsidized imports of subject merchandise from China.[2]

Scope of the Order

The products covered by this order are mattresses from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

As stated above, on May 10, 2021, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of mattresses from China.[3] Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this CVD order. Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of mattresses from China which are entered, or withdrawn from warehouse, for consumption on or after September 11, 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 in the ''Provisional Measures'' section of this notice.

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 706(a)(1) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of mattresses from China. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the net countervailable subsidy rates indicated in the table below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP must require, at the same time as importers would deposit estimated normal customs duties on subject merchandise, a cash deposit equal to the rates listed in the table below.[5]

Company	Subsidy rate (percent)
Kewei Furniture Co Ltd	97.78
Zinus Xiamen	97.78
Ningbo Megafeat Bedding Co., Ltd./Megafeat Bedding Co Ltd	97.78
Healthcare Co. Ltd	97.78
All Others	97.78

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *Preliminary Determination* on September 11, 2020.[6]

The provisional measures period, beginning on the date of publication of the *Preliminary Determination,* ended on January 8, 2021. Therefore, in accordance with section 703(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of mattresses from China entered, or withdrawn from warehouse, for consumption after January 8, 2021, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final injury determination in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the CVD order with respect to mattresses from China pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: May 10, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The products covered by this order are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''Upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this order is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this order may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this order are ''futon'' mattresses. A ''futon'' is a bi-fold

[2] *See* ITC's Letter, ''Notification of ITC Final Determination,'' dated May 10, 2021 (ITC Notification Letter).

[3] *See* ITC Notification Letter.

[4] *See Mattresses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 56216 (September 11, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[5] *See* section 706(a)(3) of the Act.

[6] *See Preliminary Determination.*

frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofa beds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this order are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this order are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this order are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this order are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this order may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB074]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of New Jersey

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 Ocean Wind, LLC (Ocean Wind) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys off of New Jersey in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0498 and OCS–A 0532 (Lease Area) and potential export cable routes to landfall locations in New Jersey.

DATES: This Authorization is effective for a period of one year, from May 10, 2021 through May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey.* 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 the 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 the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 11, 2020, NMFS received a request from Ocean Wind for an IHA to take marine mammals incidental to marine site characterization surveys off of New Jersey in the Lease Area and potential export cable routes (ECRs) to landfall locations in New Jersey. Following NMFS review of the draft application, a revised version was submitted on February 23, 2021. That revised version was deemed adequate and complete on March 9, 2020. Ocean Wind's request is for take of 16 species of marine mammals, by Level B harassment only. Neither Ocean Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Ocean Wind for similar work in the same geographic area on June 8, 2017 (82 FR 31562; July 7, 2017) with effective dates from June 8, 2017, through June 7, 2018. Ocean Wind complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA.

Description of Proposed Activity

Overview

As part of its overall marine site characterization survey operations, Ocean Wind plans to conduct high-resolution geophysical (HRG) surveys in the Lease Area and along potential ECRs to landfall locations in New Jersey.

The purpose of the marine site characterization surveys are to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of a planned offshore wind facility development. Surveys are also conducted to support engineering design and to map unexploded ordnance. Underwater sound resulting from Ocean Wind's site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B behavioral harassment.

Dates and Duration

The estimated duration of HRG survey activity is expected to be up to 275 survey days over the course of a single year, with a ''survey day'' defined as a 24-hour (hr) activity period. Ocean Wind plans to start survey activity as soon as possible in spring 2021. The IHA is effective for one year, from May 10, 2021, through May 9, 2022.

This schedule is based on 24-hr operations and includes potential down time due to inclement weather. Although some shallow-water locations may be surveyed by smaller vessels that would operate during daylight hours only, the estimated total number of survey days assumes uniform 24-hr operations. The number of estimated survey days varies between the Lease Area and ECR area, with 142 vessel survey days expected in the Lease Area and 133 vessel survey days in the ECR area.

Specific Geographic Region

The survey activities will occur within the Project Area which includes the Lease Area and potential ECRs, as shown in Figure 1. The Lease Area is approximately 649 square kilometers (km^2) and is within the Bureau of Ocean Energy Management's New Jersey Wind Energy Area (WEA). Water depths in the Lease Area range from 15 meters (m) to 35 m, and the potential ECRs extend from the shoreline to approximately 40 m depth.

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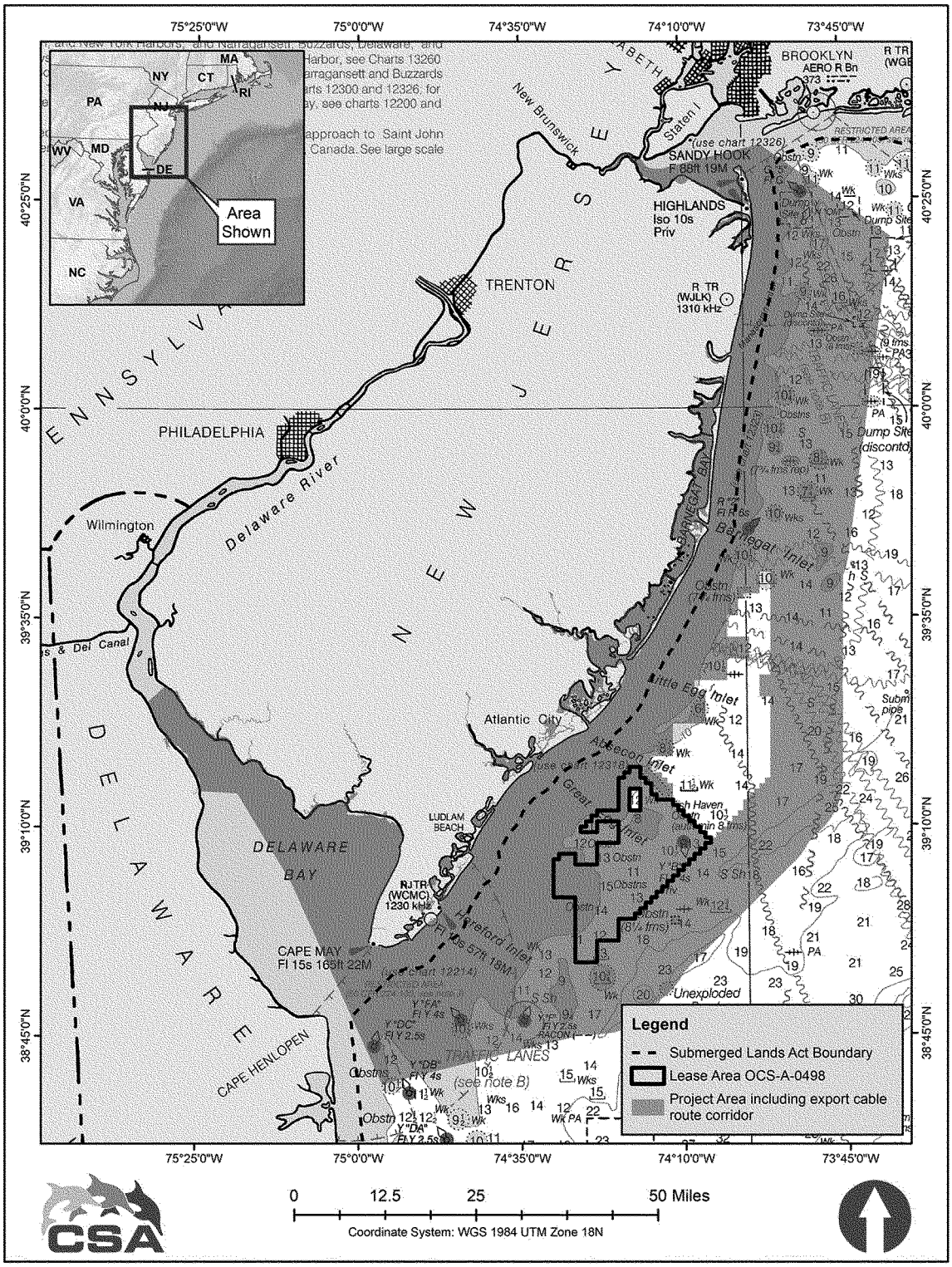

Figure 1—Site Characterization Survey Location, Including the Lease Area and Potential ECRs

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Detailed Description of Specific Activity

Ocean Wind plans to conduct HRG survey operations, including multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: side scan sonar, multibeam echosounder, magnetometers and gradiometers, parametric sub-bottom profiler (SBP), CHIRP SBP, boomers, or sparkers. Ocean Wind assumes that HRG survey operations would be conducted 24 hours per day, with an assumed daily survey distance of 70 km. Vessels would generally conduct survey effort at a transit speed of approximately 4 knots (kn), which equates to 110 km per 24-hr period. However, based on past survey experience (*i.e.,* knowledge of typical daily downtime due to weather, system malfunctions, etc.) Ocean Wind assumes 70 km as the average daily distance. On this basis, a total of 275 survey days (142 survey days in the Lease Area and 133 survey days in the ECR area) are expected. In certain shallow-water areas, vessels may conduct survey effort during daylight hours only, with a corresponding assumption that the daily survey distance would be halved (35 km). However, for purposes of analysis all survey days are assumed to cover the maximum 70 km. A maximum of 2 vessels would operate concurrently in areas where 24-hr operations would be conducted, with an additional third vessel potentially conducting daylight-only survey effort in shallow-water areas.

The following acoustic sources planned for use during Ocean Wind's HRG survey activities are conservatively assumed to have the potential to result in incidental take of marine mammals:

- Shallow penetration, non-impulsive, non-parametric SBPs (*i.e.,* CHIRP SBPs) are used to map the near-surface stratigraphy (top 0 to 10 m) of sediment below seabed. A CHIRP system emits signals covering a frequency sweep from approximately 2 to 20 kHz over time. The frequency range can be adjusted to meet project variables. These sources are typically mounted on a pole rather than towed, reducing the likelihood that an animal would be exposed to the signal; and
- Medium penetration, impulsive sources (*i.e.,* boomers and sparkers) are used to map deeper subsurface stratigraphy. A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz. These sources are typically towed behind the vessel.

Additional acoustic sources not expected to have the potential to cause take of marine mammals were described in the notice of proposed IHA (86 FR 17783; April 6, 2021). Table 1 identifies representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

Equipment	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)	Beam-width (degrees)	CF = Crocker and Fratantonio (2016) MAN = manufacturer
Non-parametric shallow penetration SBPs (non-impulsive)							
ET 216 (2000DS or 3200 top unit)	2–16 2–8	195	-	20	6	24	MAN.
ET 424	4–24	176	-	3.4	2	71	CF.
ET 512	0.7–12	179	-	9	8	80	CF.
GeoPulse 5430A	2–17	196	-	50	10	55	MAN.
Teledyne Benthos Chirp III—TTV 170	2–7	197	-	60	15	100	MAN.
Medium penetration SBPs (impulsive)							
AA, Dura-spark UHD (400 tips, 500 J) [1]	0.3–1.2	203	211	1.1	4	Omni	CF.
AA, triple plate S-Boom (700–1,000 J) [2]	0.1–5	205	211	0.6	4	80	CF.

- = not applicable; μPa = micropascal; AA = Applied Acoustics; dB = decibel; ET = EdgeTech; J = joule; Omni = omnidirectional source; re = referenced to; PK = zero-to-peak sound pressure level; SL = source level; SPL = root-mean-square sound pressure level; UHD = ultra-high definition.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. 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.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Ocean Wind was published in the **Federal Register** on April 6, 2021 (86 FR 17783). During the 30-day comment period, NMFS did not receive any substantive public comments.

Description of Marine Mammals in the Area of Specified Activities

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' Stock Assessment Reports (SARs; *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' website (*www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, NMFS follows the 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' SARs). While no mortality is anticipated or would be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included 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 survey area. NMFS' 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' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs (Hayes *et al.,* 2020) and draft 2020 SARs, available at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY OCEAN WIND'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 (WNA)	E/D; Y	412 (0; 408; 2018)	0.8	18.6
Family Balaenopteridae (rorquals)						
Humpback whale	*Megaptera novaeangliae.*	Gulf of Maine	-/-; Y	1,393 (0.15; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus.*	WNA	E/D; Y	6,802 (0.24; 5,573; 2016)	11	2.35
Sei whale	*Balaenoptera borealis.*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	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.*	North Atlantic	E/D; Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae						
Long-finned pilot whale.	*Globicephala melas.*	WNA	-/-; N	39,215 (0.30; 30,627; 2016)	306	21
Short finned pilot whale.	*Globicephala macrorhynchus.*	WNA	-/-; N	28,924 (0.24; 23,637; 2016)	236	160
Bottlenose dolphin.	*Tursiops truncatus*	WNA Offshore	-/-; N	62,851 (0.23; 51,914; 2016)	519	28
		WNA Northern Migratory Coastal	-/D; Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY OCEAN WIND'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]
Common dolphin	*Delphinus delphis*	WNA	-/-; N	172,974 (0.21; 145,216; 2016)	1,452	399
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	WNA	-/-; N	93,233 (0.71; 54,443; 2016)	544	26
Atlantic spotted dolphin.	*Stenella frontalis*	WNA	-/-; N	39,921 (0.27; 32,032; 2016)	320	0
Risso's dolphin	*Grampus griseus*	WNA	-/-; N	35,493 (0.19; 30,289; 2016)	303	54.3
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena.*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals)						
Gray seal [4]	*Halichoerus grypus.*	WNA	-/-; N	27,131 (0.19; 23,158, 2016)	1,389	4,729
Harbor seal	*Phoca vitulina*	WNA	-/-; N	75,834 (0.15; 66,884, 2012)	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: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* 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' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

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. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) was provided in the notice of proposed IHA (86 FR 17783; April 6, 2021) and is not repeated here. No new information is available since publication of that notice.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Sixteen marine mammal species (14 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The notice of proposed IHA included a summary of the ways that Ocean Wind's specified activity may impact marine mammals and their habitat (86 FR 17783; April 6, 2021). Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring within the same specified geographical region (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020). No significant new information is available, and we refer the reader to the notice of proposed IHA and to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Ocean Wind's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. The notice of proposed IHA also provided background information regarding active acoustic sound sources and acoustic terminology, which is not repeated here.

The potential effects of Ocean Wind's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

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.

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, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or 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 estimates.

Acoustic Thresholds

NMFS uses 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—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). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRP SBPs) evaluated here for Ocean Wind's activity.

Level A Harassment—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). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Ocean Wind's activity includes the use of impulsive (*i.e.,* sparkers and boomers) and non-impulsive (*e.g.,* CHIRP SBP) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Ocean Wind's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths were less than 5 m for all sources and hearing groups with the exception of an estimated 37 m zone calculated for high-frequency cetaceans during use of the GeoPulse 5430 CHIRP SBP (see Table 1 for source characteristics). Ocean Wind did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS.

Ensonified Area

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent 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 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 survey activity and the source 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 Ocean Wind that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark UHD and GeoMarine Geo-Source sparkers would produce the largest Level B harassment isopleth (141 m; please see Table 4 of Ocean Wind's application). Estimated Level B harassment isopleths associated with the boomer and CHIRP SBP systems planned for use are estimated as 34 and 48 m, respectively. Although Ocean Wind does not expect to use sparker sources on all planned survey days, it assumed for purposes of analysis that the sparker would be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

Marine Mammal Occurrence

In this section, NMFS provides information about the presence, density, or group dynamics of marine mammals that informs the take calculations.

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 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/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 NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

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 survey area were selected for all survey months (see Figure 3 in Ocean Wind's application).

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. Please see Tables 7 and 8 of Ocean Wind's application for density values used in the exposure estimation process for the Lease Area and the potential ECRs, respectively. Note that no density estimates are available for the portion of the ECR area in Delaware Bay, so the mammal densities from the density models of Roberts *et al.* were assumed to apply to this area. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated.

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. The maximum distance (*i.e.,* 141

m distance associated with sparkers) to the Level B harassment criterion and the estimated trackline distance traveled per day by a given survey vessel (*i.e.,* 70 km) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

The ZOI is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The ZOI for each piece of equipment operating below 200 kHz was calculated per the following formula: marine

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the harassment isopleth.

ZOIs associated with all sources with the expected potential to cause take of marine mammals are provided in Table 6 of Ocean Wind's application. The largest daily ZOI (19.8 km^2), associated with the various sparkers proposed for use, was applied to all planned survey days.

Potential Level B harassment exposures are estimated by multiplying the average annual density of each species within either the Lease Area or potential ECR area by the daily ZOI. That product is then multiplied by the number of operating days expected for the survey in each area assessed, and the product is rounded to the nearest whole number. These results are shown in Table 4.

TABLE 4—SUMMARY OF AUTHORIZED TAKE NUMBERS

Species	Abundance	Level B harassment takes [1]	Max percent population
North Atlantic right whale	412	9	2.18
Fin whale	6,802	6	0.09
Sei whale	6,292	0 (1)	0.02
Minke whale	21,968	2	0.01
Humpback whale	1,393	2	0.14
Sperm whale:[3]	4,349	0 (3)	0.07
Atlantic white-sided dolphin	93,233	16	0.02
Atlantic spotted dolphin	39,921	3	0.01
Common bottlenose dolphin:[2]			
Offshore Stock	62,851	262	0.42
Migratory Stock	6,639	1,410	21.24
Pilot Whales:[3]			
Short-finned pilot whale	28,924	2	0.01
Long-finned pilot whale	39,215	2	0.01
Risso's dolphin	35,493	0 (30)	0.08
Common dolphin	172,974	124	0.07
Harbor porpoise	95,543	91	0.10
Seals:[4]			
Gray seal	451,431	11	0.00
Harbor seal	75,834	11	0.01

[1] Parentheses denote take authorization where different from calculated take estimates. Increases from calculated values are based on assumed average group size for the species; sei whale, Kenney and Vigness-Raposa, 2010; sperm whale and Risso's dolphin, Barkaszi and Kelly, 2018.

[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. Coastal migratory stock dolphins are assumed to occur inshore of this line and offshore stock dolphins are assumed to occur offshore of this line.

[3] Roberts (2018) only provides density estimates for pilot whales as a guild. The pilot whale density values were applied to both species of pilot whale; therefore, the total authorized take number for pilot whales (4) is double the estimated take number for the guild.

[4] Roberts (2018) only provides density estimates for seals without differentiating by species. Harbor seals and gray seals are assumed to occur equally; therefore, density values were split evenly between the two species, *i.e.,* total estimated take for ''seals'' is 22.

The take numbers shown in Table 4 are those requested by Ocean Wind. NMFS concurs with the requested take numbers has authorized them. Previous monitoring data compiled by Ocean Wind (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-marine-site-characterization-surveys-offshore-new*) suggests that the authorized take numbers are sufficient.

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, we carefully consider 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 and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS has prescribed the following mitigation measures to be implemented during Ocean Wind's marine site characterization surveys.

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal exclusion zones (EZ) must be established around the HRG survey equipment and monitored by protected species observers (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 must 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

Ocean Wind must implement a 30-minute pre-clearance period of the exclusion zones 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 exclusion zone. If a marine mammal is observed within an exclusion zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone 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 must be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure must 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 must 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 will then be gradually turned up and other acoustic sources added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone 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 will be required if a marine mammal is sighted entering or within its respective exclusion zone. 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 exclusion zone 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 must 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 exclusion zones. 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 will 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

Ocean Wind 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 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 survey 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 seasonal management areas (SMAs) and dynamic management areas (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; and

• 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.

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 survey area 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 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 proposed 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. Ocean Wind must 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) will ensure 360° visual coverage around the vessel from the most appropriate observation posts and will 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 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will 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 will be used. Position data will 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 will 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 will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will 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.Laws@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); and
- 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); and
- 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, Ocean Wind 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 Ocean Wind personnel discover an injured or dead marine mammal, Ocean Wind will 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, Ocean Wind must report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as

feasible. The report must 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 4, given that NMFS expects the anticipated effects of the 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 section of the notice of proposed IHA (86 FR 17783; April 6, 2021), 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 above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity in estimating take numbers evaluated here, in reality much of the survey activity will involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of 48 m, 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 survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the 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 discussed in the notice of proposed IHA (86 FR 17783; April 6, 2021), elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the survey area overlaps a migratory corridor biologically important area (BIA) for North Atlantic right whales. Due to the fact that the survey activities are temporary and the spatial extent of sound produced by the survey will 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 Ocean Wind's activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested and is being 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.,* 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 Ocean Wind's activities would impact annual rates of recruitment or survival. Thus, any takes that occur will not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As discussed in the notice of proposed IHA (86 FR 17783; April 6, 2021), there are several active UMEs occurring in the vicinity of Ocean Wind's 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 DPS) 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 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 4, including those with active UMEs, 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 will 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 will 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 will occur in such a comparatively small area such that any avoidance of the survey area due to activities will not affect migration. In addition, the requirement to shut down at 500 m to minimize potential for Level B behavioral harassment would limit any take of the species; and
- 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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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 relative to the best available population abundance is less than 22 percent for one stock (bottlenose dolphin northern coastal migratory stock), less than 3 percent for the North Atlantic right whale, and less than 1 percent for 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 4.

Based on the analysis contained herein of the activity (including the 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 issuance of the 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 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which NMFS has not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 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 OPR consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS Greater Atlantic Regional Fisheries Office (GARFO).

The NMFS OPR 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 for the issuance of this IHA. NMFS GARFO determined that issuance of the IHA to Ocean Wind 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 Ocean Wind for the potential harassment of small numbers of 16 marine mammal species incidental to conducting marine site characterization surveys offshore of New Jersey and along potential submarine cable routes to a landfall location in New Jersey provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: May 11, 2021.

Catherine Marzin,

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

[FR Doc. 2021–10236 Filed 5–13–21; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: June 13, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Third Party Logistics Support Services

Mandatory for: US Army, Army Contracting Command, Aberdeen Proving Ground, MD

Designated Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8465–00–753–6335—Kit, Maintenance

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7920–01–512–9343—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Green
7920–01–512–9345—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Blue
7920–01–512–8965—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Green
7920–01–512–8972—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Blue
7920–00–782–3784—Flat Mop Frame, Plastic, 24″, Handles

Mandatory Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX and STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s):
7930–01–513–1144—Cleaner, Glass, Floral, 1 Gallon
7930–01–512–7172—Cleaner, Washroom, Multi-Surface, Biobased, 1 Gal
7930–01–512–7759—Cleaner, All-Purpose, Low Foam, Biobased, 1 Gal
7930–01–513–6571—Cleaner, Heavy Duty, Biobased, Citrus, 1 Gal

Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s):
7520–01–587–9640—Pen, Ballpoint, Retractable, 3 Pack, Black, Fine Point

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Photocopying
Mandatory for: Environmental Protection Agency, Research Triangle PK, NC
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: ENVIRONMENTAL PROTECTION AGENCY, US ENVIRONMENTAL PROTECTION AGENCY

Michael R. Jurkowski,

Deputy Director, Business Operations.

[FR Doc. 2021–10217 Filed 5–13–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* June 13, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 4/9/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following service(s) are deleted from the Procurement List:

Service(s)

Service Type: Mailroom Operation; Mail and Messenger Service
Mandatory for: US Army Corps of Engineers, Portland District Headquarters and Northwestern Division Headquarters, 333 SW 1st Avenue, Portland, OR
Designated Source of Supply: Relay Resources, Portland, OR
Contracting Activity: DEPT OF THE ARMY, W071 ENDIST PORTLAND

Michael R. Jurkowski,

Deputy Director, Business Operations.

[FR Doc. 2021–10218 Filed 5–13–21; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 19, 2021; 10:00–11:00 a.m.

PLACE: Due to the COVID–19 Pandemic, the meeting will be held remotely.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Briefing Matter: Final Rule: Safety Standard for Infant Sleep Products.

All attendees should register for the Webinar. To register for the Webinar, please visit *https://attendee.gotowebinar.com/register/3371041493042213903* and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar.

Dated: May 12, 2021.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2021–10359 Filed 5–12–21; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Virtual Public Meetings for the Draft Environmental Impact Statement for the Navy Old Town Campus Revitalization

AGENCY: Department of the Navy, DoD.

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality, the Department of the Navy (DON) has prepared and filed with the United States Environmental Protection Agency a Draft Environmental Impact Statement (EIS) for the Navy Old Town Campus (OTC) Revitalization. The Draft EIS evaluates the potential environmental effects associated with modernization of OTC to support Naval Information Warfare Systems Command's (NAVWAR) current and future operational readiness. This notice announces the public review and comment period, dates of virtual meetings, and includes information on how the public may review and comment on the Draft EIS. Additionally, the public can submit comments on the project's potential to affect historic properties pursuant to Section 106 of the National Historic Preservation Act.

DATES: The 60-day public comment period begins May 14, 2021 and ends July 13, 2021. To be considered in the Final EIS, all comments must be postmarked or received online by 11:59 p.m. Pacific Standard Time on July 13, 2021.

Due to current federal and state guidance on social distancing in response to the COVID–19 pandemic, the DON will hold virtual public meetings to provide information about the proposed action and the draft environmental analysis, and to accept public comments on the Draft EIS. The virtual public meetings will occur as follows:

1. June 8, 2021, 5:30 p.m. to 8 p.m. Pacific Standard Time
2. June 23, 2021, 5:30 p.m. to 8 p.m. Pacific Standard Time

Information on how to participate in the virtual public meetings is available on the project website at *www.NAVWAR-revitalization.com.*

ADDRESSES: Written comments may be submitted electronically on the project website at *www.NAVWAR-revitalization.com* or by mail to: Navy OTC Revitalization EIS Project Manager, Attention: Ron Bochenek, 750 Pacific

Highway, Floor 12, San Diego, CA 92132–0058.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Systems Command Southwest, Attention: Ron Bochenek, Navy OTC Revitalization EIS Project Manager, 750 Pacific Highway, Floor 12, San Diego, CA 92132–0058, 888–682–6289, *info@NAVWAR-revitalization.com.* You can also visit the project website at *www.NAVWAR-revitalization.com* for more information. Individuals interested in receiving electronic project updates can subscribe on the project website to receive notifications via email for key milestones throughout the environmental planning process.

SUPPLEMENTARY INFORMATION: The DON distributed the Draft EIS to Federal, state, and local agencies and officials, American Indian tribal governments, and other stakeholders. The Draft EIS and informational materials are available on the project website at *www.NAVWAR-revitalization.com.* The public may also review the Draft EIS and select materials at the following libraries:

1. Mission Hills-Hillcrest/Knox Library (215 West Washington Street, San Diego, CA 92103)
2. Point Loma/Hervey Library (3701 Voltaire Street, San Diego, CA 92107)
3. San Diego Central Library (330 Park Boulevard, San Diego, CA 92101)

Comments on the Draft EIS can be submitted in the following ways: (1) Written comments submitted through the project website; (2) written comments mailed to the address in this notice; and (3) verbal comments provided at the virtual public meetings.

All comments submitted during the 60-day public comment period will become part of the public record, and substantive comments will be considered in the development of the Final EIS. All comments must be postmarked or received online by 11:59 p.m. Pacific Standard Time on July 13, 2021.

Federal, state, and local agencies and officials, American Indian tribal governments, and other interested organizations and individuals are encouraged to provide comments on the Draft EIS during the 60-day public comment period.

Dated: May 7, 2021.

K.R. Callan,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2021–10024 Filed 5–13–21; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Predominantly Black Institutions Competitive Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for the Predominantly Black Institution Competitive (PBI–C) Grant Program, Assistance Listing Number 84.382A. This notice relates to the approved information collection under OMB control number 1840–0797.

DATES:

Applications Available: May 14, 2021.

Deadline for Transmittal of Applications: June 28, 2021.

Deadline for Intergovernmental Review: August 27, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Kelly Harris, U.S. Department of Education, 400 Maryland Avenue SW, room 2B207, Washington, DC 20202–4260. Telephone: (202) 453–7346. Email: *Kelly.Harris@ed.gov.*

Or

Ashley Hillary, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C143, Washington, DC 20202–4260. Telephone: (202) 453–7880. Email: *Ashley.Hillary@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the PBI Program is to strengthen Predominantly Black Institutions (PBIs) to carry out programs in the following areas: science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African American males.

Background: Recent data suggests that the COVID–19 pandemic has created mental health and academic challenges for Black or African American students. The psychological impact of an abrupt transition to continuing courses online caused some students to experience levels of stress, thus impacting their ability to perform as well academically. For example, according to a survey of more than 5,000 students conducted by the United Negro College Fund, half of the respondents wanted to return to normal with full on-campus classroom instruction; one third of respondents wanted some in-class instruction with some online courses and 17 percent of respondents thought it was best to have only online courses. Some 37 percent of all students who responded to the survey, and particularly women, said that their mental well-being had declined during the pandemic.[1] According to the ''Stay Informed'' report published in March 2021 by the National Student Clearinghouse Research Center, Black undergraduate enrollment declined 6 percent from Spring 2020 to Spring 2021 after declining 2 percent in the previous year. Black male enrollment dropped even further, by 9.7 percent from Spring 2020 to Spring 2021 after falling by 3.5 percent the prior year.[2]

Priorities: This notice contains one absolute priority, one competitive preference priority, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 371(b)(2)(C)(ii)(V) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1067q(b)(2)(C)(ii)(V). The competitive preference priority is from the Notice of Final Administrative Priority and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 30, 2020 (85 FR 86545) (Remote Learning NFP).

Absolute Priority: For FY 2021, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Improving Educational Outcomes of African American Males

Projects that propose to improve the educational outcomes of African American males.

Competitive Preference Priority: For FY 2021 and any subsequent year in which we make awards from the list of

[1] *https://www.jbhe.com/2020/08/uncf-survey-shows-how-covid-19-impacts-students-at-private-hbcus/.*

[2] *https://nscresearchcenter.org/stay-informed/.*

unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional four points to an application, depending on how well the application meets this priority.

This priority is:

Building Capacity for Remote Learning (Up to 4 Points)

Under this priority, an applicant must propose a project that is designed to provide personalized and job-embedded professional learning to build the capacity of educators to create remote learning experiences that advance student engagement and learning through effective use of technology (*e.g.,* synchronous and asynchronous professional learning, professional learning networks or communities, and coaching).

The remote learning environment must be accessible to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. The remote learning environment must also provide appropriate remote learning language assistance services to English learners.

Invitational Priority: For FY 2021, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Addressing the Impact of COVID–19 on Black or African American Students and Supporting Student Retention and Reengagement

Projects proposing to provide integrated student support services (also known as wrap-around services) for Black or African American students to address mental health and academic support due to the COVID–19 pandemic. An applicant should describe in its application how it will coordinate and leverage resources to provide services and supports to students. Specifically, an applicant should describe how it will target resources to support students living in communities hit the hardest by COVID–19 through degree completion, using the evidence-based principle that education practices should be based on the best available scientific evidence, rather than tradition, personal judgement, or other influences.

Definitions: The definitions below are from 34 CFR part 77.1 and the Remote Learning NFP.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp*, to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the What Works Clearinghouse (WWC) using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's educational needs. Remote learning may include online, hybrid/blended learning, or non-technology-based

learning (*e.g.,* lab kits, project supplies, paper packets).

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Program Authority: 20 U.S.C. 1067q.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Remote Learning NFP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $14,115,000.

Estimated Range of Awards: $400,000–$600,000.

Estimated Average Size of Awards: $564,600.

Maximum Awards: We will not make an award exceeding $600,000 for a single budget period of 12 months.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To qualify as an eligible institution under the PBI–C Program, an institution of higher education (IHE) must—

(a) Have an enrollment of needy students, as defined by section 371(c)(3) of the HEA (20 U.S.C. 1067q(c)(3)).

The term *enrollment of needy students* means the enrollment at the eligible IHE with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(i) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(ii) Come from families that receive benefits under a means-tested Federal benefit program (as defined in section 371(c)(5) of the HEA, 20 U.S.C. 1067q(c)(5));

(iii) Attended a public or nonprofit private secondary school that—

(A) Is in the school district of an LEA that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6311 *et seq.*), for any year during which the student attended such secondary school; and

(B) For the purpose of this paragraph and for that year, was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)) exceeds 30 percent of the total enrollment of such school; or

(iv) Are first-generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)), and a majority of such first-generation college students are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h));

(b) Have an average educational and general expenditure that is low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditure per FTE undergraduate student of IHEs that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA (20 U.S.C.1068a(b)), in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA (20 U.S.C. 1058(b)(1)(B));

(c) Have an enrollment of undergraduate students—

(i) That is at least 40 percent Black American students;

(ii) That is at least 1,000 undergraduate students;

(iii) Of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)), or first-generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)); and

(iv) Of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(d) Be legally authorized to provide, and provide, within the State an educational program for which the IHE awards a bachelor's degree or, in the case of a junior or community college, an associate's degree;

(e) Be accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or be, according to such an agency or association, making reasonable progress toward accreditation; and

(f) Not be receiving assistance under part B of title III or part A of title V of the HEA or an annual authorization of appropriations under the Act of March 2, 1867 (20 U.S.C. 123).

Note: The Department published a notice in the **Federal Register** on March 4, 2021 (86

FR 12665) that described the process for applying for designation as an eligible institution and set a deadline for applications of April 5, 2021. On April 13, 2021, the Department published a notice in the **Federal Register** (86 FR 19231) reopening the process and extending the deadline for applications to April 16, 2021. Only institutions that submitted applications by the extended deadline date and that the Department determined are eligible will receive funding consideration under the PBI Program.

Applicants must provide, as an attachment to the application, the documentation the institution relied upon to determine that at least 40 percent of the institution's undergraduate enrollment are Black American students. The 40 percent requirement applies only to *undergraduate* Black American students and is calculated based upon unduplicated undergraduate enrollment. Instructions for formatting and submitting the verification documentation are in the application package for this competition.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. Applicants must address each of the following selection criteria. We will award up to 100 points to an application under the selection criteria and up to 4 additional points to an application under the competitive preference priority, for a total score of up to 104 points. The total possible points for each selection criterion are noted in parentheses.

(a) *Significance* (Maximum 10 points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (up to 5 points)

(ii) The likelihood that the proposed project will result in system change or improvement. (up to 5 points)

(b) *Quality of the project design.* (Maximum 25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 10 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 10 points)

(iii) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (up to 5 points)

(c) *Quality of project services.* (Maximum 20 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (up to 5 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (up to 5 points)

(iii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (up to 5 points)

(d) *Quality of project personnel.* (Maximum 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 3 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (up to 2 points)

(e) *Adequacy of resources.* (Maximum 5 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The extent to which the budget is adequate to support the proposed project. (up to 3 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (up to 2 points)

(f) *Quality of the management plan.* (Maximum 15 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (up to 5 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (up to 5 points)

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (up to 5 points)

(g) *Quality of the project evaluation.* (Maximum 15 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(up to 5 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (up to 5 points)

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose special conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created

in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PBI Program for purposes of the Government Performance and Results Act of 1993 (GPRA):

(a) The percentage of change in the number of full-time, degree-seeking undergraduate students enrolled at PBIs.

(b) The percentage of first-time, full-time, degree-seeking undergraduate students at four-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year PBI.

(c) The percentage of first-time, full-time, degree-seeking undergraduate students at two-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year PBI.

(d) The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at four-year PBIs who graduate within six years of enrollment.

(e) The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at two-year PBIs who graduate within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance management requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–10235 Filed 5–13–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0074]

Agency Information Collection Activities; Comment Request; Impact Aid Electronic Data Collection (EDC) Program Questionnaire

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

DATES: Interested persons are invited to submit comments on or before July 13, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0074. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicholas Di Taranto, (202) 453–7457.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Aid Electronic Data Collection (EDC) Program Questionnaire.

OMB Control Number: 1810–NEW.

Type of Review: New collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 8.

Abstract: The Impact Aid Program (IAP) in the Office of Elementary and Secondary Education (OESE) at the U.S. Department of Education (the Department) requests clearance for the Electronic Data Collection (EDC) Program Questionnaire. This is a new information collection request. As part of the Impact Aid 7003 application, Local Educational Agency's (LEA) are required to submit data concerning federally-connected children within their LEA. In the past LEAs have collected this information using paper forms, but more recently, and particularly this past year, there has been more interest from LEAs to collect this data electronically. The purpose of the EDC program is to reduce administrative burden and to create a set of best practices to assist other LEAs in the development their own electronic systems. The questionnaire will allow IAP staff to provide in depth technical assistance to LEAs and potentially increase efficiency and reduce costs associated with the Impact Aid data collection process. Prior to Impact Aid approval of an EDC program, the LEA must successfully demonstrate that their system complies with all requirements of the Impact Aid program: U.S.C. 7703 and 7705, and regulations at 34 CFR 222.39–35.

Dated: May 11, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–10201 Filed 5–13–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for the Strengthening Institutions Program (SIP), Assistance Listing Number 84.031A. This notice relates to the approved information collection under OMB control number 1840–0114.

DATES:

Applications Available: May 14, 2021.

Deadline for Transmittal of Applications: July 13, 2021.

Deadline for Intergovernmental Review: September 13, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B116, Washington, DC 20202–4260. Telephone: (202) 453–7953. Email: *Nalini.Lamba-Nieves@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Strengthening Institutions Program provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Priorities: This notice contains two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(v), Competitive Preference Priority 1 is from allowable activities specified in the statute (see section 311 of the Higher Education Act of 1965, as amended (HEA)). Competitive Preference Priority 2 is from the Secretary's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to eight additional points for the priorities, depending on how well the application meets these priorities. Applicants may address one or both of the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Tutoring, Counseling, and Student Service Programs (up to 5 points).

Background: The SIP Program is critical to the Department's efforts to improve college completion for students who have been traditionally underrepresented in postsecondary education. In recent years, attention to the importance of other supports, such as mental health, food pantries, and childcare, among others, to student persistence and graduation rates has increased.[1] Through this priority we encourage IHEs to develop and/or create internal support systems and/or train personnel on ways to enhance and/or develop systems of support that provide wrap around services to students and promote retention. These services can

[1] M. Mechur Karp, 2011, *Toward a New Understanding of Non-Academic Student Support: Four Mechanisms Encouraging Positive Student Outcomes in the Community College,* Retrieved 3/2/2021 from *http://ccrc.tc.columbia.edu/media/k2/attachments/new-understanding-non-academic-support.pdf.*

be provided to newly admitted students or to existing students at the institution.

Priority: Projects designed to provide tutoring, counseling, and student service programs designed to improve academic success, including innovative, customized, instruction courses designed to help retain students and move the students rapidly into core courses and through program completion, which may include remedial education and English language instruction.

Competitive Preference Priority 2—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills (up to 3 points).

Background: One of the top expectations of students who attend postsecondary education is that they will gain the knowledge and skills necessary to get a job. However, a Lumina Foundation/Gallup Poll [2] report found that less than half (43 percent) of Americans agree that college graduates are well-prepared for success in the workplace, and when polling business leaders, just 11 percent strongly agreed that higher education institutions are graduating students with the skills and competencies that their businesses need. With the coronavirus pandemic's negative impact on higher education enrollment and employment, the previously found gap between skills and degrees has likely worsened. To ameliorate these gaps, institutions are encouraged to provide their students employability-related experiences.

Priority: Projects designed to provide work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014 (WIOA)).

Definitions: These definitions apply to the priorities and the selection criteria for this competition and are from section 3(23) of WIOA and 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes. (34 CFR 77.1).

In-demand industry sector or occupation means—

(a) *In General.*—(i) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(ii) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

(B) *Determination.*—The determination of whether an industry sector or occupation is in-demand under this paragraph shall be made by the State board or local board, as appropriate, using State and regional business and labor market projections, including the use of labor market information. (WIOA).

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1).

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1).

Program Authority: 20 U.S.C. 1057–1059d (title III, part A, of the HEA).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the regulations for SIP in 34 CFR part 607 have not been updated to reflect these statutory changes. The statute supersedes all other regulations.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program are in 34 CFR part 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2021.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this competition and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $17,182,981.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Individual Development Grants:

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will not make an award exceeding $450,000 for a single budget period of 12 months.

Estimated Number of Awards: 28.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $500,000–$550,000 per year.

Estimated Average Size of Awards: $525,000 per year.

Maximum Award: We will not make an award exceeding $550,000 for a single budget period of 12 months.

[2] Gallup and Lumina Foundation, What America Needs to Know about Higher Education Redesign (Indianapolis: Lumina Foundation, 2014).

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

This program is authorized by title III, part A, of the HEA. To qualify as an eligible institution under any title III, part A program, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2021 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on March 4, 2021 (86 FR 12665). The Department extended the deadline for applications in a notice published in the **Federal Register** on April 13, 2021 (86 FR 19231). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in the March 4, 2021 notice, may apply for a grant in this program.

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative Arrangement Development Grant in this competition may be awarded both in the same fiscal year. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a partner in one or more Cooperative Development Arrangement Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners are not required to be eligible institutions.

Relationship Between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program

A grantee under the HSI program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. The title III, part A programs are: SIP; the Tribally Controlled Colleges and Universities program; the Alaska Native and Native Hawaiian-Serving Institutions program; the Asian American and Native American Pacific Islander-Serving Institutions program; and the Native American-Serving Nontribal Institutions program. Furthermore, a current HSI program grantee may not give up its HSI grant to receive a grant under SIP or any title III, part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the HSI program may apply for a FY 2021 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1057(d)(1)–(2)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contains requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants. If you are addressing one or both competitive preference priorities, we recommend that you limit your response to no more than an additional five pages total, three additional pages for Competitive Preference Priority 1 and two additional pages for Competitive Preference Priority 2. Please include a separate heading when responding to one or both competitive preference priorities. We also recommend that you use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations,

references, and captions as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Quality of the Applicant's Comprehensive Development Plan.* (Maximum 20 Points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of the Project Design.* (Maximum 15 Points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(c) *Quality of Activity Objectives.* (Maximum 16 Points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(d) *Quality of Implementation Strategy.* (Maximum 15 Points) The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of Key Personnel.* (Maximum 8 Points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of Project Management Plan.* (Maximum 10 Points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of Evaluation Plan.* (Maximum 10 Points) The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(h) *Budget.* (Maximum 6 Points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the two competitive preference priorities.

In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at similar type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2018–2019 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR

200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993 and 34 CFR 75.110, the following performance measures will be used in assessing the effectiveness of SIP:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure that will be used to periodically gauge performance.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at four-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(c) The percentage of first-time, full-time degree-seeking undergraduate students at two-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year SIP institutions graduating within six years of enrollment.

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year SIP institutions graduating within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving

the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–10232 Filed 5–13–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Asian American and Native American Pacific Islander-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for the Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) Program, Assistance Listing Number 84.382B. This notice relates to the approved information collection under OMB control number 1840–0798.

DATES:

Applications Available: May 14, 2021.

Deadline for Transmittal of Applications: June 28, 2021.

Deadline for Intergovernmental Review: August 27, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Pearson Owens, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B109, Washington, DC 20202–4260. Telephone: (202) 453–7997. Email: *Pearson.Owens@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AANAPISI Program provides grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Asian American and Native American Pacific Islander students. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution.

The Department encourages applicants to describe how their services will improve educational outcomes for Asian American and Native American Pacific Islander students. The Department strongly encourages applicants to develop a five-year plan that will improve the assistance provided by the Asian American and Native American Pacific Islander-serving institution to Asian American and Native American Pacific Islander students and low-income individuals.

Priorities: This notice contains two competitive preference priorities and one invitational priority. Competitive Preference Priority 1 is from the Secretary's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). Competitive Preference Priority 2 is from the Administrative Priorities for Discretionary Grant Programs, published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities).

Competitive Preference Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an application, depending on how well the application meets Competitive Preference Priority 1. We award an additional three points to an application that meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills (up to 5 points).

Providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

Competitive Preference Priority 2—Applications from New Potential Grantees (3 points).

Under this priority, an applicant must demonstrate that it has never received a grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the AANAPISI Part F program.

Invitational Priority: For FY 2021, there is one invitational priority for this program. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Addressing the Impact of COVID–19 on Students' Mental Health and Academic Outcomes Through Student Support Services.

Projects designed to provide integrated student support services (also known as wrap-around services) for students to address mental health and academic support needs due to the COVID–19 pandemic. An applicant should describe in its application how it will collaborate with any partners to provide resources to support students and communities hit the hardest by COVID–19 and implement evidence-based best practices to address the existing inequities exacerbated by the

pandemic. The proposed system of integrated student support services should include services, including those not funded through the AANAPISI Program, that meet the whole needs of students from low-income backgrounds, including aid for school supplies, transportation costs as allowable by program regulations, connections to mental health services, mentoring, tutoring, and peer support groups, that help ensure success in postsecondary education.

Definitions: The definitions below are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Program Authority: 20 U.S.C. 1067q (title III, part F, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the regulations for the AANAPISI Program in 34 CFR part 607 have not been updated to reflect these statutory changes.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607. (e) The Supplemental Priorities. (f) The Administrative Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2021.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $4,638,703.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Individual Development Grants:

Estimated Range of Awards: $250,000–$300,000 per year.

Estimated Average Size of Awards: $275,000 per year.

Maximum Award: We will not make an award exceeding $300,000 for a single budget period of 12 months.

Estimated Number of Awards: 12.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $350,000–$400,000 per year.

Estimated Average Size of Awards: $375,000 per year.

Maximum Award: We will not make an award exceeding $400,000 for a single budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

This program is authorized by title III, part F, of the HEA. At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that at least 10 percent of the IHE's enrollment is Asian American or Native American Pacific Islander. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

To qualify as an eligible institution under the AANAPISI Program, an institution must—

(i) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(iii) Be designated as an ''eligible institution,'' as defined in 34 CFR 600.2, by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The Department published a notice in the **Federal Register** on March 4, 2021 (86 FR 12665) that described the process for applying for designation as an eligible institution and set a deadline for applications of April 5, 2021. On April 13, 2021, the Department published a notice in the **Federal Register** (86 FR 19231) reopening the process and extending the deadline for applications to April 16, 2021. Only institutions that the Department determines are eligible, or that are granted a waiver under the process described in the March 4, 2021 notice, may apply for a grant in this program.

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative Arrangement Development Grant in this competition may be awarded both in the same fiscal year. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a partner in one or more Cooperative Development Arrangement Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution.

Partners are not required to be eligible institutions.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30 (b)).

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Need for project.* (Maximum 10 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers:

(i) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(b) *Quality of the project design.* (Maximum 35 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (15 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

(iii) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (10 points)

(c) *Quality of project services.* (Maximum 10 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(3) In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (3 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (4 points)

(d) *Quality of project personnel.* (Maximum 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the

applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(3) In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (4 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (3 points)

(e) *Adequacy of resources.* (Maximum 5 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The extent to which the budget is adequate to support the proposed project. (3 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

(f) *Quality of the management plan.* (Maximum 15 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(g) *Quality of the project evaluation.* (Maximum 15 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from any competitive preference priorities addressed by the applicant.

In tie-breaking situations for development grants, under 34 CFR 607.23(b), we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities:

(1) Faculty development.

(2) Funds and administrative management.

(3) Development and improvement of academic programs.

(4) Acquisition of equipment for use in strengthening management and academic programs.

(5) Joint use of facilities.

(6) Student services.

For the purpose of these funding considerations, we use 2018–2019 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an

objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key Government Performance and Results Act of 1993 (GPRA) performance measures for assessing the effectiveness of the AANAPISI Program:

(a) The percentage of first-time, full-time degree-seeking undergraduate students at four-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at two-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI.

(c) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year AANAPISIs who graduate within six years of enrollment.

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year AANAPISIs who graduate within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–10231 Filed 5–13–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2019–009; EERE–2019–BT–WAV–0028]

Energy Conservation Program: Decision and Order Granting a Waiver to CellarPro From the Department of Energy Walk-in Coolers and Walk-in Freezers Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notification of a Decision and Order (Case Number 2019–009) that grants to CellarPro Cooling Systems (''CellarPro'') a waiver from specified portions of the DOE test procedure for determining the energy efficiency of specified walk-in wine cellar refrigeration systems. Due to the design of CellarPro's specific basic models of walk-in wine cellar refrigeration systems, the current test procedure evaluates such models in a manner that is unrepresentative of their energy use. Under the Decision and Order, CellarPro is required to test and rate the specified basic models of its walk-in cellar refrigeration systems in accordance with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on May 14, 2021. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for walk-in coolers and walk-in freezers located at title 10 of the Code of Federal Regulations (''CFR''), part 431, subpart R, appendix C that addresses the issues presented in this waiver. At such time, CellarPro must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, 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: *AS_Waiver_Requests@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with section 431.401(f)(2) of Title 10 of the Code of Federal Regulations (''CFR'') (10 CFR 431.401(f)(2)), DOE gives notification of the issuance of its Decision and Order as set forth below. The Decision and Order grants CellarPro a waiver from the applicable test procedure at 10 CFR part 431, subpart R, appendix C for specified basic models of walk-in cooler refrigeration systems, and provides that CellarPro must test and rate such walk-in cooler refrigeration systems using the alternate test procedure specified in the Decision and Order. CellarPro's representations concerning the energy efficiency of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6314(d))

Manufacturers not currently distributing equipment in commerce in the United States that employ a technology or characteristic that results in the same need for a waiver from the applicable test procedure must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401. (10 CFR 431.401(j))

Case #2019–009

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency for certain types of industrial equipment. This equipment includes walk-in coolers and walk-in freezers (collectively, ''walk-ins''), the focus of this document. (42 U.S.C. 6311(1)(G))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6299).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered walk-ins. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of walk-ins during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C.6314(a)(2)) The test procedure for walk-ins is set forth in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix C, Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems (''Appendix C'').

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 431.401(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(3).

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

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

II. CellarPro's Petition for Waiver: Assertions and Determinations

On September 13, 2019, CellarPro submitted a petition for an interim waiver from the DOE test procedure applicable to walk-ins set forth in Appendix C. (CellarPro, No. 1 at p. 1 [3]) The waiver process under 10 CFR 431.401 requires that a petition for interim waiver must reference the related petition for waiver. (10 CFR 431.401(b)(2)) CellarPro confirmed in a May 29, 2020 email that the petition should also be considered as a petition for waiver. (CellarPro, No. 4) CellarPro stated that the specified basic models of walk-in cooler refrigeration systems are intended to operate at a temperature range of 45 °F to 65 °F and 50 to 70 percent relative humidity (''RH''), rather than the 35 °F with less than 50 percent RH test conditions prescribed by the test procedure for walk-in cooler applications. CellarPro stated that the units operate at temperature and relative humidity ranges optimized for long-term storage of wine and that they are usually located in air-conditioned spaces. CellarPro asserted that testing at 35 °F would be unrepresentative of the true energy consumption characteristics of the specified units and that operation at this temperature may damage the specified units. On October 2, 2020, CellarPro submitted an updated petition for waiver and interim waiver stating that all basic models listed in the petition for waiver and interim waiver cannot be operated at a temperature less than 45 °F and provided DOE with maximum external static pressure values for the specified basic models, which are all capable of being installed with a duct.[4] (CellarPro, No. 6)

On March 1, 2021, DOE published a notification announcing its receipt of the petition for waiver and granted CellarPro an interim waiver. 86 FR 11972 (''Notification of Petition for Waiver''). In the Notification of Petition for Waiver, DOE noted that a number of the basic models of walk-in refrigeration systems identified by CellarPro in its petition are single-package systems. CellarPro noted that it is difficult to install mass flow meters for testing these small footprint systems. DOE agreed that because of their single-package design, these basic models have insufficient space within the units and insufficient lengths of liquid line and evaporator outlet line for the dual mass flow meters (two independent meters) and the dual temperature and pressure measurements (two independent sets of measurement equipment) required by the test procedure's refrigerant enthalpy method. 86 FR 11972, 11974. AHRI 1250–2009 (''Standard for Performance Rating of Walk-in Coolers and Freezers'' [5])—the industry testing standard on which DOE's test procedure is based—does not include specific provisions for testing single-package systems, and testing these basic models using the refrigerant enthalpy method as required by Appendix C would require extensive additional piping to route the pipes out of the system—where the components could be installed—and then back in. This additional piping would impact unit performance, would likely be inconsistent between test labs, and would result in unrepresentative test values for the unit under test. AHRI has published a revised version of the test standard that provides provisions for single-package systems without requiring extensive additional piping (AHRI 1250–2020, *2020 Standard for Performance Rating of Walk-in Coolers and Freezers*).

In the Notification of Petition for Waiver, DOE established an alternate test procedure that was a modified version of the alternate test procedure suggested by CellarPro. 86 FR 11972, 11975–11980. Specifically, the required alternate test procedure establishes unit cooler air inlet conditions of 55 °F and 55 percent RH, specifies primary and secondary capacity measurement methods for single-package systems, requires testing at 50 percent of maximum external static pressure for ducted units, and defines wine cellar box load and evaporator cycle periods for calculation of Annual Walk-in Energy Factor (''AWEF'') for the specified basic models of walk-in cooler refrigeration systems. *Id.* DOE solicited comments from interested parties on all aspects of the petition and the modified alternate test procedure. *Id.*

DOE received one comment, which was submitted by the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, ''the CA IOUs'').[6] The CA IOUs recommended that DOE consider changes to the walk-in cooler and walk-in freezer labeling requirements and to the definitions applicable to walk-in cooler refrigeration systems in order to differentiate between walk-in cooler refrigeration systems and walk-in cooler refrigeration systems that are wine cooler systems. The CA IOUs stated that the current labeling requirements would classify a wine cellar walk-in cooler as a standard walk-in cooler, despite the difference in testing requirements. The CA IOUs suggested that manufacturer materials should be required to report use of an alternate test procedure. The CA IOUs stated that otherwise, there may be confusion in the market. (CA IOUs, No 15 at pp. 1–2)

The current definition and labeling requirements for walk-in coolers do not distinguish between walk-in cooler refrigeration systems generally and walk-in cooler refrigeration systems for wine cellars. As discussed, CellarPro stated that the subject units are unable to operate at a temperature less than 45 °F. Because of the inability to operate at lower temperatures and the specific application to wine cellars, there is unlikely to be confusion in the market between the subject units and other walk-in cooler refrigeration systems.

In addition, the CA IOUs reiterated comments that they submitted in response to a notice of proposed rulemaking regarding testing provisions for hot gas defrost in the walk-in cooler test procedure (85 FR 60724; September 28, 2020).[7] Specifically, the CA IOUs recommended that DOE address several open test procedure waivers (including those for walk-in wine cellars) and recommendations from the 2015 Appliance Standards and Rulemaking Federal Advisory Committee working group related to improving the representativeness of the test procedure.

In accordance with 10 CFR 431.401, this Decision and Order addresses the petition for waiver submitted by CellarPro and is limited to the basic models specified in the Order. As stated, as soon as practicable after the granting of this and any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l).

For the reasons explained here and in the Notification of Petition for Waiver,

[3] A notation in the form ''CellarPro, No. 1'' identifies a written submission: (1) Made by CellarPro; and (2) recorded in document number 1 that is filed in the docket of this petition for waiver (Docket No. EERE–2019–BT–WAV–0028) and available at *http://www.regulations.gov*.

[4] The October 2, 2020 update was consistent with a letter from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') recommending that a 45 °F minimum temperature be used for testing wine cellar cooling systems, and that testing be conducted at an external static pressure (''ESP'') value equal to 50 percent of the maximum ESP to be specified by manufacturers for each basic model. The AHRI letter is available at Docket No. EERE–2019–BT–WAV–0028–0005.

[5] This also includes the related Errata sheet published by AHRI, dated December 2015.

[6] Comments available in Docket No. EERE–2019–BT–WAV–0028–0015 at *http://www.regulations.gov*.

[7] Comments available in Docket No. EERE–2020–BT–TP–0016–0004 at *https://www.regulations.gov*.

absent a waiver the basic models identified by CellarPro in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. As noted above, the alternate test procedure prescribed in the Interim Waiver modified CellarPro's suggested alternate test procedure by including ESP provisions for certain systems that can be installed with (1) ducted evaporator air, (2) with or without ducted evaporator air, (3) ducted condenser air, or (4) with or without ducted condenser air. For such systems, testing is conducted at 50 percent of the maximum ESP specified by the manufacturer, subject to a tolerance of –0.00/+0.05 inches of water column (''in. wc.''). (CellarPro, No. 14)

Selection of a representative ESP equal to half the maximum ESP is based on the expectation that most installations will require less than the maximum allowable duct length. In the absence of field data, DOE expects that a range of duct lengths from the minimal length to the maximum allowable length would be used; thus, half of the maximum ESP would be representative of most installations.

Additionally, if the basic model provides multiple condenser or unit cooler fan speed settings, the speed setting used is as instructed in the unit's installation instructions. However, if the installation instructions do not specify a fan speed setting for ducted installation, systems that can be installed with ducts would be tested with the highest available fan speed. The ESP is set for testing either by symmetrically restricting the outlet duct or, if using the indoor air enthalpy method, by adjusting the airflow measurement apparatus blower.

The alternate test procedure also describes the requirements for measuring ESP consistent with the provisions provided in AHRI 1250–2020 when using the indoor air enthalpy method with unit coolers.

Additionally, the alternate test procedure requires that specified basic models that are split systems must be tested as matched pairs. According to CellarPro's petition, the walk-in refrigeration system basic models that are split-systems are sold as full systems (*i.e.,* matched pairs) rather than as individual unit cooler and condensing unit components. This Order provides no direction regarding refrigerant line connection operating conditions, and as such is inapplicable to testing the basic models as individual components. Consequently, this Order addresses only matched-pair testing of the specified basic models that are split-systems.

For the reasons explained in the Notification of Petition for Waiver, the Order does not include a 0.55 correction factor in the alternate test procedure as suggested by CellarPro. 86 FR 11972, 11976–11977. The company had observed that the test procedure in appendix A to subpart B of 10 CFR part 430 (''Appendix A''), which applies to miscellaneous refrigeration products, includes such a factor to account for the difference in use and loading patterns of coolers (*e.g.,* self-contained wine chiller cabinets) as compared to other residential refrigeration products in terms of use and loading patterns, compressor efficiency, and required fan power, and sought to include such a factor as part of its petition. As explained in the Notice of Petition for Waiver, the closed-door conditions on which the miscellaneous refrigeration correction factor is based are not present in the test procedure for walk-in cooler refrigeration systems, and the referenced AHRI 1250–2009 provisions assume a load factor of 50 percent, consistent with Appendix C. *Id.* As a result, applying the 0.55 correction factor as suggested by CellarPro is not appropriate for the specified basic models.

DOE is requiring that CellarPro test and rate specified walk-in wine cellar refrigeration system basic models according to the alternate test procedure specified in this Decision and Order. This alternate procedure is a modified version of the one suggested by CellarPro. The alternate test procedure required under this Order is the same alternate test procedure prescribed in the Interim Waiver Order.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. CellarPro may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). CellarPro may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, CellarPro may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

As set forth previously, the test procedure specified in this Decision and Order is not the same as the test procedure offered by CellarPro. If CellarPro believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, CellarPro may submit a request for modification under 10 CFR 431.401(k)(2) that addresses the concerns that DOE has specified with that procedure. CellarPro may also submit another less burdensome alternative test procedure not expressly considered in this notification under the same provision.

III. Order

After careful consideration of all the material that was submitted by CellarPro, the various public-facing materials (*e.g.,* marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, information provided by CellarPro and other wine cellar walk-in refrigeration system manufacturers in meetings with DOE, and the comment received, in this matter, it is Ordered that:

(1) CellarPro must, as of the date of publication of this Order in the **Federal Register**, test and rate the following CellarPro-branded wine cellar walk-in cooler refrigeration system basic models with the alternate test procedure as set forth in paragraph (2):

CELLARPRO BASIC MODELS

Basic model	Catalog models under basic model group	Minimum operating temperature (°F)	Maximum operating temperature (°F)	Maximum evaporator fan external static pressure (inwg)	Maximum condenser fan external static pressure (inwg)
1800QTL	1800QTL, 1800QTL–L	45	65	0.00	0.00
1800QT	1800QT	45	65	0.00	0.00
1800XT	1800XT	45	65	0.00	0.00
1800XTS	1800XTS, 1800XTS–B	45	65	0.00	0.00
1800XTSx	1800XTSx	45	65	0.00	0.00
1800XT 220V	1800XT 220V	45	65	0.00	0.00
1800XTS 220V	1800XTS 220V	45	65	0.00	0.00
1800XTx 220V	1800XTx 220V	45	65	0.00	0.00
1800H	1800H	51	65	0.09	0.09
1800H 220V	1800H 220V	51	65	0.09	0.09
2000VS	2000VSi, 2000VSx	45	65	0.19	0.19
2000VS 220V	2000VSi 220V, 2000VSx 220V	45	65	0.19	0.19
3200VS	3200VSi, 3200VSx	45	65	0.25	0.25
4200VS	4200VSi, 4200VSx, 4200VSi–B, 4200VSi–L	45	65	0.25	0.25
4200VS 220V	4200VSi 220V, 4200VSx 220V	45	65	0.25	0.25
6200VS	6200VSi, 6200VSx	45	65	0.25	0.25
8200VS	8200VSi, 8200VSx	45	65	0.25	0.25
3000S	3000S, 3000Sqc	45	65	0.25	0.00
3000Scm	3000Scm	47	65	0.00	0.00
3000Scmr	3000Scmr	45	65	0.25	0.00
3000Sh	3000Sh, 3000Shqc	45	65	0.25	0.00
4000S	4000S, 4000Sqc	45	65	0.25	0.00
4000S 220V	4000S 220V	45	65	0.25	0.00
4000Scm	4000Scm	47	65	0.00	0.00
4000Scmr	4000Scmr	45	65	0.25	0.00
4000Sh	4000Sh, 4000Shqc	45	65	0.25	0.00
4000Shwc	4000Shwc	45	65	0.25	0.00
4000Swc	4000Swc	45	65	0.25	0.00
6000S	6000S	45	65	0.25	0.00
6000S 220V	6000S 220V	45	65	0.25	0.00
6000Scm	6000Scm	47	65	0.00	0.00
6000Scmr	6000Scmr	45	65	0.25	0.00
8000S	8000S	45	65	0.25	0.00
8000Scm	8000Scm	47	65	0.00	0.00
8000Scmr	8000Scmr	45	65	0.25	0.00
8000Swc	8000Swc	45	65	0.25	0.00
AH6500S	AH6500SCv, AH6500SCh, AH6500Si, AH6500Sx	45	65	0.25	0.25
AH8500S	AH8500SCv, AH8500SCh, AH8500Si, AH8500Sx	45	65	0.25	0.25
AH12Sx	AH12Sx	45	65	0.30	0.00
AH18Sx	AH18Sx	45	65	0.30	0.00
AH24Sx	AH24Sx	45	65	0.30	0.00

(2) The alternate test procedure for the CellarPro basic models listed in paragraph (1) of this Order is the test procedure for Walk-in Cooler Refrigeration Systems prescribed by DOE at 10 CFR part 431, subpart R, appendix C, (''Appendix C to Subpart R'') with the modifications provided below. All other requirements of Appendix C and DOE's other relevant regulations remain applicable.

In Appendix C to Subpart R, revise section 3.1.1 (which specifies modifications to AHRI 1250–2009 (incorporated by reference; see § 431.303)) to read:

3.1.1. In Table 1, Instrumentation Accuracy, refrigerant temperature measurements shall have an accuracy of ±0.5 °F for unit cooler in/out. Measurements used to determine temperature or water vapor content of the air (*i.e.* wet bulb or dew point) shall be accurate to within ±0.25 °F; all other temperature measurements shall be accurate to within ±1.0 °F.

In Appendix C to Subpart R, revise section 3.1.4 (which specifies modifications to AHRI 1250–2009) and add modifications of AHRI 1250–2009 Tables 3 and 4 to read:

3.1.4. In Tables 3 and 4 of AHRI 1250–2009, Section 5, the Condenser Air Entering Wet-Bulb Temperature requirement applies only to single-packaged dedicated systems. Tables 3 and 4 shall be modified to read:

TABLE 3—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED INDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, % [1]	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55	.....	.....	.....	Measure fan input wattage [2]
Refrigeration Capacity	55	55	90	[3] 65	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition

Notes:
1. The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.
2. Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately submetering the evaporator fan.
3. Maximum allowable value for Single-Packaged Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

TABLE 4—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED OUTDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, % [1]	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55	.....	.....	.....	Measure fan input wattage [2]
Refrigeration Capacity A	55	55	95	[3] 68	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition
Refrigeration Capacity B	55	55	59	[3] 46	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler and system input power at moderate condition
Refrigeration Capacity C	55	55	35	[3] 29	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler and system input power at cold condition

Notes:
1. The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.
2. Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately submetering the evaporator fan.
3. Maximum allowable value for Single-Packaged Dedicated Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

In Appendix C to Subpart R, following section 3.2.5 (instructions regarding modifications to AHRI 1250–2009), add sections 3.2.6 and 3.2.7 to read:

3.2.6. The purpose in section C1 of appendix C is modified by extending it to include Single-Packaged Dedicated Systems.

3.2.7. For general test conditions and data recording (appendix C, section C7), the test acceptance criteria in Table 2 and the data to be recorded in Table C2 apply to the Dual Instrumentation and Calibrated Box methods of test.

In Appendix C to Subpart R, revise section 3.3 to read:

3.3. *Matched systems, single-packaged dedicated systems, and unit coolers tested alone:* Test any split system wine cellar walk-in refrigeration system as a matched pair. Any condensing unit or unit cooler component must be matched with a corresponding counterpart for testing. Use the test method in AHRI 1250–2009 (incorporated by reference; see § 431.303), appendix C as the method of test for matched refrigeration systems, single-packaged dedicated systems, or unit coolers tested alone, with the following modifications:

* * * * *

In Appendix C to Subpart R, revise sections 3.3.3 through 3.3.3.2 to read:

3.3.3. *Evaporator fan power.*

3.3.3.1. The unit cooler fan power consumption shall be measured in accordance with the requirements in Section C3.5 of AHRI 1250–2009. This measurement shall be made with the fan operating at full speed, either measuring unit cooler or total system power input upon the completion of the steady state test when the compressors and condenser fan of the walk-in system is turned off, or by submetered measurement of the evaporator fan power during the steady state test.

Section C3.5 of AHRI 1250–2009 is revised to read:

Unit Cooler Fan Power Measurement. The following shall be measured and recorded during a fan power test.

$EF_{comp,on}$ Total electrical power input to fan motor(s) of Unit Cooler, W
FS Fan speed (s), rpm
N Number of motors
P_b Barometric pressure, in. Hg
T_{db} Dry-bulb temperature of air at inlet, °F
T_{wb} Wet-bulb temperature of air at inlet, °F
V Voltage of each phase, V

For a given motor winding configuration, the total power input shall be measured at the highest nameplated voltage. For three-phase power, voltage imbalance shall be no more than 2%.

3.3.3.2. Evaporator fan power for the off-cycle is equal to the on-cycle evaporator fan power with a run time of ten percent of the off-cycle time.

$EF_{comp,off} = 0.1 \times EF_{comp,on}$

In Appendix C to Subpart R, following section 3.3.7.2, add new sections 3.3.8, 3.3.9, and 3.3.10 to read:

3.3.8. Measure power and capacity of single-packaged dedicated systems as described in sections C4.1.2 and C9 of AHRI 1250–2020. The third and fourth sentences of Section C9.1.1.1 of AHRI 1250–2020 (''Entering air is to be sufficiently dry as to not produce frost on the Unit Cooler coil. Therefore, only sensible capacity measured by dry bulb change shall be used to calculate capacity.'') shall not apply.

3.3.9. For systems with ducted evaporator air, or that can be installed with or without ducted evaporator air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of −0.00/+0.05 in. wc. If testing with the indoor air enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting evaporator airflow take precedence over airflow values specified in manufacturer installation instructions or product literature.

3.3.10. For systems with ducted condenser air, or that can be installed with or without ducted condenser air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of −0.00/+0.05 in. wc. If testing with the outdoor enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting condenser airflow take precedence over airflow values specified in manufacturer installation instructions or product literature. If testing using the outdoor air enthalpy method, the requirements of section 8.6 of ASHRAE 37–2009 are not applicable.

In Appendix C to Subpart R, revise section 3.3.6 (which specifies modifications to AHRI 1250–2009) to read:

3.3.6. AWEF is calculated on the basis that walk-in box load is equal to half of the system net capacity, without variation according to high and low load periods and without variation with outdoor air temperature for outdoor refrigeration systems, and the test must be done as a matched or single-package refrigeration system, as follows:

For Indoor Condensing Units:

$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(90\,^{\circ}F)$$

$$LF = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(90\,^{\circ}F) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\dot{BL}}{\dot{E}_{ss}(90\,^{\circ}F) \cdot LF + \dot{EF}_{comp,off} \cdot (1 - LF)}$$

For Outdoor Condensing Units:

$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(95\,^{\circ}F)$$

$$LF(t_j) = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(t_j) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\sum_{j=1}^{n} BL(t_j)}{\sum_{j=1}^{n} E(t_j)}$$

$$BL(t_j) = \dot{BL} \cdot n_j$$

$$E(t_j) = \left[\dot{E}_{ss}(t_j) \cdot LF(t_j) + \dot{EF}_{comp,off} \cdot \left(1 - LF(t_j)\right)\right] \cdot n_j$$

Where:

$\dot{BL}$ is the non-equipment-related box load

LF is the load factor

And other symbols are as defined in AHRI 1250–2009.

(3) *Representations.* CellarPro may not make representations about the efficiency of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Order is issued on the condition that the statements, representations, and information provided by CellarPro are valid. If CellarPro makes any modifications to the controls or configurations of a basic model subject to this Order, such modifications will render the waiver invalid with respect to that basic model, and CellarPro will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, CellarPro may request that DOE rescind or modify the waiver if CellarPro discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) CellarPro remains obligated to fulfill any applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. CellarPro may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of Walk-in Cooler Refrigeration Systems. Alternatively, if appropriate, CellarPro may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signing Authority

This document of the Department of Energy was signed on May 10, 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 May 11, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–10246 Filed 5–13–21; 8:45 am]

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DEPARTMENT OF ENERGY

[Case Number 2019–011; EERE–2019–BT–WAV–0038]

Energy Conservation Program: Decision and Order Granting a Waiver to Vinotheque From the Department of Energy Walk-In Coolers and Walk-In Freezers Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notification of a Decision and Order (Case Number 2019–011) that grants to Vinotheque Wine Cellars DBA WhisperKOOL Corp. DBA CellarCool (''Vinotheque'') a waiver from specified portions of the DOE test procedure for determining the energy efficiency of specified wine cellar walk-in cooler refrigeration systems. Due to the design of Vinotheque's specific basic models of walk-in wine cellar refrigeration systems, the current test procedure evaluates such models in a manner that is unrepresentative of their energy use. Under the Decision and Order, Vinotheque is required to test and rate the specified basic models of its walk-in cooler refrigeration systems in accordance with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on May 14, 2021. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for walk-in coolers and walk-in freezers located at title 10 of the Code of Federal Regulations (''CFR''), part 431, subpart R, appendix C that addresses the issues presented in this waiver. At such time, Vinotheque must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, 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: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 431.401(f)(2) of Title 10 of the Code of Federal Regulations (''CFR'') (10 CFR 431.401(f)(2)), DOE gives notification of the issuance of its Decision and Order as set forth below. The Decision and Order grants Vinotheque a waiver from the applicable test procedure at 10 CFR part 431, subpart R, appendix C for specified basic models of walk-in cooler refrigeration systems, and provides that Vinotheque must test and rate such walk-in cooler refrigeration systems using the alternate test procedure specified in the Decision and Order. Vinotheque's representations concerning the energy efficiency of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6314(d))

Manufacturers not currently distributing equipment in commerce in the United States that employ a technology or characteristic that results in the same need for a waiver from the applicable test procedure must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. 10 CFR 431.401(j). Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401. *Id.*

Case #2019–011

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency for certain types of industrial equipment. This equipment includes walk-in coolers and walk-in freezers (collectively, ''walk-ins''), the focus of this document. (42 U.S.C. 6311(1)(G))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6299).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered walk-ins. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of walk-ins during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for walk-ins is set forth in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix C, Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems (''Appendix C'').

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 431.401(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design

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

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(3).

II. Vinotheque's Petition for Waiver: Assertions and Determinations

DOE received correspondence, docketed on December 2, 2019, from Vinotheque seeking an interim waiver from the DOE test procedure applicable to walk-ins set forth in Appendix C. (Vinotheque, No. 1 [3]) The waiver process under 10 CFR 431.401 requires that a petition for interim waiver must reference the related petition for waiver. (10 CFR 431.401(b)(2)) Vinotheque later confirmed in a May 26, 2020 email that its petition should also be considered as a petition for waiver. (Vinotheque, No. 4) Vinotheque later submitted an updated petition, docketed on December 11, 2020, providing maximum external static pressure (''ESP'') values for specified basic models and clarifying that the specified basic models cannot operate below 45 °F.[4] (Vinotheque, No. 6) Due to two discrepancies in Vinotheque's petition for waiver (the ''Platinum 4000 Ducted'' model is listed in the basic model list but is not listed in the table containing ESP values; the ''SL2500'' model is listed in the basic model list, but only appears as ''SL'' in the table containing ESP values), Vinotheque provided a maximum ESP for the ''Platinum 4000 Ducted'' model, and confirmed the model number and maximum ESP for ''SL2500''. (Vinotheque, No. 9) Vinotheque stated that the specified basic models of walk-in cooler refrigeration systems are intended to operate at a temperature range of 45 °F to 65 °F and 50 to 70 percent relative humidity (''RH''), rather than the 35 °F with less than 50 percent RH test conditions prescribed by the test procedure for walk-in cooler applications. Vinotheque stated that the units operate at temperature and relative humidity ranges optimized for long-term storage of wine, reflecting conditions in natural caves, and that they are usually located in air-conditioned spaces. Vinotheque asserted that testing at 35 °F would be unrepresentative of the true energy consumption characteristics of the specified units and that operation at this temperature may damage the specified units.

On March 1, 2021, DOE published a notification announcing its receipt of the petition for waiver and granted Vinotheque an interim waiver. 86 FR 11961 (''Notification of Petition for Waiver''). In the Notification of Petition for Waiver, DOE noted that the ''Single-Packaged'' basic models of walk-in refrigeration systems identified by Vinotheque in its petition are self-contained, single-package systems. Although not explicitly identified by Vinotheque, DOE recognized that because of their single-package design, these basic models have insufficient space within the units and insufficient lengths of liquid line and evaporator outlet line for the dual mass flow meters (*i.e.,* two independent meters) and the dual temperature and pressure measurements (*i.e.,* two independent sets of measuring equipment) required by the test procedure's refrigerant enthalpy method. 86 FR 11961, 11964. AHRI 1250–2009 (''Standard for Performance Rating of Walk-in Coolers and Freezers'' [5])—the industry testing standard on which DOE's test procedure is based—does not include specific provisions for testing single-package systems, and testing these basic models using the refrigerant enthalpy method as required by Appendix C would require extensive additional piping to route the pipes out of the system—where the components could be installed—and then back in. This additional piping would impact unit performance, would likely be inconsistent between test labs, and would result in unrepresentative test values for the unit under test. AHRI has published a revised version of the test standard that provides provisions for single-package systems without requiring extensive additional piping (AHRI 1250–2020, *2020 Standard for Performance Rating of Walk-in Coolers and Freezers*).

In the Notification of Petition for Waiver, DOE established an alternate test procedure that was a modified version of the alternate test procedure suggested by Vinotheque. 86 FR 11961, 11966–11969. Specifically, the required alternate test procedure establishes unit cooler air inlet conditions of 55 °F and 55 percent RH, specifies primary and secondary capacity measurement methods for single-package systems, requires testing at 50 percent of maximum external static pressure for ducted units, and defines wine cellar box load and evaporator cycle periods for calculation of Annual Walk-in Energy Factor (''AWEF'') for the specified basic models of walk-in cooler refrigeration systems. *Id.* DOE solicited comments from interested parties on all aspects of the petition and the modified alternate test procedure. *Id.*

DOE received one comment, which was submitted by the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, ''the CA IOUs'').[6] The CA IOUs recommended that DOE consider changes to the walk-in cooler and walk-in freezer labeling requirements and to the definitions applicable to walk-in cooler refrigeration systems in order to differentiate between walk-in cooler refrigeration systems and walk-in cooler refrigeration systems that are wine cooler systems. The CA IOUs stated that the current labeling requirements would classify a wine cellar walk-in cooler as a standard walk-in cooler, despite the difference in testing requirements. The CA IOUs suggested that manufacturer materials should be required to report use of an alternate test procedure. The CA IOUs stated that otherwise, there may be confusion in the market. (CA IOUs, No 12 at pp. 1–2)

The current definition and labeling requirements for walk-in coolers do not distinguish between walk-in cooler refrigeration systems generally and

[3] A notation in the form ''Vinotheque, No. 1'' identifies a written submission: (1) Made by Vinotheque; and (2) recorded in document number 1 that is filed in the docket of this petition for waiver (Docket No. EERE–2019–BT–WAV–0038) and available at *http://www.regulations.gov.*

[4] The December 11, 2020 update was consistent with a letter from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') recommending that a 45 °F minimum temperature be used for testing wine cellar cooling systems, and that testing be conducted at an external static pressure (''ESP'') value equal to 50 percent of the maximum ESP to be specified by manufacturers for each basic model. The AHRI letter is available at Docket No. EERE–2019–BT–WAV–0038–0005. Vinotheque asserted that the maximum ESP values included in its updated petition for waiver are confidential business information. These values have been redacted from the publicly-available version of the company's submission.

[5] This also includes the related Errata sheet published by AHRI, dated December 2015.

[6] Comments available in Docket No. EERE–2019–BT–WAV–0038–0012 at *http://www.regulations.gov.*

walk-in cooler refrigeration systems for wine cellars. As discussed, Vinotheque stated that the subject units are unable to operate at a temperature less than 45 °F. Because of the inability to operate at lower temperatures and the specific application to wine cellars, there is unlikely to be confusion in the market between the subject units and other walk-in cooler refrigeration systems.

In addition, the CA IOUs reiterated comments that they submitted in response to a notice of proposed rulemaking regarding testing provisions for hot gas defrost in the walk-in cooler test procedure (85 FR 60724; September 28, 2020).[7] Specifically, the CA IOUs recommended that DOE address several open test procedure waivers (including those for wine cellar walk-ins) and recommendations from the 2015 Appliance Standards and Rulemaking Federal Advisory Committee working group related to improving the representativeness of the test procedure.

In accordance with 10 CFR 431.401, this Decision and Order addresses the petition for waiver submitted by Vinotheque and is limited to the basic models specified in the Order. As stated, as soon as practicable after the granting of this and any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l).

For the reasons explained here and in the Notification of Petition for Waiver, absent a waiver the basic models identified by Vinotheque in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. As noted above, the alternate test procedure prescribed in the Interim Waiver modified Vinotheque's suggested alternate test procedure by including ESP provisions for certain systems that can be installed with (1) ducted evaporator air, (2) with or without ducted evaporator air, (3) ducted condenser air, or (4) with or without ducted condenser air. For such systems, testing is conducted at 50 percent of the maximum ESP specified by the manufacturer, subject to a tolerance of −0.00/+0.05 inches of water column (''in. wc.''). (Vinotheque, No. 5)

Selection of a representative ESP equal to half the maximum ESP is based on the expectation that most installations will require less than the maximum allowable duct length. In the absence of field data, DOE expects that a range of duct lengths from the minimal length to the maximum allowable length would be used; thus, half of the maximum ESP would be representative of most installations.

If the basic model provides multiple condenser or unit cooler fan speed settings, the speed setting used is as instructed in the unit's installation instructions. However, if the installation instructions do not specify a fan speed setting for ducted installation, systems that can be installed with ducts would be tested with the highest available fan speed. The ESP is set for testing either by symmetrically restricting the outlet duct or, if using the indoor air enthalpy method, by adjusting the airflow measurement apparatus blower.

The alternate test procedure also specifies the requirements for measuring ESP consistent with the provisions provided in AHRI 1250–2020 when using the indoor air enthalpy method with unit coolers.

Additionally, the alternate test procedure requires that specified basic models that are split systems must be tested as matched pairs. According to Vinotheque's petition, the walk-in refrigeration system basic models that are split-systems are sold as full systems (*i.e.,* matched pairs) rather than as individual unit cooler and condensing unit components. This Order provides no direction regarding refrigerant line connection operating conditions, and as such is inapplicable to testing the basic models as individual components. Consequently, this Order addresses only matched-pair testing of the specified basic models that are split-systems.

For the reasons explained in the Notification of Petition for Waiver, the Order does not include a 0.55 correction factor in the alternate test procedure as suggested by Vinotheque. 86 FR 11961, 11965–11966. The company had observed that the test procedure in appendix A to subpart B of 10 CFR part 430 (''Appendix A''), which applies to miscellaneous refrigeration products, includes such a factor to account for the difference in use and loading patterns of coolers (*e.g.,* self-contained wine chiller cabinets) as compared to other residential refrigeration products in terms of use and loading patterns, compressor efficiencies and refrigerants, and required fan power, and sought to include such a factor as part of its petition. As explained in the Notice of Petition for Waiver, the closed-door conditions on which the miscellaneous refrigeration correction factor is based are not present in the test procedure for walk-in cooler refrigeration systems, and the referenced AHRI 1250–2009 provisions assume a load factor of 50 percent, consistent with Appendix C. *Id.* As a result, applying the 0.55 correction factor as suggested by Vinotheque is not appropriate for the specified basic models.

DOE is requiring that Vinotheque test and rate specified wine cellar walk-in refrigeration system basic models according to the alternate test procedure specified in this Decision and Order. This alternate procedure is a modified version of the one suggested by Vinotheque. The alternate test procedure required under this Order is the same alternate test procedure prescribed in the Interim Waiver Order.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Vinotheque may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). Vinotheque may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Vinotheque may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

As set forth previously, the test procedure specified in this Decision and Order is not the same as the test procedure offered by Vinotheque. If Vinotheque believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, Vinotheque may submit a request for modification under 10 CFR 431.401(k)(2) that addresses the concerns that DOE has specified with that procedure. Vinotheque may also submit another less burdensome alternative test procedure not expressly considered in this notification under the same provision.

[7] Comments available in Docket No. EERE–2020–BT–TP–0016–0004 at *https://www.regulations.gov.*

III. Order

After careful consideration of all the material that was submitted by Vinotheque, the various public-facing materials (*e.g.,* marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, information provided by Vinotheque and other wine cellar walk-in refrigeration system manufacturers in meetings with DOE, and the comment received, in this matter, it is *Ordered* that:

(1) Vinotheque must, as of the date of publication of this Order in the **Federal Register**, test and rate the following WhisperKOOL and CellarCool-branded wine cellar walk-in cooler refrigeration system basic models with the alternate test procedure as set forth in paragraph (2):

Single-Packaged:

Basic model	Brand name
SC Pro 2000	WhisperKOOL
SC Pro 3000	WhisperKOOL
SC Pro 4000	WhisperKOOL
SC Pro 8000	WhisperKOOL
Extreme 3500 ti	WhisperKOOL
Extreme 5000 ti	WhisperKOOL
Extreme 8000 ti	WhisperKOOL
Extreme 3500 tiR	WhisperKOOL
Extreme 5000 tiR	WhisperKOOL
Extreme 8000 tiR	WhisperKOOL
Extreme 3500 tiR Fully Ducted.	WhisperKOOL
Extreme 5000 tiR Fully Ducted.	WhisperKOOL
Extreme 8000 tiR Fully Ducted.	WhisperKOOL
Phantom 3500	WhisperKOOL
Phantom 5000	WhisperKOOL
Phantom 8000	WhisperKOOL
Slimline LS	WhisperKOOL
Optimum 2200	CellarCool
Optimum 3300	CellarCool
Optimum 4400	CellarCool
Optimum 8800	CellarCool
CX2200	CellarCool
CX3300	CellarCool
CX4400	CellarCool
CX8800	CellarCool
SL2500	CellarCool
Ultimate 3300	CellarCool
Ultimate 4400	CellarCool
Ultimate 8800	CellarCool
Ultimate 3300–R	CellarCool
Ultimate 4400–R	CellarCool
Ultimate 8800–R	CellarCool
Ultimate FD 3300	CellarCool
Ultimate FD 4400	CellarCool
Ultimate FD 8800	CellarCool
Ultimate PLUS Fully Ducted 3300.	CellarCool
Ultimate PLUS Fully Ducted 4400.	CellarCool
Ultimate PLUS Fully Ducted 8800.	CellarCool

Matched-Pair:

Basic model	Brand name
Platinum Mini	WhisperKOOL
Platinum 4000	WhisperKOOL
Platinum 8000	WhisperKOOL
Platinum Twin	WhisperKOOL
Platinum 4000 Fully Ducted	WhisperKOOL
Platinum 8000 Fully Ducted	WhisperKOOL
Platinum Twin Fully Ducted	WhisperKOOL
Platinum 4000 Ducted	WhisperKOOL
Platinum 8000 Ducted	WhisperKOOL
Platinum Twin Ducted	WhisperKOOL
Ceiling Mount Mini	WhisperKOOL
Ceiling Mount 4000	WhisperKOOL
Ceiling Mount 8000	WhisperKOOL
Ceiling Mount Twin	WhisperKOOL
Quantum 9000	WhisperKOOL
Quantum 12000	WhisperKOOL
Magnum 9000	CellarCool
Magnum 12000	CellarCool
CM2500–S	CellarCool
CM3500–S	CellarCool
CM5000–S	CellarCool
CM9000 Twin Split	CellarCool
WM2500–S	CellarCool
WM3500–S	CellarCool
WM5000–S	CellarCool
WM9000 Twin-S	CellarCool
FD3500–S	CellarCool
FD5000–S	CellarCool
FD9000 Twin-S	CellarCool

(2) The alternate test procedure for the Vinotheque basic models listed in paragraph (1) of this Order is the test procedure for Walk-in Cooler Refrigeration Systems prescribed by DOE at 10 CFR part 431, subpart R, appendix C, (''Appendix C to Subpart R'') with the modifications provided below. All other requirements of Appendix C and DOE's other relevant regulations remain applicable.

In Appendix C to Subpart R, revise section 3.1.1 (which specifies modifications to AHRI 1250–2009 (incorporated by reference; see § 431.303)) to read:

3.1.1. In Table 1, Instrumentation Accuracy, refrigerant temperature measurements shall have an accuracy of ±0.5 °F for unit cooler in/out. Measurements used to determine temperature or water vapor content of the air (*i.e.* wet bulb or dew point) shall be accurate to within ±0.25 °F; all other temperature measurements shall be accurate to within ±1.0 °F.

In Appendix C to Subpart R, revise section 3.1.4 (which specifies modifications to AHRI 1250–2009) and add modifications of AHRI 1250–2009 Tables 3 and 4 to read:

3.1.4. In Tables 3 and 4 of AHRI 1250–2009, Section 5, the Condenser Air Entering Wet-Bulb Temperature requirement applies only to single-packaged dedicated systems. Tables 3 and 4 shall be modified to read:

TABLE 3—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED INDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity,[1] %	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55				Measure fan input wattage.[2]
Refrigeration Capacity	55	55	90	[3] 65	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition.

Notes:

[1] The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.

[2] Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately submetering the evaporator fan.

[3] Maximum allowable value for Single-Packaged Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

TABLE 4—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED OUTDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity,[1] %	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55				Measure fan input wattage.[2]
Refrigeration Capacity A	55	55	95	[3] 68	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition.
Refrigeration Capacity B	55	55	59	[3] 46	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler and system input power at moderate condition.
Refrigeration Capacity C	55	55	35	[3] 29	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler and system input power at cold condition.

Notes:
[1] The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.
[2] Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately submetering the evaporator fan.
[3] Maximum allowable value for Single-Packaged Dedicated Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

In Appendix C to Subpart R, following section 3.2.5 (instructions regarding modifications to AHRI 1250–2009), add sections 3.2.6 and 3.2.7 to read:

3.2.6. The purpose in section C1 of appendix C is modified by extending it to include Single-Packaged Dedicated Systems.

3.2.7. For general test conditions and data recording (appendix C, section C7), the test acceptance criteria in Table 2 and the data to be recorded in Table C2 apply to the Dual Instrumentation and Calibrated Box methods of test.

In Appendix C to Subpart R, revise section 3.3 to read:

3.3. *Matched systems, single-packaged dedicated systems, and unit coolers tested alone:* Test any split system wine cellar walk-in refrigeration system as a matched pair. Any condensing unit or unit cooler component must be matched with a corresponding counterpart for testing. Use the test method in AHRI 1250–2009 (incorporated by reference; see § 431.303), appendix C as the method of test for matched refrigeration systems, single-packaged dedicated systems, or unit coolers tested alone, with the following modifications:

* * * * *

In Appendix C to Subpart R, revise sections 3.3.3 through 3.3.3.2 to read:

3.3.3. *Evaporator fan power.*

3.3.3.1. The unit cooler fan power consumption shall be measured in accordance with the requirements in Section C3.5 of AHRI 1250–2009. This measurement shall be made with the fan operating at full speed, either measuring unit cooler or total system power input upon the completion of the steady state test when the compressors and condenser fan of the walk-in system is turned off, or by submetered measurement of the evaporator fan power during the steady state test.

Section C3.5 of AHRI 1250–2009 is revised to read:

Unit Cooler Fan Power Measurement. The following shall be measured and recorded during a fan power test.

$EF_{comp,on}$ = Total electrical power input to fan motor(s) of Unit Cooler, W
FS = Fan speed (s), rpm
N = Number of motors
P_b = Barometric pressure, in. Hg
T_{db} = Dry-bulb temperature of air at inlet, °F
T_{wb} = Wet-bulb temperature of air at inlet, °F
V = Voltage of each phase, V

For a given motor winding configuration, the total power input shall be measured at the highest nameplated voltage. For three-phase power, voltage imbalance shall be no more than 2%.

3.3.3.2. Evaporator fan power for the off-cycle is equal to the on-cycle evaporator fan power with a run time of ten percent of the off-cycle time.

$$EF_{comp,off} = 0.1 \times EF_{comp,on}$$

In Appendix C to Subpart R, following section 3.3.7.2, add new sections 3.3.8, 3.3.9, and 3.3.10 to read:

3.3.8. Measure power and capacity of single-packaged dedicated systems as described in sections C4.1.2 and C9 of AHRI 1250–2020. The third and fourth sentences of Section C9.1.1.1 of AHRI 1250–2020 (''Entering air is to be sufficiently dry as to not produce frost on the Unit Cooler coil. Therefore, only sensible capacity measured by dry bulb change shall be used to calculate capacity.'') shall not apply.

3.3.9. For systems with ducted evaporator air, or that can be installed with or without ducted evaporator air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of –0.00/+0.05 in. wc. If testing with the indoor air enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting evaporator airflow take precedence over airflow values specified in manufacturer installation instructions or product literature.

3.3.10. For systems with ducted condenser air, or that can be installed with or without ducted condenser air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of –0.00/

+0.05 in. wc. If testing with the outdoor enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting condenser airflow take precedence over airflow values specified in manufacturer installation instructions or product literature. If testing using the outdoor air enthalpy method, the requirements of section 8.6 of ASHRAE 37–2009 are not applicable.

In Appendix C to Subpart R, revise section 3.3.6 (which specifies modifications to AHRI 1250–2009) to read:

3.3.6. AWEF is calculated on the basis that walk-in box load is equal to half of the system net capacity, without variation according to high and low load periods and without variation with outdoor air temperature for outdoor refrigeration systems, and the test must be done as a matched or single-package refrigeration system, as follows:

For Indoor Condensing Units:

$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(90\,^{\circ}F)$$

$$LF = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(90\,^{\circ}F) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\dot{BL}}{\dot{E}_{ss}(90\,^{\circ}F) \cdot LF + \dot{EF}_{comp,off} \cdot (1 - LF)}$$

For Outdoor Condensing Units:

$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(95\,^{\circ}F)$$

$$LF(t_j) = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(t_j) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\sum_{j=1}^{n} BL(t_j)}{\sum_{j=1}^{n} E(t_j)}$$

$$BL(t_j) = \dot{BL} \cdot n_j$$

$$E(t_j) = \left[\dot{E}_{ss}(t_j) \cdot LF(t_j) + \dot{EF}_{comp,off} \cdot \left(1 - LF(t_j)\right)\right] \cdot n_j$$

Where:

BL is the non-equipment-related box load

LF is the load factor

And other symbols are as defined in AHRI 1250–2009.

(3) *Representations.* Vinotheque may not make representations about the efficiency of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Order is issued on the condition that the statements, representations, and information provided by Vinotheque are valid. If Vinotheque makes any modifications to the controls or configurations of a basic model subject to this Order, such modifications will render the waiver invalid with respect to that basic model, and Vinotheque will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Vinotheque may request that DOE rescind or modify the waiver if Vinotheque discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Vinotheque remains obligated to fulfill any applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Vinotheque may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of Walk-in Cooler Refrigeration Systems. Alternatively, if appropriate, Vinotheque may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signing Authority

This document of the Department of Energy was signed on May 10, 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 May 11, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–10244 Filed 5–13–21; 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 corporate filings:

Docket Numbers: EC21–91–000.
Applicants: Broadlands Wind Farm LLC, Lexington Chenoa Wind Farm LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Broadlands Wind Farm LLC, et al.
Filed Date: 5/7/21.
Accession Number: 20210507–5230.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: EC21–92–000.
Applicants: Rensselaer Generating LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Rensselaer Generating LLC, et al.
Filed Date: 5/7/21.
Accession Number: 20210507–5232.
Comments Due: 5 p.m. ET 5/28/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1863–004.
Applicants: Ingenco Wholesale Power, L.L.C.
Description: Compliance filing: Informational Filing Pursuant to Section 2 of the PJM Tariff to be effective N/A.
Filed Date: 5/10/21.
Accession Number: 20210510–5087.
Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21–1065–001.
Applicants: TransCanyon Western Development, LLC.
Description: Compliance filing: TransCanyon Western Formula Rate Compliance Filing to be effective 4/7/2021.
Filed Date: 5/6/21.
Accession Number: 20210506–5158.
Comments Due: 5 p.m. ET 5/27/21.

Docket Numbers: ER21–1738–000.
Applicants: Unitil Power Corp.
Description: Unitil Power Corp. submits Statement of all billing transactions under the Amended Unitil System Agreement for the period January 1, 2020 to December 31, 2020.
Filed Date: 4/22/21.
Accession Number: 20210422–5220.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1873–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc., submits First Quarter 2021 Capital Budget Report.
Filed Date: 5/7/21.
Accession Number: 20210507–5226.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1874–000.
Applicants: Indiana Crossroads Wind Farm LLC.
Description: Compliance filing: Compliance Filing and Revised Market-Based Rate Tariff to be effective 3/15/2021.
Filed Date: 5/10/21.
Accession Number: 20210510–5068.
Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21–1875–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: OATT Modifications—Administrative Filing to be effective 7/10/2021.
Filed Date: 5/10/21.
Accession Number: 20210510–5123.
Comments Due: 5 p.m. ET 6/1/21.

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: May 10, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–10214 Filed 5–13–21; 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: EC21–89–000.
Applicants: Quitman II Solar, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Quitman II Solar, LLC.
Filed Date: 5/6/21.
Accession Number: 20210506–5185.
Comments Due: 5 p.m. ET 5/27/21.

Docket Numbers: EC21–90–000.
Applicants: Cool Springs Solar, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Cool Springs Solar, LLC.
Filed Date: 5/6/21.
Accession Number: 20210506–5187.
Comments Due: 5 p.m. ET 5/27/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–194–006.

Applicants: Hartree Partners, LP.
Description: Notice of Change in Status of Hartree Partners, LP.
Filed Date: 5/6/21.
Accession Number: 20210506–5189.
Comments Due: 5 p.m. ET 5/27/21.

Docket Numbers: ER17–1394–004; ER19–2728–002; ER19–2729–002.
Applicants: 83WI 8me, LLC, Lily Solar LLC, Lily Solar Lessee, LLC.
Description: Notice of Non-Material Change in Status of X-Elio Public Utilities.
Filed Date: 5/6/21.
Accession Number: 20210506–5190.
Comments Due: 5 p.m. ET 5/27/21.

Docket Numbers: ER19–2757–005.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2021–05–07 FERC Order 831- Reconciliation of Commission-Approved Tariff Records to be effective 3/21/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5184.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER20–2148–003.
Applicants: Lexington Chenoa Wind Farm LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 5/7/21.
Accession Number: 20210507–5185.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1454–001.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: Tariff Amendment: 2021–05–07_SA 2800 ATC-City of Stoughton Substitute 1st Rev CFA to be effective 5/17/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5026.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1568–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Amendment to March 21, 2021 Tri-State Generation and Transmission Association, Inc. tariff filing.
Filed Date: 5/5/21.
Accession Number: 20210505–5110.
Comments Due: 5 p.m. ET 5/26/21.

Docket Numbers: ER21–1684–000.
Applicants: DesertLink, LLC.
Description: Informational Filing of the Projected Net Revenue Requirement and True-up Adjustment of DesertLink, LLC.
Filed Date: 4/15/21.
Accession Number: 20210415–5047.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: ER21–1742–000.
Applicants: Tampa Electric Company.
Description: Supplemental Motion to April 22, 2021 Request for Waiver of Rate Schedule Provisions, et al. of Tampa Electric Company.
Filed Date: 5/7/21.
Accession Number: 20210507–5028.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1864–000.
Applicants: The Empire District Electric Company.
Description: Compliance filing: Compliance with Order No. 864 to be effective N/A.
Filed Date: 5/6/21.
Accession Number: 20210506–5172.
Comments Due: 5 p.m. ET 5/27/21.

Docket Numbers: ER21–1865–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original IISA, Service Agreement No. 6061; Queue No. AF1–227 to be effective 4/14/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5050.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1866–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Revisions to the Schedule and Appendices of the OMA 230 kV Bemidji-Grand Rapids to be effective 7/6/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5057.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1867–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp NITSA SA T–1098 Low Voltage Charges to be effective 6/1/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5060.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1868–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 20–00037 NPC 302PN 8me LLC EPC Agreement to be effective 5/8/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5068.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1869–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Filing of a CIAC Agreement to be effective 5/7/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5100.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1870–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Tri-State, Empire Const Agmt at Pinto (Rev1) to be effective 7/7/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5106.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1871–000.
Applicants: Wisconsin Public Service Corporation.
Description: § 205(d) Rate Filing: WPSC FERC Form 1 Update to be effective 7/7/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5114.
Comments Due: 5 p.m. ET 5/28/21.

Docket Numbers: ER21–1872–000.
Applicants: Avangrid Renewables, LLC.
Description: Baseline eTariff Filing: Rate Schedule Tariff to be effective 6/6/2021.
Filed Date: 5/7/21.
Accession Number: 20210507–5153.
Comments Due: 5 p.m. ET 5/28/21.

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: May 7, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–10213 Filed 5–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15111–000]

Saugerties Community Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 15, 2021, Saugerties Community Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the

feasibility of the Saugerties Community Hydro Project to be located at the Diamond Mills Dam on Esopus Creek in Saugerties, Ulster County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An 140-acre impoundment with a normal volume of 826 acre-feet at a normal maximum surface elevation of 46.5 feet National Geodetic Vertical Datum of 1929; (2) an existing 350-foot-long, 32-foot-high concrete gravity dam with a 340-foot-long spillway; (3) an existing 30-foot-long, 9-foot-high auxiliary spillway; (4) an existing 40-foot-long, 6-foot-diameter penstock; (5) two new 759-kilowatt horizontal Kaplan bulb turbines; (6) a new 15-foot-long, 10-foot-wide powerhouse; (7) a new three-phase, 13.2-kilovolt, 250-foot-long transmission line extending from the powerhouse to the proposed interconnection point west of the project; and (8) appurtenant facilities. The proposed project would have an annual generation of 6,000 megawatt-hours.

Applicant Contact: Joel Herm, Saugerties Community Hydro, LLC, P.O. Box 224, Rhinebeck, NY 12572; phone: 917–244–3607.

FERC Contact: Woohee Choi; email: *woohee.choi@ferc.gov*; phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15111–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15111) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–10227 Filed 5–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–126]

Georgia Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters—Sand Mine.

b. *Project No:* 2413–126.

c. *Date Filed:* August 30, 2019, and supplemented on April 22, 2021, and April 26, 2021.

d. *Applicant:* Georgia Power Company (licensee).

e. *Name of Project:* Wallace Pumped Storage Hydroelectric Project.

f. *Location:* The proposed non-project sand mine is located in the northern part of Lake Oconee, the project reservoir, in Greene County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Herbie Johnston, Hydro General Manager, 600 North 18th Street, Bin 16N–8180, Birmingham, AL 35203, 205–257–1359.

i. *FERC Contact:* Michael Calloway at (202) 502–8041 or *michael.calloway@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 10, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2413–126. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Request: On August 30, 2019, the licensee filed a request with the Commission for approval to permit a non-project use of project lands and waters to allow River Sand Incorporated to dredge an approximately 2-mile stretch of the upper project reservoir in Greene County, Georgia for the purposes of commercial sand mining. The Commission noticed the original application on October 21, 2019. On April 22 and 26, 2021, the licensee filed an amendment to their original application to provide avoidance and mitigation measures regarding cultural resources that may exist within the area. The licensee also filed a letter from the Georgia State Historic Preservation Office providing a no adverse effect call provided the prescribed measures were met. The sorting area will be located on 6 acres of privately-owned land within the project boundary that the licensee has flowage rights over. The mine

operator expects the year-round operation of the sand mine will extract 5,000 to 25,000 tons of sediment per year. The operation will not be conducted on U.S. Forest Service Land.

l. *Locations of the Application:* This filing 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–10228 Filed 5–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2444–037]

Northern States Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request for a temporary amendment of reservoir elevation requirement.

b. *Project No.:* 2444–037.

c. *Date Filed:* April 7, 2021.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydroelectric Project.

f. *Location:* The project is located on the White River in Ashland County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Matthew Miller, 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702, (715) 737–1353.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2444–037.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary amendment of its minimum reservoir elevation requirement to allow for bridge and gate repairs. The applicant states it would initially draw down the reservoir by approximately 5 feet below the normal pond elevation to allow for repair of the bridge that crosses the spillway. The applicant expects this work to be completed approximately 10 weeks after commencement of the drawdown. Following completion of the bridge work, the applicant intends to lower the reservoir another 3 feet, or 8 feet below the normal elevation, to allow for work on its spillway gates which would require an additional 2 weeks before beginning to refill the reservoir. The applicant expects to return the reservoir to its normal elevation approximately 14 weeks after the beginning of the drawdown, but requests the temporary amendment be effective from June 1 through October 31, 2021 to allow for weather and construction contingencies.

l. 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://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–10226 Filed 5–13–21; 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: RP21–815–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing—ConnocoPhillips Company to be effective 5/6/2021.
Filed Date: 5/6/21.
Accession Number: 20210506–5047.
Comments Due: 5 p.m. ET 5/18/21.

Docket Numbers: RP21–816–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Permanant Capacity Release—Negotiated Rate Agreements—5/7/2021 to be effective 5/7/2021.
Filed Date: 5/6/21.
Accession Number: 20210506–5070.
Comments Due: 5 p.m. ET 5/18/21.

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: May 10, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–10212 Filed 5–13–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9056–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed May 3, 2021 10 a.m. EST Through May 10, 2021 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210050, Draft, NOAA, FL, Draft Amendment 53 to the Fishery Management Plan for the Reef Fish Fishery in the Gulf of Mexico, *Comment Period Ends:* 06/28/2021, *Contact:* Peter Hood 727–551–5728.

EIS No. 20210051, Draft, USN, CA, Navy Old Town Campus Revitalization, *Comment Period Ends:* 07/13/2021, *Contact:* Ron Bochenek 619–705–5560.

EIS No. 20210052, Draft, NMFS, PRO, Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program, *Comment Period Ends:* 06/28/2021, *Contact:* Stephen Manley 301–427–8476.

Amended Notice

EIS No. 20210041, Draft Supplement, CHSRA, CA, California High-Speed Rail San Jose to Merced Project Section Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, *Comment Period Ends:* 06/09/2021, *Contact:* Scott Rothenberg 916–403–6936. Revision to FR Notice Published 4/23/2021; Correction to Comment Period Due Date from June 7, 2021 to June 9, 2021.

Dated: May 10, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–10225 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10024–02–Region 1]

2021 Annual Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the 2021 Annual Joint Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to Regional Haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on June 15, 2021 starting at 2:30 p.m. and ending at 4:00 p.m.

ADDRESSES: Virtual meeting. Further information on the details for the virtual public meeting will be available at *http://otcair.org.*

FOR FURTHER INFORMATION CONTACT: *For documents and press inquiries contact:* Ozone Transport Commission,

89 South St., Suite 602, Boston, MA 02111; (617) 259–2005; email: *ozone@otcair.org;* website: *http://www.otcair.org.*

For registration: To register for the virtual meeting, please use the online registration form available at *http://otcair.org,* or contact the OTC at (617) 259–2005 or by email at *ozone@otcair.org.*

Supplementary Information: The Clean Air Act Amendments of 1990 contain Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to address ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed at in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (617) 259–2005; by email: *ozone@otcair.org* or via the OTC website at *http://www.otcair.org.*

Dated: May 10, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2021–10247 Filed 5–13–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 14, 2021.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *SmartFinancial, Knoxville, Tennessee*; to merge with Sevier County Bancshares, Inc., and thereby indirectly acquire Sevier County Bank, both of Sevierville, Tennessee.

B. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Banc of California, Inc., Santa Ana, California*; to acquire Pacific Mercantile Bancorp, and thereby indirectly acquire Pacific Mercantile Bank, both of Costa Mesa, California.

Board of Governors of the Federal Reserve System, May 11, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–10250 Filed 5–13–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0840]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Formative Research and Tool Development'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 12, 2021 to obtain comments from the public and affected agencies. CDC received one non-substantive public comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Formative Research and Tool Development—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This purpose of this information collection request is to allow the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), to conduct formative research information collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP's four priority diseases (HIV/AIDS, sexually transmitted diseases/infections (STD/STI), viral hepatitis, tuberculosis elimination) and the Division of School and Adolescent Heath (DASH).

The Centers for Disease Control and Prevention (CDC), and NCHHSTP request approval for an Extension and a three-year approval for the previously approved Generic Clearance, ''Formative Research and Tool Development.'' Formative research is the basis for developing effective strategies including communication channels for influencing behavior change. It helps researchers identify and understand the characteristics, interests, behaviors, and needs of target populations that influence their decisions and actions. Formative research is integral in developing programs, as well as improving existing and ongoing programs. Formative research also looks at the community in which a public health intervention is being, or will be, implemented and helps the project staff understand the interests, attributes, and needs of different populations and persons in that community. Formative research can occur before a program is designed and implemented, or while a program is being conducted.

NCHHSTP formative research is necessary for developing new programs or adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S, as well as for school and adolescent health. CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the development of a product.

Products from these formative research studies will be used for prevention of HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis. Findings from these studies may also be presented as evidence to disease-specific National Advisory Committees, to support revisions to recommended prevention and intervention methods, as well as new recommendations. Much of CDC's health communication takes place within campaigns that have lengthy planning periods, or timeframes that accommodate the standard Federal process for approving data collections. Short term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of scientifically valid and population-appropriate methods, interventions, and instruments.

This request includes studies investigating the utility and acceptability of proposed sampling and recruitment methods, intervention content and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will provide information about how respondents answer questions and ways in which question response bias and error can be reduced.

This request also includes collection of information from public health programs to assess needs related to initiation of a new program activity or expansion or changes in scope, or implementation of existing program activities to adapt them to current needs. The information collected will be used to advise programs and provide capacity-building assistance tailored to identified needs.

Overall, these development activities are intended to provide information that will increase the success of the surveillance or research projects through increasing response rates and decreasing response error, thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) Structured and qualitative interviewing for surveillance, research, interventions, and material development, (2) cognitive interviewing for development of specific data collection instruments, (3) methodological research, (4) usability testing of technology-based instruments and materials, (5) field testing of new methodologies and materials, (6) investigation of mental models for health decision-making to inform health communication messages, and (7) organizational needs assessments to support development of capacity.

Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer assisted development activities) are selected purposively from those who respond to recruitment advertisements. In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project.

The total annualized burden hours requested for this collection is 46,516. Participation of respondents is voluntary. There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
General public	Screener	56,840	1	10/60
Health care providers	Screener	24,360	1	10/60
General public	Consent Forms	28,420	1	5/60
Health care providers	Consent Forms	12,180	1	5/60
General public	Individual Interview	4,620	1	1
Health care providers	Individual Interview	1,980	1	1
General public	Focus Group Interview	2,800	1	2
Health care providers	Focus Group Interview	1,200	1	2
General public	Survey of Individual	21,000	1	30/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Health care providers	Survey of Individual	9,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–10149 Filed 5–13–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21FC; Docket No. CDC–2021–0048]

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, Nurse Fatigue-Mitigation Education: Does it Change Nurse Sleep Behavior? The purpose of this project is to evaluate the online NIOSH Training for Nurses on Shift Work and Long Work Hours for effectiveness at improving nurse sleep and well-being. Study 1 describes the nurses who have taken the training since first published on the NIOSH website in 2015. Study 2 assesses the effectiveness of the training on nurse sleep health and well-being over a six-month post-training period.

DATES: CDC must receive written comments on or before July 13, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0048 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, 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

Nurse Fatigue-Mitigation Education: Does it Change Nurse Sleep Behavior?—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Many nurses in the United States work in around-the-clock healthcare facilities, providing necessary care to patients and the public. Providing these services requires nurses to work nonstandard hours, including shift work (*e.g.,* early mornings, over-nights, rotating between days and nights) and long work hours. These work organizational characteristics are primary factors contributing to sleep-related fatigue, and decreased health and well-being for nurses. Studies have found 36% of healthcare workers (including nurses) report sleeping less than the recommended 7–9 hours of sleep/24 hours, with prevalence rates climbing to a little over 50% for those working night shifts. This is concerning, as insufficient sleep not only increases the risk for a patient care error to occur but can also jeopardize the health of nurses.

In 2015, the National Institutes for Occupational Safety and Health (NIOSH) published an online resource to address the risks associated with shift work and other nonstandard work hours, titled ''Training for Nurses on Shift Work and Long Work Hours.'' This no-cost training is designed to educate nurses, nurse managers and other interested healthcare workers on the health and safety risks associated with nonstandard work hours. In addition to sleep and fatigue-related background information, the training provides strategies for improving nurse sleep and reducing fatigue-related risks when

working shift work in the healthcare setting.

Over five years have passed since the training was published online. Since then, the nursing workforce has faced a changing healthcare landscape. In response, the two studies in this project have been designed to evaluate whether the NIOSH Training for Nurses is effective at helping nurses improve their sleep and well-being, as well as assess the reach of training dissemination. This evaluation project will help NIOSH assess gaps in training distribution, as well as identify any needs to enhance training content, ensuring the training is providing the intended service.

The goal of Study 1 is to provide a description of the registered nurses (RNs) who have already completed the NIOSH ''Training for Nurses on Shift Work and Long Work Hours.'' The goal of Study 2 is to evaluate the effectiveness of the training on objective (*i.e.,* actigraphy watches) and subjective sleep health (composite and separate components [*i.e.,* duration, efficiency, timing, quality, daytime sleepiness]) and well-being from baseline over one, three, and six months post-training. Study 2 explores the relationship between nurse characteristics and behavioral intention as well as the relationship between behavioral intention and sleep health post-training at one, three, and six months.

Information gathered from this evaluation study will allow NIOSH to identify where future dissemination efforts for this training product should be targeted, as well as assess whether the training should be enhanced to meet the greater needs of the current nursing population.

For Study 1, NIOSH will be using pre-existing data already collected by the CDC from individuals who have received continuing professional licensing education credits following training completion. For Study 2, NIOSH will be recruiting 50 RNs to volunteer to participate. Recruitment will take approximately three months through online platforms and with assistance of the NIOSH staff's nursing contacts across the country.

During Study 2, NIOSH will collect data before and after RNs complete the NIOSH Training for Nurses. RNs enrolled in the study will be asked to take online surveys and wear an actigraphy watch during this study. Actigraphy watches are research grade sleep data collection instruments, similar to a wristwatch. Actigraphy watches will be supplied by NIOSH for participant use during the study. Baseline measures include an online survey with questions about demographics, workplace characteristics (*i.e.,* job tenure, shift length), sleep quality, daytime sleepiness, well-being, complete online daily sleep diaries, and activate actigraphy watches for seven days prior to taking the online training. One month after baseline measures, participants will be asked to take the NIOSH online nurse training. It takes approximately 3.5 hours to complete, and participants will have the opportunity to receive Continuing Education (CD) credits upon completion. After completing the online nurse training, participants will answer four immediate post-training online questions regarding behavioral intention and feedback on the participant training experience. The participant will then be scheduled for the one-month post-training data collection period. At each post-training follow-up period, participants will be asked to follow the same sampling protocol they completed at baseline (seven day actigraphy and sleep/wake diary, online survey on sleep quality, daytime sleepiness, well-being, and behavioral intention towards sleep promoting behavior), as well as three open-ended questions to describe strategies adopted to improve sleep, and facilitators and barriers to adoption. The six-month follow-up will exclude behavioral intention measures.

CDC requests OMB approval for an estimated 341 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Registered Nurses	Baseline Survey	50	1	23/60	19
	Online Nurses Training	50	1	3.5	175
	Immediate Post-Training Survey	50	1	7/60	6
	Post-Training (1, 3, and 6-months) Survey.	50	3	16/60	40
	Consensus Sleep Diary	50	4	21/60	70
	Actigraphy watch training	50	1	10/60	8
	Actigraphy watch fitting	50	4	7/60	23
Total					341

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–10152 Filed 5–13–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-21–0696]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National HIV Prevention Program Monitoring and Evaluation (NHM&E) OMB 0920–0696, Expiration 10/31/2021 to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 2, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to

allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National HIV Prevention Program Monitoring and Evaluation (NHM&E) (OMB Control No. 0920–0696, Exp. 10/31/2021)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC seeks to request a three-year Office of Management and Budget (OMB) approval to revise the previously approved project and continue the collection of standardized HIV prevention program evaluation data from health departments and community-based organizations (CBOs) who receive federal funds for HIV prevention activities. Health department grantees have the options to key-enter or upload data to a CDC-provided web-based software application (EvaluationWeb®). CBO grantees may only key-enter data to the CDC-provided web-based software application. The evaluation and reporting process is necessary to ensure that CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed standardized NHM&E variables through extensive consultation with representatives from health departments, CBOs, and national partners (*e.g.,* The National Alliance of State and Territorial AIDS Directors and Urban Coalition of HIV/AIDS Prevention Services). This revision includes changes to the data variables to adjust to the different monitoring and evaluation needs of new funding announcements without a substantial change in burden.

CDC requires CBOs and health departments who receive federal funds for HIV prevention to report nonidentifying, client-level and aggregate level, standardized evaluation data to: (1) Accurately determine the extent to which HIV prevention efforts are carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) Improve ease of reporting to better meet these data needs; and (3) Be accountable to stakeholders by informing them of HIV prevention activities and use of funds in HIV prevention nationwide.

CDC HIV prevention program grantees will collect, enter or upload, and report agency-identifying information, budget data, intervention information, and client demographics and behavioral risk characteristics with an estimate of 204,498 burden hours, representing no change from the previously approved burden hours. Data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry or upload into the web-based system. There are no additional costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Departments	Health Department Reporting	66	2	1,427
Community-based Organizations	Community-based Organization Reporting	150	2	54

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–10145 Filed 5–13–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–20PJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Formative Research on Community-Level Factors that Promote the Primary Prevention of Adverse Childhood Experiences (ACEs) and Opioid Misuse Among Children, Youth, and Families in Tribal American Indian and Alaska Native (AI/AN) Communities'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and

Recommendations'' notice on July 2,2020 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Formative Research on Community-Level Factors that Promote the Primary Prevention of Adverse Childhood Experiences (ACEs) and Opioid Misuse Among Children, Youth, and Families in Tribal American Indian and Alaska Native (AI/AN) Communities—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Adverse childhood experiences (ACEs) are preventable, potentially traumatic events that occur in childhood (0–17 years) such as experiencing violence, abuse, or neglect; witnessing violence in the home; and having a family member attempt or die by suicide. There is a robust evidence base linking ACEs to a variety of poor health outcomes across the life span, including depression, alcohol and substance use disorder, and violence perpetration and victimization. The ongoing opioid epidemic is a complex and significant public health crisis that exposes children to opioid misuse, violence, and other ACEs, and challenges the ability of Health and Human Service (HHS) systems to mitigate the effects of opioid misuse and ACEs on children and families across the U.S. American Indian/Alaska Native (AI/AN) populations experience a disproportionate burden of opioid misuse and ACEs, and ACE-related health outcomes, including opioid overdose, sexual assault, and suicide attempts. The nature and consequences of ACEs in Tribal communities is unique because of historical trauma and stark socioeconomic disparities. In addition, there are gaps in the provision of adequate healthcare.

This collection addresses critical research gaps and extends efforts to prevent violence and other ACEs before they occur and to build evidence of effectiveness of community-level strategies and approaches at the outer levels of the social ecology to Tribal communities. Results from this data collection will be communicated to relevant public health officials and community stakeholders in the study locations. These local public health officials and community stakeholders will use the study results to guide strategies to further strengthen their local prevention efforts within their regions.

Data collection methods used in this qualitative study include well-established qualitative methods, including in-depth open-ended individual interviews and focus groups. Quantitative methods include brief structured surveys. There will be a total of six Tribal communities (three urban and three rural) in regions identified with higher opioid overdose mortality rates relative to other areas in Indian Country. Due to COVID–19, at the time of the focus groups/interviews, social distancing and public health safety measures will be implemented, including considerations for phone/virtual meetings instead of in-person sessions.

The total estimated annualized burden hours are 441. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults 18 years or older affected by the opioid epidemic (*e.g.,* parents/caregivers of AI/AN children, Tribal Elders) living in Tribal urban and rural/reservation communities.	Information Letter	160	1	5/60
	Telephone screening	160	1	25/60
	Confirmation email/letter	120	1	5/60
	Reminder email	120	1	5/60
	Informed Consent	120	1	25/60
	Demographic Survey	120	1	25/60
	Focus group/interview	44	1	2
	Focus group/interview	64	1	2
	Focus group/interview	12	1	2

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–10144 Filed 5–13–21; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10054 and CMS–10396]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *June 14, 2021.*

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* New Technology Services for Ambulatory Payment Classifications under the Outpatient Prospective Payment System; *Use:* Section 1833(t)(6) of the Social Security Act (the Act) states, ''The Secretary shall provide for an additional payment under this paragraph for any of the following that are provided as part of a covered OPD service (or group of services).'' In accordance with the Act, CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that we continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to our attention specific services that they wish us to evaluate for New Technology APC payment.

The information that we seek to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies.

Both the New Technology APC provision and the transitional pass-through provisions provide ways for ensuring appropriate payment for new technologies for which the use and costs are not adequately represented in the base year claims data on which the outpatient PPS is constructed. Although individual drugs and biologicals and categories of medical devices will receive transitional pass-through payments for 2 to 3 years from the date payment is initiated for the specific item or category, the underlying statutory provision is permanent and provides an on-going mechanism for reflecting the introduction of new items into the payment structure in a timely manner. New Technology APCs are designed to allow appropriate payment for new technology services that are not covered by the transitional pass-through provisions. *Form Number:* CMS–10054 (OMB control number: 0938–0272); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 160. (For policy questions regarding this collection contact Allison Bramlett at 410–786–6556.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medication Therapy Management Program Improvements; *Use:* Information collected by Part D MTM programs as required by the Standardized Format for the CMR summary is used by beneficiaries or their authorized representatives, caregivers, and their healthcare providers to improve medication use and achieve better healthcare outcomes. Members in a Part D sponsors' plan who are eligible are enrolled in the sponsors' MTM program and offered a CMR which is a consultation between the MTM provider (such as a pharmacist) with the beneficiary to review their medications. After a CMR is performed, the sponsor creates and sends a summary of the CMR to the beneficiary that includes a medication action plan and personal medication list using the Standardized Format; *Form Number:* CMS–10396 (OMB control number 0938–1154); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits; *Number of Respondents:* 807; *Total Annual Responses:* 2,386,955; *Total Annual Hours:* 1,591,383. (For policy questions regarding this collection contact Victoria Dang at 410–786–3991.)

Dated: May 11, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–10260 Filed 5–13–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB No. 0985–0048]

Agency Information Collection Activities; Proposed Collection; Public Comment Request; State Grants for Assistive Technology Program State Plan for Assistive Technology; [OMB# 0985–0048]

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the proposed renewal for the information collection requirements related to State Grants for Assistive Technology Program State Plan for Assistive Technology.

DATES: Submit written comments on the collection of information by June 14, 2021.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Robert Groenendaal, Assistive Technology Program Manager, Center for Innovation and Partnership in the Office of Interagency Innovation Administration for Community Living, 330 C Street SW, Washington, DC 20201, Phone: 202–795–7356, Email: *Robert.Groenendaal@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. ACL is requesting approval for the renewal of a data collection associated with the State Grants for Assistive Technology Program, State Plan for Assistive Technology.

The information collected through this data collection instrument is necessary for ACL and states to comply with Sections 4 and 7 of the Assistive Technology Act of 1998, as amended (AT Act). ACL is requesting a renewal of the state plan data collection instrument (OMB No. 0985–0048). Section 4 of the AT Act authorizes grants to public agencies in the 50 states and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas (states and outlying areas). With these funds, the 56 states and outlying areas operate ''Statewide AT Programs'' that conduct activities to increase access to and acquisition of assistive technology (AT) for individuals with disabilities and older Americans.

Divided into two comprehensive activity categories: ''State-level Activities'' and ''State Leadership Activities,'' according to Section 4 of the AT Act, as a condition of receiving a grant to support their Statewide AT Programs, the 56 states and outlying areas must provide to ACL: (1) Applications and (2) annual progress reports on their activities.

Applications: The application required of states and outlying areas is a three-year State Plan for Assistive Technology (State Plan for AT or State Plan) (OMB No. 0985–0048). The content of the State Plan for AT is based on the requirements in Section 4(d) of the AT Act.

Annual Reports: In addition to submitting a State Plan, every three years, states and outlying areas are required to submit annual progress reports on their activities. The data required in that progress report is specified in Section 4(f) of the AT Act (OMB No. 0985–0042).

National aggregation of data related to conducting required state-level and state leadership activities is necessary for the Government Performance and Results Modernization Act of 2010 (GPRAMA) (Pub. L. 111–352), as well as an Annual Report to Congress (see ''Section 7 Requirements Necessitating Collection'' below). Therefore, this data collection instrument provides a way for all 56 grantees—50 U.S. states, DC, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to collect and report data on their activities in a consistent manner, including a uniform survey to be given to consumers. This uniform survey is included as part of the Assistive Technology Annual Performance Report (APR) data collection package (OMB No. 0985–0042).

Section 7(d) of the AT Act requires that ACL submit to Congress an annual report on the activities conducted under the Act and an analysis of the progress of the states and outlying areas in meeting measurable goals. This report must include a compilation and summary of the data collected under Section 4(f). In order to make this possible, states and outlying areas must provide their data uniformly. This data collection instrument was developed to ensure that all 56 states and outlying areas report data in a consistent manner in alignment with the requirements of Section 4(f).

As stated above, ACL will use the information collected via this instrument to:

(1) Complete the annual report to Congress required by the AT Act;

(2) Comply with reporting requirements under the Government Performance and Results Modernization Act of 2010 (GPRAMA) (Pub. L. 111–352); and

(3) Assess the progress of states and outlying areas regarding measurable goals.

Data collected from the grantees will provide a national description of activities funded under the AT Act to increase the access to and acquisition of AT devices and services through statewide AT programs for individuals with disabilities. Data collected from grantees will also provide information for usage by Congress, the Department, and the public. In addition, ACL will use this data to inform program management, monitoring, and technical assistance efforts. States will be able to use the data for internal management and program improvement.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** on February 25, 2021 in FR 86 pg. 11545–11546. There were no public comments received during the 60-day FRN comment period.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
State Plan for Assistive Technology	56	1	73.0	4,088

Dated: May 11, 2021.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2021–10239 Filed 5–13–21; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2047]

Rick Shepard: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Rick Shepard for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Shepard was convicted of one felony count under Federal law for conspiracy to import and introduce misbranded drugs into interstate commerce. The factual basis supporting Mr. Shepard's conviction is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Shepard was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of February 14, 2021 (30 days after receipt of the notice), Mr. Shepard had not responded. His failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable May 14, 2021.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4029), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(C) of the FD&C, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance. On September 14, 2020, Mr. Shepard was convicted, as defined in section 306(*l*)(1) of the FD&C Act, in the U.S. District Court for the District of Kansas, when the court entered judgment against him for the offense of ''Conspiracy to Import and Introducing Misbranded Drugs into Interstate Commerce, a Class D Felony'' in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the Plea Agreement in Mr. Shepard's case, filed on January 27, 2020, Mr. Shepard owned, controlled, and operated Epic Products, LLC (Epic), a Kansas Limited Liability Company, from approximately October 2013 until at least April 2018. Epic was engaged in wholesaling of products under the labeled name ''Euphoric'' that were marketed as ''all-natural, herbal supplements for male enhancement.'' Euphoric's label made no mention of tadalafil and sildenafil citrate. However, Mr. Shepard knew that Euphoric contained tadalafil and sildenafil citrate because he imported these drugs, repacked them, and sold them under the Euphoric label. Specifically, Mr. Shepard purchased in bulk from suppliers in China capsules containing tadalafil and sildenafil citrate that he had delivered to mail and packing stores on the east coast before forwarding them to his address in Kansas.

Sildenafil citrate is the active ingredient in Pfizer, Inc.'s FDA-approved erectile dysfunction drug, VIAGRA. Likewise, tadalafil is the active ingredient in Eli Lilly & Company's FDA-approved erectile dysfunction drug, CIALIS. Once Mr. Shepard received the bulk capsules, he repackaged them and applied his Euphoric label. Mr. Shepard then sold these capsules in novelty stores in Kansas, Missouri, and Colorado. Throughout this entire scheme, Mr. Shepard did not possess a valid wholesale drug distribution license, a valid pharmacy license, or a license to prescribe prescription drugs. Finally, from January 2012 to September 2017, Mr. Shepard deposited $1.8 million into his business account.

As a result of this conviction, FDA sent Mr. Shepard, by certified mail on December 21, 2020, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding, under section 306(b)(3)(C) of the FD&C Act, that Mr. Shepard's felony conviction for one felony count under Federal law, for the offense of ''Conspiracy to Import And Introducing Misbranded Drugs into Interstate Commerce, a Class D Felony,'' was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported, repackaged, and introduced misbranded tadalafil and sildenafil capsules into interstate commerce.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Shepard's offense and concluded that this felony offense warranted the imposition of a 5-year period of debarment. The proposal informed Mr. Shepard of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Shepard received the proposal and notice of opportunity for a hearing on January 15, 2021. He failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section

306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Rick Shepard has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Shepard is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Shepard is a prohibited act.

Any application by Mr. Shepard for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2020–N–2047 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: May 11, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10249 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on June 3 and 4, 2021, from 9 a.m. Eastern Time to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, *james.swink@fda.hhs.gov,* 301–796–6313, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website *https://www.fda.gov/advisory-committees/medical-devices/medical-devices-advisory-committee* and scroll down to the appropriate advisory committee meeting link or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On June 3, 2021, during session I, the committee will discuss and make recommendations regarding the classification of topical refrigerants (vapocoolants), which are currently unclassified preamendment devices, to class II (general and special controls). During session II, the committee will discuss and make recommendations regarding the classification of acupressure devices, which are currently unclassified preamendment devices, to class I (general controls). During session III, the committee will discuss and make recommendations regarding the classification of electro-acupuncture stimulators, which are currently unclassified preamendment devices, to class II (general and special controls).

On June 4, 2021, during session I, the committee will discuss and make recommendations regarding the classification of attention task performance recorders, which are currently unclassified preamendment devices, to class II (general and special controls). During session II, the committee will discuss and make recommendations regarding the classification of optical contour sensing devices, which are currently unclassified preamendment devices, to class I (general controls). During session III, the committee will discuss and make recommendations regarding the classification of plunger-like joint manipulators, which are currently unclassified preamendment devices, to class II (general and special controls).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/medical-devices/medical-devices-advisory-committee.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 21, 2021. Oral presentations from the public will be scheduled on June 3 and June 4, 2021, between approximately 9:15 a.m. and 10:15 a.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 13, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will

notify interested persons regarding their request to speak by May 14, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 10, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10167 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0347]

Evaluating the Clinical Pharmacology of Peptides; Establishment of a Public Docket; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to collect comments on evaluating the clinical pharmacology of peptides. For the purpose of this request, FDA is specifically interested in comments regarding the characterization of the effects of hepatic impairment, drug-drug interactions, and immunogenicity on the pharmacokinetics of peptides, as well as the effects of peptides on cardiac electrophysiology. However, there may be other clinical pharmacology considerations concerning the development of peptides. Public comments will help FDA develop recommendations for the design and conduct of studies important to the safe and effective use of peptides and facilitate the regulatory assessment of such studies.

DATES: Although you can comment at any time, to ensure that the Agency considers your comment in our development of recommendations, submit either electronic or written information and comments by July 13, 2021.

ADDRESSES: You may submit comments and information at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0347 for ''Evaluating the Clinical Pharmacology of Peptides; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jagan Parepally, Office of Clinical Pharmacology, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1688.

SUPPLEMENTARY INFORMATION:

I. Background

FDA uses the term ''peptide'' to refer to polymers composed of 40 or fewer amino acids.[1] Peptides can be isolated

[1] FDA Proposed Rule ''Definition of the Term 'Biological Product' '' (83 FR 63817 at 63821, December 12, 2018).

from whole animal tissue, or produced in vitro, synthetically or through recombinant expression, and often serve as signaling molecules for many physiologic functions that are regulated by endogenous proteins. Peptides can exhibit distinct combinations of characteristics regarding their chemistry, pharmacology, sites of action, pharmacokinetic disposition, and pharmacodynamics. Although FDA has been regulating peptides for decades, there is a growing appreciation for specific considerations for the design and conduct of clinical pharmacology studies to assess peptides, such as those designed to evaluate the effects of organ impairment or drug interactions. Currently, there are no FDA-published guidance documents on clinical pharmacology assessments that contain specific recommendations for peptides.[2]

II. Request for Information and Comments

Interested persons are invited to provide detailed information and comments on certain aspects of evaluating the clinical pharmacology of peptides. For all questions, organize any discussion by the type of peptide (*e.g.,* isolated from animal source, or produced in vitro, synthetically or through recombinant expression) and route of administration. Please provide the rationale for your suggestions and include supporting data if available. FDA is particularly interested in responses to the following overarching questions:

(1) Under what circumstances should the following assessments be warranted or not warranted for peptides?

(a) Evaluating pharmacokinetics-based drug-drug interactions (DDIs)

(b) Evaluating the pharmacokinetics in hepatic impairment

(c) Evaluating immunogenicity and its impact on pharmacokinetics, safety, and efficacy

(d) Evaluating QT prolongation

(2) In circumstances where the assessments above are warranted, what types of assessments are suitable and why? What are the study design considerations (*e.g.,* in vitro test systems, population, analytes, immunogenicity risk assessment, immunogenicity assay development and validation) for the types of assessments discussed in the following items? Please describe the rationale for any design considerations proposed.

(a) For evaluating pharmacokinetics-based DDIs (*e.g.,* in vitro studies, dedicated clinical studies, including cocktail studies, population pharmacokinetic analyses), please discuss the advantages, challenges, and limitations for these assessments.

(b) For evaluating pharmacokinetics in hepatic impairment (*e.g.,* dedicated clinical studies, population pharmacokinetic analyses), please discuss the advantages, challenges, and limitations for these assessments.

(c) For evaluating immunogenicity and its impact on pharmacokinetics, safety, and efficacy (*e.g.,* antibodies against the active ingredient peptide, peptide-related impurities, or endogenous counterpart, if present, neutralizing activity and antibody titers, cytokine measurements), please discuss the advantages, challenges, and limitations for these assessments.

(d) For evaluating cardiac electrophysiology (*e.g.,* hERG inhibition assay, thorough QT assessment) in nonclinical or clinical studies, please discuss the advantages, challenges, and limitations for these assessments.

(3) Are there other clinical pharmacology considerations for peptides not covered in the questions above, such as use of pharmacodynamic biomarkers and/or pharmacokinetic assessments for dose selection? If yes, provide a description and rationale for any proposed considerations, as well as approaches, advantages, challenges, and limitations for the assessment.

The public comments collected will help FDA develop recommendations for the design and conduct of clinical pharmacology studies important to the understanding of the safe and effective use of peptides and facilitate the regulatory assessment of such studies.

III. Electronic Access

Persons with access to the internet may obtain relevant clinical pharmacology guidances at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Dated: May 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10179 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

[2] There is an FDA draft guidance entitled ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin'' (October 2017) that is specific for ANDA applications for chemically synthetized peptides that refers to listed drugs of rDNA origin; available at *https://www.fda.gov/media/107622/download.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1440]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on June 24, 2021, from 10:30 a.m. to 2:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1440. The docket will close on June 23, 2021. Submit either electronic or written comments on this public meeting by June 23, 2021. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 23, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 23, 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.

Comments received on or before June 10, 2021, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and

consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1440 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: She-Chia Chen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–5343, Fax: 301–847–8533, *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss biologics license application (BLA) 761209, for retifanlimab injection, submitted by Incyte Corporation. The proposed indication (use) for this product is for the treatment of adult patients with locally advanced or metastatic squamous carcinoma of the anal canal (SCAC) who have progressed on or who are intolerant of platinum-based chemotherapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before June 10, 2021, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 2, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 3, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact She-Chia Chen (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 10, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10181 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0306]

Determination That OVIDE (Malathion) Lotion, 0.5%, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that OVIDE (malathion) lotion, 0.5%, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Kaetochi Okemgbo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6272, Silver Spring, MD 20993–0002, 240–825–9944, *Kaetochi.Okemgbo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

OVIDE (malathion) lotion, 0.5%, is the subject of NDA 018613, held by Taro Pharmaceutical Industries, Ltd., and initially approved on August 2, 1982. OVIDE is indicated for patients infected with *Pediculus humanus capitis* (head lice and their ova) of the scalp hair.

In a letter dated August 19, 2019, Taro Pharmaceutical Industries Ltd. notified FDA that OVIDE (malathion) lotion, 0.5%, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Encube Ethicals Private Ltd. submitted a citizen petition dated March 19, 2021 (Docket No. FDA–2021–P–0306), under 21 CFR 10.30, requesting that the Agency determine whether OVIDE (malathion) lotion, 0.5%, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that OVIDE (malathion) lotion, 0.5% was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that OVIDE (malathion) lotion, 0.5%, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of OVIDE (malathion) lotion, 0.5%, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list OVIDE (malathion) lotion, 0.5%, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10166 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0341]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Safety; Federal-State Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of

certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with FDA's Federal-State Food Regulatory Program Standards.

DATES: Submit either electronic or written comments on the collection of information by July 13, 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 July 13, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 13, 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–2021–N–0341 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Safety; Federal-State Food Regulatory Program Standards.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Safety; Federal-State Food Regulatory Program Standards

OMB Control Number 0910–0760—Revision

This information collection supports implementation of FDA's Federal-State Regulatory Program Standards, part of our National Integrated Food Safety System (IFSS) Programs and Initiatives. For more information we invite you to

visit our website at: *https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/national-integrated-food-safety-system-ifss-programs-and-initiatives.* In the United States, Federal and State governments work cooperatively to ensure the safety of food intended for both human and animal consumption. Part of this effort includes developing and maintaining uniform review criteria by which to assess food safety. FDA has established and maintains a number of program standards aimed at improving the safety evaluation for certain food products including manufactured foods and animal feed. Similarly, we are establishing regulatory program standards for eggs and have developed the ''Eggs Regulatory Program Standards'' (ERPS). The ERPS is intended for use by State and local regulatory officials and identifies ten elements we believe are essential to the effective regulatory assessment of egg safety. States are encouraged to build systems that are sustainable and implement plans corresponding to the IFSS.

In the course of their normal duties, State, local, Territorial, and Tribal governments collect information pertaining to compliance with the respective State, local, Territorial, and tribal food safety requirements within their jurisdictions. Although content and format of the information collected may vary, these activities are a usual and customary part of routine regulatory oversight. Respondents to the information collection are State, local, Territorial, Tribal, and Federal regulatory agencies participating in FDA's Voluntary National Retail Food Regulatory Program Standards (information collection currently approved under OMB control number 0910–0621). Consistent with the ERPS, respondents will submit the following information to FDA: (1) Program self-assessment; (2) risk factor study of the regulated industry; and (3) independent outside audit (verification audit).

The ERPS offers forms, worksheets, and templates to help respondents assess and meet the program elements identified and discussed. Respondents are not required to use the sample collection instruments included in the ERPS, however all data elements should be submitted to FDA and supporting documentation retained. The ERPS is not intended to address any performance appraisal processes that any State, local, Territorial, or tribal agency may use to evaluate its employees' performance. Funding opportunities are available to respondents who choose to implement the ERPS, however these opportunities are limited and contingent upon the availability of funds, and to those respondents who currently have an egg inspection contract with FDA and thus subject to auditing. A copy of the ERPS has been posted to FDA–2021–N–0341 and is available at *https://www.regulations.gov.*

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondents; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State, Local, Territorial, and/or Tribal Governments; submission of data elements to FDA consistent with ERPS	10	10	100	500	500,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on our experience with similar information collection, we estimate an initial 10 respondents will participate in the ERPS, and assume an average of 500 hours is necessary for the attendant recordkeeping and submission of data elements to FDA. We expect participation in the ERPS to increase.

Dated: May 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10180 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0408]

Modified Risk Tobacco Product Application: Application for the IQOS 3 System Holder and Charger Submitted by Philip Morris Products S.A.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a modified risk tobacco product application (MRTPA) for the IQOS 3 System Holder and Charger submitted by Philip Morris Products S.A.

DATES: Electronic or written comments on the application may be submitted beginning May 14, 2021. FDA will establish a closing date for the comment period as described in section I.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0408 for ''Modified Risk Tobacco Product Application: Application for the IQOS 3 System Holder and Charger Submitted by Philip Morris Products S.A.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read 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:

Samantha Loh Collado, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 911 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 387k) addresses the marketing and distribution of modified risk tobacco products (MRTPs). MRTPs are tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. Section 911(a) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any MRTP unless an order issued by FDA pursuant to section 911(g) of the FD&C Act is effective with respect to such product.

Section 911(d) of the FD&C Act describes the information that must be included in a MRTPA, which must be filed and evaluated by FDA before an applicant can receive an order from FDA. FDA is required by section 911(e) of the FD&C Act to make a MRTPA available to the public (except for matters in the application that are trade secrets or otherwise confidential commercial information) and to request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying the application. The determination of whether an order is appropriate under section 911 of the FD&C Act is based on the scientific information submitted by the applicant as well as the scientific evidence and other information that is made available to the Agency, including through public comments.

Section 911(g) of the FD&C Act describes the demonstrations applicants must make to obtain an order from FDA under either section 911(g)(1) or (2). The applicant, Philip Morris Products S.A., is seeking an order under section 911(g)(2) of the FD&C Act.

FDA may issue an order under section 911(g)(2) of the FD&C Act with respect to a tobacco product that does not satisfy the section 911(g)(1) standard. A person seeking an order under section 911(g)(2) of the FD&C Act must show that:

• Such an order would be appropriate to promote the public health;

• Any aspect of the label, labeling, and advertising for the product that would cause the product to be an MRTP is limited to an explicit or implicit representation that the tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

• Scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards for obtaining an order under section 911(g)(1) of the FD&C Act;

• The scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies;

• The magnitude of overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

• The product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

• Testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product is or has been demonstrated to be less harmful or presents or has been demonstrated to present less of a risk of disease than one or more other commercially marketed tobacco products; and

• Issuance of the exposure modification order is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

Section 911(g)(4) of the FD&C Act describes factors that FDA must take into account in evaluating whether a tobacco product benefits the health of individuals and the population as a whole.

FDA is issuing this notice to inform the public that an MRTPA for the IQOS 3 System Holder and Charger submitted by Philip Morris Products S.A. has been filed and is being made available for public comment. The applicant is seeking authorization to market a modified version of the IQOS system holder and charger that previously

received an order under section 911(g)(2) of the FD&C Act [1] as an MRTP and is including information from the authorized MRTPA by cross-reference.

FDA will post the application documents, including those cross-referenced from prior submissions previously authorized and those contained in any amendments, for public comment in batches on a rolling basis as they are redacted in accordance with applicable laws. In this document, FDA is announcing the availability of the first batch of application documents for public comment. FDA intends to establish a closing date for the comment period that is both at least 45 days after the date this notice publishes and at least 30 days after the final documents from the application are made available for public comment. FDA will announce the closing date at least 30 days in advance. FDA believes that this comment period is appropriate given the relatively low volume of information in the MRTPA that has not already been available for public comment as part of the previously authorized MRTPAs for the IQOS system. FDA will notify the public about the availability of application documents and comment period closing date via the Agency's web page for the MRTPA (see section II) and by other means of public communication, such as by email to individuals who have signed up to receive email alerts. FDA does not intend to issue additional notices in the **Federal Register** regarding the availability of additional application documents, including amendments, or the comment period for this MRTPA. To receive email alerts, visit FDA's email subscription service management website (*https://www.fda.gov/about-fda/contact-fda/get-email-updates*), provide an email address, scroll down to the ''Tobacco'' heading, select ''Modified Risk Tobacco Product Application Update'', and click ''Submit''. To encourage public participation consistent with section 911(e) of the FD&C Act, FDA is making the redacted MRTPA that is the subject of this notice available electronically (see section II).

II. Electronic Access

Persons with access to the internet may obtain the application documents at either *https://www.fda.gov/tobacco-products/advertising-and-promotion/philip-morris-products-sa-modified-risk-tobacco-product-mrtp-applications* or *http://www.regulations.gov.*

Dated: May 10, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10177 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

[1] The notice of availability for the IQOS MRTPAs that received a modified risk granted order appeared in the **Federal Register** of June 15, 2017 (82 FR 27487), and the docket containing notices and public comments, FDA–2017–D–3001, is accessible at: *https://www.regulations.gov/docket/FDA-2017-D-3001/.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by June 14, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0363. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Feed Directive

OMB Control Number 0910–0363—Extension

Section 504 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 354) establishes a regulatory category for certain new animal drugs called veterinary feed directive (VFD) drugs. The VFD regulation is set forth at § 558.6 (21 CFR 558.6). VFD drugs are new animal drugs, intended for use in or on animal feed, which are limited to use under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice (§ 558.6(b)(6)). An animal feed containing a VFD drug or a combination VFD drug may be fed to animals only by or upon a lawful VFD issued by a licensed veterinarian (§ 558.6(a)(1)).

Veterinarians issue three copies of the VFD: One for their own records, one for their client, and one to the client's VFD feed distributor (§ 558.6(a)(4) and (b)(8) and (9)). The VFD includes information about the number and species of animals to receive feed containing one or more of the VFD drugs (§ 558.6(b)(3)), along with other information required under § 558.6. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute such feed and must maintain records of the receipt and distribution of all medicated feeds containing VFD drugs.

The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost effectively as possible. The VFD regulation is tailored to the unique circumstances relating to the distribution and use of animal feeds containing a VFD drug.

We will use the information collected to assess compliance with the VFD regulation. The required recordkeeping and third-party disclosures provide assurance that the medicated feeds will be safe and effective for their labeled conditions of use and that edible products from treated animals will be free of unsafe drug residues.

In the **Federal Register** of December 23, 2020 (85 FR 83968), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

A. Reporting Requirements

Description of Respondents: VFD Feed Distributors and VFD Drug Sponsors.

A distributor of animal feed containing a VFD drug must notify FDA prior to the first time it distributes the VFD feed (§ 558.6(c)(5)). This notification is required one time per distributor and must include the information set forth in § 558.6(c)(5). In addition, a distributor must notify FDA within 30 days of any change in ownership, business name, or business address (§ 558.6(c)(6)). Additional reporting burdens for current VFD drug sponsors are approved under OMB control numbers 0910–0032 (New Animal Drug Applications) and 0910–0669 (Abbreviated New Animal Drug Applications).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
558.6(c)(5) requires a distributor to notify FDA prior to the first time it distributes a VFD feed.	188	1	188	0.117 (7 minutes) ..	22
558.6(c)(6) requires a distributor to notify FDA within 30 days of any change in ownership, business name, or business address.	192	1	192	0.117 (7 minutes) ...	22
Total	.....	.....	.....	.....	44

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

B. Recordkeeping Requirements

Description of Respondents: VFD Feed Distributors, Food Animal Veterinarians, and Clients (Food Animal Producers).

As stated previously, veterinarians issue three copies of the VFD: One for their own records, one for their client, and one to the client's VFD feed distributor. All involved parties (veterinarian, distributor, and client) must retain a copy of the VFD for 2 years (§ 558.6(a)(4)). In addition, VFD feed distributors must also keep receipt and distribution records of VFD feeds they manufacture and make them available for inspection by FDA for 2 years (§ 558.6(c)(3)). If a distributor manufactures the VFD feed, the distributor must also keep VFD manufacturing records for 1 year in accordance with 21 CFR part 225 and such records must be made available for inspection and copying by FDA upon request (§ 558.6(c)(4)). These record requirements are currently approved under OMB control number 0910–0152, ''Current Good Manufacturing Practice Regulations for Medicated Feed.'' Distributors may distribute VFD feeds to another distributor only if the originating distributor (consignor) first obtains a written acknowledgment letter from the receiving distributor (consignee) before the feed is shipped. Such letters, like VFDs, are also subject to a 2-year record retention requirement (§ 558.6(c)(8)).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section/activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
558.6(a)(4); required recordkeeping by veterinarians and producers.	13,050	114.9	1,500,000	0.0167 (1 minute) ..	25,050
558.6(a)(4), (c)(3), (4), and (8); required recordkeeping by distributors.	9,635	545.1	5,252,039	0.0167 (1 minute) ..	87,709
Total	.....	.....	.....	.....	112,759

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

C. Third-Party Disclosure Requirements

Description of Respondents: VFD Drug Sponsors, Food Animal Veterinarians, VFD Feed Distributors, and Clients.

FDA regulation requires that veterinarians include the information specified at § 558.6(b)(3) through (5) on the VFD. Additional requirements relating to the VFD are specified at § 558.6(b)(7) through (9). A distributor may only distribute a VFD feed to another distributor for further distribution if the originating distributor (consignor) first obtains a written acknowledgment letter from the receiving distributor (consignee) before the feed is shipped (§ 558.6(c)(8)).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
558.6(b)(3)–(5) and (b)(7)–(9); required disclosures when a veterinarian issues a VFD.	3,050	246	750,300	0.117 (7 minutes) ..	87,785
558.6(c)(8); required disclosure (acknowledgment letter) from one distributor to another.	1,000	5	5,000	0.117 (7 minutes) ...	585

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

21 CFR section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Total					88,370

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The VFD regulation also contains several labeling provisions that are exempt from OMB review and approval under the PRA because they are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501, *et seq.*). All labeling and advertising for VFD drugs, combination VFD drugs, and feeds containing VFD drugs or combination VFD drugs must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian'' (§ 558.6(a)(6)). In addition, the veterinarian must ensure that the following statement is included on the VFD (§ 558.6(b)(3)(xiii)): ''Use of feed containing this veterinary feed directive (VFD) drug in a manner other than as directed on the labeling (extralabel use) is not permitted.''

The veterinarian may restrict VFD authorization to only include the VFD drug(s) cited on the VFD or such authorization may be expanded to allow the use of the cited VFD drug(s) along with one or more over-the-counter animal drugs in an approved, conditionally approved, or indexed combination VFD drug (§ 558.6(b)(6)). The veterinarian must affirm his or her intent regarding combination VFD drugs by including one of the following statements on the VFD:

1. ''This VFD only authorizes the use of the VFD drug(s) cited in this order and is not intended to authorize the use of such drug(s) in combination with any other animal drugs'' (§ 558.6(b)(6)(i)).

2. ''This VFD authorizes the use of the VFD drug(s) cited in this order in the following FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component.'' (List specific approved, conditionally approved, or indexed combination medicated feeds following this statement.) (§ 558.6(b)(6)(ii)).

3. ''This VFD authorizes the use of the VFD drug(s) cited in this order in any FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component'' (§ 558.6(b)(6)(iii)).

These labeling statements are not subject to review by OMB because, as stated previously, they are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501, *et seq.*).

Based on a review of the information collection since our last request for OMB approval, there has been a significant increase in the number of VFD distributors due to changes to the VFD regulations that were implemented in 2017. Since implementation, the number of approved VFD drugs has increased. As a result, the burden for the information collection has increased 69,148 hours since the last OMB approval.

Since the publication of the 60-day notice, we have adjusted 7 minutes for the average burden per response from 0.125 to 0.117. We believe this is a better representation for 7 minutes. As a result, this has slightly changed the burden hours.

Dated: May 10, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10245 Filed 5–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Eleventh Meeting of the National Clinical Care Commission; Correction

AGENCY: Office on Women's Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the **Federal Register** of May 4, 2021, concerning a virtual meeting of the National Clinical Care Commission. The date of the eleventh meeting of the Commission has changed. The original dates for the eleventh meeting were May 19 and June 1, 2021. The new dates for the two-day meeting are June 1 and June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Kara Elam, Ph.D., MPH, MS, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office on Women's Health, 200 Independence Ave. SW, 7th Floor, Washington, DC 20201, Phone: (240) 435–9438, Email: *Kara.Elam@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of May 4, 2021, FR Doc. 2021–09277, page 23731, in the first column, correct the **SUMMARY** caption to read:

SUMMARY: The National Clinical Care Commission (the Commission) will conduct its eleventh meeting virtually on June 1 and June 22, 2021. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

Correction

In the **Federal Register** of May 4, 2021, FR Doc. 2021–09277, page 23731, in the first column, correct the **DATES** caption to read:

DATES: The two-day meeting will take place June 1 and June 22, 2021 from 1 p.m. to approximately 6 p.m. Eastern Time (ET).

Dated: May 4, 2021.

Dorothy A. Fink,

Deputy Assistant Secretary for Women's Health.

[FR Doc. 2021–10258 Filed 5–13–21; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.
Date: June 7–8, 2021.
Time: 8:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Joanna Szczepanik, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1000D, Bethesda, MD 20892, (301) 402–6746, *szczepaj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.
Date: June 7, 2021.
Time: 4:30 p.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: JOANNA Szczepanik, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1000D, Bethesda, MD 20892, (301) 402–6746, *szczepaj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bacterial Pathogenesis.
Date: June 9, 2021.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Richard G. Kostriken, Ph.D., AB, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.
Date: June 10–11, 2021.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4016F, MSC 7812, Bethesda, MD 20892, (301) 435–0908, *boycevs@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.
Date: June 17–18, 2021.
Time: 9:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5902, *caojn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Basic Mechanisms of Diabetes and Metabolism.
Date: June 17, 2021.
Time: 9:30 a.m. to 10:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Elaine Sierra-Rivera, MS, BS, Ph.D., IRG Chief, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301–435–2514, *riverase@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.
Date: June 17–18, 2021.
Time: 10:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Basic Mechanisms of Diabetes and Metabolism Study Section.
Date: June 17–18, 2021.
Time: 10:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 6158, MSC 7890, Bethesda, MD 20892, 301–827–7609, *liliana.berti-mattera@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Pain and Itch Study Section.
Date: June 21–22, 2021.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vector Biology Study Section.
Date: June 21–22, 2021.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10147 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs Special Emphasis Panel Member Conflict: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (STOD).

Date: June 30, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10151 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Human Complex Mental Function Study Section.

Date: June 9–11, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karen S. Seymour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Rm. 1000–E; 6701, Rockledge Drive, Bethesda, MD 20892, (240) 762–2729, *karen.seymour@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; 'Topics in Perception and Cognition'.

Date: June 9, 2021.

Time: 4:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, Ph.D., BA, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.

Date: June 11, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 435–2591, *pamela.jeter@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: June 14–15, 2021.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Elena Cardenas-Corona, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 806–A, Bethesda, MD 20817, (301) 867–5309, *maria.cardenas-corona@nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: June 14–15, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2208, Bethesda, MD 20892, (301) 402–3702, *christopher.payne@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–19–021 ''Maximizing the Scientific Value of Existing Biospecimen Collections (R21)''.

Date: June 15, 2021.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: June 17–18, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 805–N, Bethesda, MD 20817, (301) 867–5309, *eleni.liapi@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Lifestyle Change and Behavioral Health Study Section.

Date: June 17–18, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ahlishia Jnae Shipley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3222, MSC 7816, Bethesda, MD 20892, (301) 480–8976, *shipleyaj@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Biology and Development of the Eye Study Section.

Date: June 17–18, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, (301) 435–1175, *berestm@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Eukaryotic Pathogen Drug Discovery and Resistance.

Date: June 18, 2021.

Time: 10:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, (301) 827–7233, *susan.boyle-vavra@nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management in General Care Settings Study Section.

Date: June 21–22, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 435–6998 *fordycelm@mail.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Integrative Vascular Physiology and Pathology Study Section.

Date: June 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, MS, Ph.D., Scientific Review Officer, Vascular and Hematology, IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Risks and Behavioral Medicine Across the Lifespan.

Date: June 21, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10157 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 26, 2021, 11:00 a.m. to May 26, 2021, 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 20, 2021, 86 FR 20505.

This notice is being amended to change the meeting end time of the Center for Scientific Review RFA Panel: Tobacco Regulatory Science A from 4:00 p.m. to 6:00 p.m. The meeting is closed to the public.

Dated: May 10, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10221 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Novel Synthetic Nucleic Acid Technologies.

Date: June 14, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20817, 301–594–4280, *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 11, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10242 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Contract Review: In Vitro Metabolism and Non-Clinical ADME Studies (8957).

Date: June 15, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Contract Review: Development and Manufacture of Pharmaceutical Products for the Treatment of Substance Abuse Disorders.

Date: June 25, 2021.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH 301, North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 10, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10153 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.
Date: June 15, 2021.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: Presentations and discussion of programs.
Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Telephone Access: 1–646–828–7666 (Meeting ID: 160 927 6632).
Virtual Access: https://nih.zoomgov.com (Meeting ID: 161 192 8682).
Contact Person: W. Keith Hoots, MD, Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 9030, Bethesda, MD 20892, 301–435–0080, *hootswk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 11, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10243 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Council of Research Advocates.
Date: June 16, 2021.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: Welcome and Chairwoman's Remarks, NCI Updates, Legislative Update, and Director's Update.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Amy Williams, NCI, Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, (301) 496–9723, *williaam@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 10, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10154 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; DSPAN F99 Application Review.
Date: June 14–15, 2021.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS DSPAN F99—Overflow Review.
Date: June 14, 2021.
Time: 3:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Study Section.

Date: June 21–22, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 402–0288, *natalia.strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases.

Date: June 21, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Rockville, MD 20852, (301) 496–9223, *Ana.Olariu@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Diversity K01 and K22 Application Review.

Date: June 23, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 10, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10158 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Minority Aging.

Date: June 29, 2021.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 480–1266 *neuhuber@ninds.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Multi-Component Project.

Date: July 6, 2021.

Time: 1:00 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Dario Dieguez, Jr, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–3101, *dario.dieguez@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 11, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10220 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: June 3–4, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis, Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yin Liu, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, Bethesda, MD 20817, 301–594–8919, *liuy@mail.nih.gov*.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 24–25, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis, Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10150 Filed 5–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Screening Partnership Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0064, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves an application completed by airports to initiate a request to participate in TSA's Screening Partnership Program (SPP).

DATES: Send your comments by June 14, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 12, 2021. *See* 86 FR 9358.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. This ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Screening Partnership Program Application.

Type of Request: Extension.

OMB Control Number: 1652–0064.

Form(s): TSA Form 424 Screening Partnership Program Application.

Affected Public: Airport Operators.

Abstract: Under 49 U.S.C. 44920, an airport may submit an application to TSA to have the screening of passengers and property required by 49 U.S.C. 44901 conducted by non-Federal personnel. TSA must approve the application if the approval ''would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.'' TSA implements this requirement through the SPP. Participation in the SPP is initiated with the application covered by this information collection.

Number of Respondents: 2.

Estimated Annual Burden Hours: An estimated 0.50 hours annually.

Dated: May 10, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–10182 Filed 5–13–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11602]

Intent To Request Extension From OMB of One Current Public Collection of Information: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0005, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by July 13, 2021.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0005; Security Programs for Foreign Air Carriers, 49 CFR part 1546. TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to provide for the safety of persons and property traveling on flights provided by the foreign air carrier against acts of criminal violence and air piracy, and the introduction of unauthorized explosives, incendiaries, or weapons aboard an aircraft. The information TSA collects includes identifying information on foreign air carriers' flight crews and passengers. Specifically, TSA requires foreign air carriers to electronically submit the following information: (1) A master crew list of all flight and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; and (3) passenger identifying information on a flight-by-flight basis. This information collection is mandatory for foreign air carriers and must be submitted before entry into the United States.

Additionally, foreign air carriers must maintain these records, as well as training records for crew members and individuals performing security-related functions, and make them available to TSA for inspection upon request. TSA will continue to collect information described above to determine foreign air carrier compliance with requirements of 49 CFR part 1546. TSA estimates that there will be approximately 180 respondents to the information collection, with an annual burden estimate of 277,247 hours.

Dated: May 10, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–10185 Filed 5–13–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0036]

Notice of Availability of a Joint Record of Decision for the Final Environment Impact Statement for the Vineyard Wind 1 Offshore Wind Energy Project Construction and Operations Plan

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior; New England District, U.S. Army Corps of Engineers (USACE), Defense; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of availability (NOA); record of decision (ROD).

SUMMARY: BOEM announces the availability of the joint ROD on the final environmental impact statement (FEIS) for the construction and operations plan (COP) submitted by Vineyard Wind LLC (Vineyard Wind). The joint ROD includes the decisions of the Department of the Interior (DOI), USACE, and NMFS regarding the Vineyard Wind COP. The USACE has adopted the FEIS to support its permitting actions under the River and Harbors Act of 1899 (RHA) and the Clean Water Act (CWA). NMFS has adopted the FEIS to support its decision to issue an incidental take authorization under the Marine Mammal Protection Act. The joint ROD concludes the National Environmental Policy Act (NEPA) process for each agency and is available with associated information on BOEM's website at *https://www.boem.gov/Vineyard-Wind/.*

FOR FURTHER INFORMATION CONTACT:

BOEM—Michelle Morin, BOEM, Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov.*

NOAA—Candace Nachman, NOAA Fisheries Office of Policy, (301) 427–8031 or *candace.nachman@noaa.gov.*

USACE—Christine Jacek, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742–2751, (978) 318–8026, or *christine.m.jacek@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Vineyard Wind seeks to construct, operate, maintain, and eventually decommission an 800-megawatt wind energy facility on the Outer Continental Shelf offshore Massachusetts (the Project). The Project and associated export cables would be developed within the range of design parameters outlined in the Vineyard Wind COP, subject to applicable mitigation measures. The Project is located approximately 14 miles southeast of Martha's Vineyard and a similar distance southwest of Nantucket. The COP proposed installing up to 100 wind turbine generators (WTGs) and one or two offshore substations or electrical service platforms. The WTGs would be located in water depths ranging from approximately 37 to 49 meters (121 to 161 feet). The COP proposed one export cable landfall near the town of Barnstable, Massachusetts, and onshore construction and staging at the New Bedford Marine Commerce Terminal.

After carefully considering the FEIS alternatives, including comments from the public on the draft and supplemental EISs, DOI has decided to approve the COP for Vineyard Wind using a combination of alternatives C (No Surface Occupancy in the Northernmost Portion of the Project Area Alternative), D2 (East-West and One-Nautical-Mile Turbine Layout Alternative), and E (Reduced Project Size Alternative). BOEM identified this combination as its preferred alternative in the FEIS (Preferred Alternative). By selecting the Preferred Alternative, DOI will allow 84 or fewer WTGs to be installed in 100 of the 106 locations proposed by Vineyard Wind and will prohibit the installation of WTGs in 6 locations in the northernmost portion of the project area. This decision will also require that the WTG layout be arranged in an east-west/north-south orientation, with a minimum spacing of 1 nautical mile between WTGs, consistent with the U.S. Coast Guard's recommendations in the final ''The Areas Offshore of Massachusetts and Rhode Island Port Access Route Study.'' Vineyard Wind may choose where to place the 84 or fewer WTGs on the remaining 100 locations available and must proceed within the range of the design parameters outlined in the Vineyard Wind COP.

DOI's selection of a combination of alternatives C, D2, and E as its Preferred Alternative meets the purpose and need as identified in the Vineyard Wind FEIS. The full text of the mitigation, monitoring, and reporting requirements that will be included in the COP approval are available in the joint ROD, which is available on BOEM's website at: *https://www.boem.gov/Vineyard-Wind/.*

NMFS has decided to adopt BOEM's FEIS and issue a final incidental harassment authorization (IHA) to Vineyard Wind. NMFS' final decision to issue the requested IHA is documented in a separate decision memorandum prepared in accordance with internal

NMFS policy and procedures. The IHA authorizes the incidental take of marine mammals while prescribing the permissible methods of incidental take as well as mitigation and monitoring requirements, including those mandated by the biological opinion issued to complete the formal Endangered Species Act section 7 consultation process. A notice of issuance of the final IHA will be published in the **Federal Register**.

The USACE has decided to adopt BOEM's FEIS and issue a Department of the Army (DA) permit pursuant to section 404 of the CWA (33 U.S.C. 1344) and section 10 of the RHA (33 U.S.C. 403). The DA permit authorizes Vineyard Wind to discharge fill below the high tide line of waters of the United States and to perform work and place structures below the mean high-water mark of navigable waters of the United States. Activities under the DA permit are being authorized using a combination of alternatives C, D2, and E, as described in the Vineyard Wind FEIS. This alternative incorporates all practicable avoidance and minimization measures.

Authority: This NOA is published in accordance with 40 CFR parts 1500–1508, implementing the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–10192 Filed 5–13–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1258]

Certain Smart Thermostat Systems, Smart HVAC Systems, Smart HVAC Control Systems, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting an Unopposed Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 4) of the presiding administrative law judge (''ALJ'') granting an unopposed motion to amend the complaint and notice of investigation to substitute Johnson Controls Inc. for respondent Johnson Controls International, PLC.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 2, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by EcoFactor, Inc. of Palo Alto, California (''Complainant''). *See* 86 FR 17402–03 (Apr. 2, 2021). The complaint, as amended and supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart thermostat systems, smart HVAC systems, smart HVAC control systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,423,322; 8,019,567; 10,612,983; 8,596,550; and 8,886,488. *See id.* The notice of investigation names the following respondents: Ecobee Ltd. and Ecobee, Inc. of Toronto, Canada; Google LLC of Mountain View, California; Carrier Global Corporation of Palm Beach Gardens, Florida; Emerson Electric Co. of St. Louis, Missouri; Honeywell International Inc. of Charlotte, North Carolina; Resideo Technologies, Inc. of Austin, Texas; Johnson Controls International, PLC of Cork, Ireland; Siemens Industry, Inc. of Buffalo Grove, Illinois; and Siemens AG of Munich, Germany. *See id.* The Office of Unfair Import Investigations is not a party to the investigation. *See id.*

On April 12, 2021, the ALJ issued an ID terminating Emerson Electric Co.; Siemens Industry, Inc.; and Siemens AG from the investigation. *See* Order No. 3 (Apr. 12, 2021), *unreviewed by* Comm'n Notice (Apr. 29, 2021).

On April 19, 2021, Complainant filed an unopposed motion for leave to amend the complaint and notice of investigation to add proposed respondent Johnson Controls Inc. (''Proposed Respondent'') and to terminate respondent Johnson Controls International, PLC (''Terminated Respondent''). No responses to the motion were filed.

On April 20, 2021, the ALJ issued the subject ID (Order No. 4) granting the motion. The ID finds that the motion complies with Commission Rule 210.14(b) (19 CFR 210.14(b)) and that good cause exists to amend the complaint and notice of investigation. *See* ID at 3. In particular, Complainant learned that the Terminated Respondent does not import, sell for importation, or sell after importation any of the products at issue in the complaint. *See id.* at 2. In addition, the Proposed Respondent was identified as the appropriate entity. *See id.* The ID also finds that ''no prejudice to the public interest or to the rights of the parties to the investigation will result from granting the motion.'' *See id.* at 3. No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. Respondent Johnson Controls International, PLC is terminated from the investigation. Johnson Controls Inc. is named as a respondent in this investigation.

The Commission's vote for this determination took place on May 11, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 11, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10255 Filed 5–13–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1263]

Certain Televisions, Remote Controls, and Components Thereof; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2021, under section 337 of the Tariff Act of 1930, as amended, on

behalf of Roku, Inc. of San Jose, California. A supplement to the complaint was filed on April 9, 2021, and an amended complaint was filed on April 27, 2021. The complaint, as supplemented and amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain televisions, remote controls, and components thereof by reason of infringement of one or more claims of U.S. Patent No. 8,378,875 (''the '875 patent'') and U.S. Patent No. 7,388,511 (''the '511 patent''). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on May 10, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5, 8–11, and 14 of the '875 patent and claim 5 of the '511 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''televisions, remote controls and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Roku, Inc., 1155 Coleman Avenue, San Jose, CA 95110.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Universal Electronics, Inc., 15147 N Scottsdale Road, Suite H300, Scottsdale, AZ 85254
Gemstar Technology (Qinzhou) Co. Ltd., Hedong Industrial Park, Qinzhou, Guangxi Province, 535000 China
Gemstar Technology (Yangzhou) Co. Ltd., 1 Junsheng Road Industry Park, Fanshui Industrial Zone, Baoying, Yanzhou, Jiangsu Province, 225800 China
C.G. Development Ltd., Units 902–905, 9/F, One Harbourfront, 18 Tak Fung Street, Hung Hom, Kowloon, Hong Kong
Universal Electronics BV, Colosseum 2, 7521 PT Enschede, Netherlands
UEI Brasil Controles Remotos Ltda., Avenida Torquato Tapajos, no 4010 Galpao 04, Colonia Santo Antonio, CEP:69093–018, Manaus—Amazonas—Brasil
CG México Remote Controls, S. de R.L. de C.V., Séptima No. 840–B, Parque Industrial Monterrey, Apodaca, NUEVO LEON, 66603, Mexico
LG Electronics Inc., LG Twin Tower, 128, Yeoui-daero, Yeongdeungpo-gu, Seoul, 07336, Republic of Korea
LG Electronics USA, Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632
Samsung Electronics Co., Ltd., 129, Samsung-Ro, Maetan-3dong, Yeongtong-Gu, Suwon-si, Gyeonggi-do, 16677, Republic of Korea
Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660
Charter Communications, Inc., 400 Atlantic Street, Stamford, CT 06901
Charter Communications Operating, LLC, 12405 Powerscourt Drive, St. Louis, MO 63131
Spectrum Management Holding Company, LLC, 400 Atlantic Street, Stamford, CT 06901
Altice USA, Inc., One Court Square, Long Island City, NY 11101
Cablevision Systems Corp., 1111 Stewart Ave., Bethpage, NY 11714
Cequel Communications, LLC d/b/a Suddenlink Communications, One Court Square, Long Island City, NY 11101
Wideopenwest, Inc., 7887 E Belleview Ave., Ste. 1000, Englewood, CO 80111

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not a party to this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10163 Filed 5–13–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1264]

Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Celanese International Corporation of Irving, Texas; Celanese (Malta) Company 2 Limited of Qormi, Malta; and Celanese Sales U.S. Ltd. of Irving, Texas. A supplement to the complaint was filed on April 22, 2021. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same by reason of infringement of certain claims of U.S. Patent No. 10,023,546 (''the '546 patent''); U.S. Patent No. 10,208,004 (''the '004 patent''); U.S. Patent No. 10,590,098 (''the '098 patent''); U.S. Patent No. 10,233,163 (''the '163 patent); and U.S. Patent No. 10,590,095 (''the '095 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 10, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 11–13, 15–18, 22, and 27 of the '546 patent; claims 1–5, 7–9, 11–13, 21–33, and 35–42 of the '004 patent; claims 1–5, 7–9, 11–12, 20–32, 34, and 36–38 of the '098 patent; claims 1, 4–5, 7–11, 13, 15–16, 18–19, and 22–37 of the '163 patent; and claims 1, 4–5, 7–11, 13, 15, 18–19, and 22–39 of the '095 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''Jinhe Ace-K sweetener products and manufacture processes thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Celanese International Corporation, 222 West Las Colinas Blvd., Suite 900N, Irving, Texas 75039

Celanese (Malta) Company 2 Limited, 78 Mill street, Zone 5, Central Business District, Qormi, CBD 5090, Malta

Celanese Sales U.S. Ltd., 222 West Las Colinas Blvd., Suite 900N, Irving, Texas 75039

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Anhui Jinhe Industrial Co., Ltd., 127 East Street, Lai'an County, Chuzhou City, Anhui 239200, People's Republic of China

Jinhe USA LLC, 111 West Jackson Blvd., Suite 1350, Chicago, Illinois 60604

Agridient, Inc., 28580 Orchard Lake Road, Suite 205, Farmington Hills, Michigan 48334

Apura Ingredients Inc., 14168 Central Ave., Unit A, Chino, California 91710

Crossroad Ingredients, 271 Route 46 West, Suite H206, Fairfield, New Jersey 07004

Hhoya USA Inc., 228 East 45th Street, Suite 9E, New York, New York 10017

Ingredis US LLC, 5 Chandler Court, Plainsboro, New Jersey 08536

NiuSource Inc., 14266 Euclid Ave., Chino, California 91710

Prinova US LLC, 6525 Muirfield Drive, Hanover Park, Illinois 60133

Prosweetz Ingredients Incorporated d/b/a Panasource Ingredients Inc., 98–A Mayfield Ave., Edison, New Jersey 08837

Suzhou-Chem Inc., 396 Washington Street, Suite 318, Wellesley, Massachusetts 02481

UMC Ingredients, LLC fka JRS International LLC, 160 Chubb Avenue, Suite 206, Lyndhurst, New Jersey 07071

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the

Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10233 Filed 5–13–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Final)]

Mattresses From Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam, provided for in subheadings 9404.21.00, 9404.29.10, 9404.29.90, 9401.40.00, and 9401.90.50 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and by reason of imports of mattresses from China that have been found by Commerce to be subsidized by the government of China.

Background

The Commission instituted these investigations effective March 31, 2020, following receipt of petitions filed with the Commission and Commerce by Brooklyn Bedding (Phoenix, Arizona), Corsicana Mattress Company (Dallas, Texas), Elite Comfort Solutions (Newnan, Georgia), FXI, Inc. (Media, Pennsylvania), Innocor, Inc. (Media, Pennsylvania), Kolcraft Enterprises, Inc. (Chicago, Illinois), Leggett & Platt, Incorporated (Carthage, Missouri), the International Brotherhood of Teamsters (Washington, DC), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (Washington, DC). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of mattresses from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 27, 2020 (85 FR 76105). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on March 18, 2020. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on May 10, 2021. The views of the Commission are contained in USITC Publication 5191 (May 2021), entitled *Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Final).*

By order of the Commission.

Issued: May 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10165 Filed 5–13–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–521 and 731–TA–1252–1255 and 1257 (Review)]

Steel Nails From Korea, Malaysia, Oman, Taiwan, and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on steel nails from Korea, Malaysia, Oman, Taiwan, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 4, 2020.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—On September 4, 2020, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 33195, June 1, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 3, 2021, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before May 6, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by May 6, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—Commerce conducted a full review on the antidumping duty order on Oman. As a result, the Commission shall make its final determination for its grouped expedited reviews 120 days after Commerce published its final determination regarding the order on Oman pursuant to 19 U.S.C. 1675(c)(5)(D).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 30, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–10248 Filed 5–13–21; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found a response to its notice of institution filed on behalf of Mid Continent Steel & Wire, Inc., a domestic producer of steel nails, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF LABOR

Veterans Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Charter Renewal

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of ACVETEO charter renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA) and its implementing regulations issued by the U.S. General Services Administration (GSA), the Secretary of Labor is renewing the charter for the Advisory Committee on Veterans' Employment, Training, and Employer Outreach (ACVETEO).

SUPPLEMENTARY INFORMATION: The ACVETEO's responsibilities are to: (a) Assess employment and training needs of veterans and their integration into the workforce; (b) determine the extent to which the programs and activities of the Department of Labor (DOL) are meeting such needs; (c) assist the Assistant Secretary for Veterans' Employment and Training (ASVET) in conducting outreach to employers with respect to the training and skills of veterans and the advantages afforded employers by hiring veterans; (d) make recommendations to the Secretary of Labor, through the ASVET, with respect to outreach activities and the employment and training needs of veterans; and (e) carry out such other activities deemed necessary to make required reports and recommendations under Section 4110(f) of Title 38, U.S. Code.

Per Section 4110(c)(1) of Title 38, U.S. Code, the Secretary of Labor shall appoint at least twelve, but no more than sixteen, individuals to serve as Special Government Employees of the ACVETEO as follows: Seven individuals, one each from the following organizations: (i) The Society for Human Resource Management; (ii) the Business Roundtable; (iii) the National Association of State Workforce Agencies; (iv) the United States Chamber of Commerce; (v) the National Federation of Independent Business; (vi) a nationally recognized labor union or organization; and (vii) the National Governors Association. The Secretary shall appoint not more than five individuals nominated by veterans' service organizations that have a national employment program and not more than five individuals who are recognized authorities in the fields of business, employment, training, rehabilitation, or labor and who are not employees of DOL. Members will serve as Special Government Employees.

The ACVETEO will function in compliance with the provisions of the FACA, and its charter will be filed under the FACA. For more information, contact Gregory B. Green, Designated Federal Official, ACVETEO, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210; via email to Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

Signed in Washington, DC, this 10th day of May 2021.

James Rodriguez,

Principal Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2021–10204 Filed 5–13–21; 8:45 am]

BILLING CODE 4510–79–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation's (LSC) Board of Directors will meet remotely on Tuesday, May 25, 2021. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the Board's agenda.

PLACE: Public Notice of Virtual Remote Meeting.

LSC will be conducting the May 25, 2021 meeting remotely via ZOOM.

Public Observation: Unless otherwise noted herein, the Board meeting will be open to public observation. Members of the public who wish to participate remotely may do so by following the directions provided below.

Directions for Open Session:

- To join the Zoom meeting by computer, please click the link

below: *https://lsc-gov.zoom.us/j/93366816196?pwd=cjdEVE1nRms3Q01MVUFNbmVuaTlQZz09*
- Meeting ID: 933 6681 6196
- Passcode: 509121
- To join the Zoom meeting with one tap from your mobile phone, please click below
  +13017158592, 93366816196# US (Washington, DC)
  +13126266799, 93366816196# US (Chicago)
- To join the Zoom meeting by phone, please use the information below:
- Dial by your location
  +1 301 715 8592 US (Washington, DC)
  +1 312 626 6799 US (Chicago)
  +1 646 876 9923 US (New York)
  +1 253 215 8782 US (Tacoma)
  +1 346 248 7799 US (Houston)
  +1 408 638 0968 US (San Jose)
  +1 669 900 6833 US (San Jose)

Meeting ID: 933 6681 6196
Find your local number: *https://lsc-gov.zoom.us/u/adI2lh1Gkr*
- When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Board of Directors

1. Approval of agenda
2. Approval of minutes of the Board's Open Session meeting of April 20, 2021
3. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of October 1, 2020 through March 31, 2021
4. Public comment
5. Consider and act on other business
6. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Yladrea Drummond, Special Assistant to the President at (202) 295–1633. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Yladrea Drummond at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 12, 2021.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2021–10332 Filed 5–12–21; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–029]

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming meeting of the Advisory Committee on the Records of Congress in accordance with the Federal Advisory Committee Act. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Legislative Archives, Presidential Libraries, and Museum Services (LPM).

DATES: The meeting will be on June 7, 2021, from 11:00 a.m. to 12:30 p.m. EDT.

ADDRESSES: This meeting will be a virtual meeting. You must register in advance through the Webex link at *https://tinyurl.com/6f77y6nh* if you wish to attend.

FOR FURTHER INFORMATION CONTACT: U.S. House of Representatives, Office of Art and Archives, by email at *archives@mail.house.gov* or by telephone at 202.226.1300.

SUPPLEMENTARY INFORMATION: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations.

Agenda

(1) Chair's Opening Remarks—Clerk of the U.S. House of Representatives
(2) Recognition of Co-chair—Secretary of the U.S. Senate
(3) Recognition of the Archivist of the United States
(4) Approval of the minutes of the last meeting
(5) Senate Archivist's report
(6) House Archivist's report
(7) Center for Legislative Archives update
(8) Other current issues and new business

Tasha Ford,

Committee Management Officer.

[FR Doc. 2021–10188 Filed 5–13–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–030]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on June 10, 2021, from 10:00 a.m. to 1:00 p.m. EDT. You must register by 11:59 p.m. EDT June 8, 2021, to attend the meeting.

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: We will post all meeting materials at *https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term.* This will be the fourth meeting of the 2020–2022 committee term. The purpose of this meeting will be to hear updates, and consider any recommendations, from the four subcommittees: Classification, Legislation, Process, and Technology.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). You must register in advance through this Eventbrite link

https://foiaac-mtg-june-10-2021.eventbrite.com if you wish to attend and you must provide an email address so that we can provide you with information to access the meeting online. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Tasha Ford,

Committee Management Officer.

[FR Doc. 2021–10189 Filed 5–13–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold six meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during June 2021. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: June 16, 2021

This video meeting will discuss applications on the topic of European Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

2. Date: June 21, 2021

This video meeting will discuss applications for SHARP Grantmaking Programs for Organizations, submitted to Agency-wide Projects.

3. Date: June 23, 2021

This video meeting will discuss applications for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

4. Date: June 24, 2021

This video meeting will discuss applications for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

5. Date: June 25, 2021

This video meeting will discuss applications for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

6. Date: June 28, 2021

This video meeting will discuss applications for SHARP Grantmaking Programs for Individuals, submitted to Agency-wide Projects.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 10, 2021.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2021–10142 Filed 5–13–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) hereby gives notice of the scheduling of meetings for the transaction of NSB business as follows:

TIME AND DATE: Tuesday, May 18, 2021, from 11:00 a.m. to 6:15 p.m., and Wednesday, May 19, 2021, from 11:00 a.m. to 6:05 p.m. EDT.

PLACE: These meetings will be held by videoconference. There will be no in-person meetings. The public may observe the public meetings, which will be streamed to the NSF You Tube channel. For meetings on Tuesday, May 18, go to: *https://www.youtube.com/watch?v=-tvEDxgN9uU.* For meetings on Wednesday, May 19, go to: *https://www.youtube.com/watch?v=9d9vYPNPNLE.*

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Tuesday, May 18, 2021

Plenary Board Meeting

Open Session: 11:00 a.m.–12:00 p.m.

- NSB Chair's Remarks
- NSF Director's Remarks
- NSB Chair Activity Summary
- Nominations Update
- Women, Minorities and Persons with Disabilities Report

Committee on Strategy (CS)

Open Session: 12:00 p.m.–12:20 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- FY 2021 Current Plan and FY 2022 Budget Update

Committee on Strategy (CS)

Closed Session: 12:30 p.m.–1:35 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- NSF COVID–19 Recovery Update
- FY 2021 Current Plan and FY 2022 Budget Request Development
- NSF Strategic Plan 2022–2026

Committee on Awards and Facilities (A&F)

Closed Session: 1:35 p.m.–4:30 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Information Item: NSF Strategy for Managing COVID–19 Impacts Across Facilities
- Action Item: National Ecological Observatory Network (NEON) Initial Operations Award Extension
- Context Item: Rubin Observatory Management Reserve
- Context Item: Arecibo Observatory Clean-Up Costs
- Information Item: SAGE/GAGE Future Directions

Plenary Board Meeting

Open Session: 4:45 p.m.–6:15 p.m.

- Celebrating Science and Public Service with the 2021 Waterman, Bush, and Public Service Award Winners

Wednesday, May 19, 2021

Plenary Board Meeting

Open Session: 11:00 a.m.–12:15 p.m.

- Panel Discussion: Lessons from Minority Serving Institutions
- Vision 2030 Implementation Working Group Update

Committee on External Engagement (EE)

Open Session: 12:15 p.m.–12:50 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Congressional Plan
- Media Plan
- External Panel Series
- NSB 2022 Honorary Awards Nominations

Committee on Oversight (CO)

Open Session: 1:00 p.m.–1:40 p.m.

- Committee Chair's Remarks
- Approval of Committee Minutes
- Review of the Office of the Inspector General Semiannual Report and NSF Management Response
- Inspector General's Update
- Chief Financial Officer's Update

Committee on Awards and Facilities (A&F)

Open Session: 1:40 p.m.–2:00 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Rolling Calendar of Schedule of Planned Action and Context Items
- Action Item: Gemini Observatory Spending Cap Increase

Committee on National Science and Engineering Policy (SEP)

Open Session: 2:45 p.m.–3:25 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Update on *Indicators 2022*
- Demonstration of State Indicators Website and Update on SEI 2022 Cover Selection
- Update on Policy Products

Plenary Board

Closed Session: 3:35 p.m.–4:05 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- Director's Remarks
- Closed Committee Reports
- Vote: Mid-Scale Research Infrastructure-2 Awards
- Vote: NEON Operations & Maintenance Award

Plenary Board

Executive Closed Session: 4:05 p.m.–5:05 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- NSF Director's Discussion
  - Personnel Updates
- Future Directions in Translation, Innovation and Partnerships
- Alan T. Waterman Award Management Update
- Election of Two Executive Committee Members

Plenary Board

Open Session: 5:15 p.m.–6:05 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
  Senior Staff Updates
  Office of Legislative and Public Affairs Update
- EPSCoR Update
- Open Committee Reports
- Votes:
  Resolution: Gemini Spending Cap Increase
  OIG Semiannual Report and NSF Management Response
  Executive Committee Annual Report

Meeting Adjourns: 6:05 p.m.

MEETINGS THAT ARE OPEN TO THE PUBLIC:

Tuesday, May 18, 2021

11:00 a.m.–12:00 p.m. Plenary NSB
12:00 p.m.–12:20 p.m. CS
4:45 p.m.–6:15 p.m. Plenary NSB

Wednesday, May 19, 2021

11:00 a.m.–12:15 p.m. Plenary NSB
12:15 p.m.–12:50 p.m. EE
1:00 p.m.–1:40 p.m. CO
1:40 p.m. –2:00 p.m. A&F
2:45 p.m.–3:25 p.m. SEP
5:15 p.m.–6:05 p.m. Plenary

MEETINGS THAT ARE CLOSED TO THE PUBLIC:

Tuesday, May 18, 2021

12:30 p.m.–1:35 p.m. CS
1:35 p.m.–4:30 p.m. A&F

May 19, 2021

3:35 p.m.–4:05 p.m. Plenary
4:05 p.m.–5:05 p.m. Plenary Executive

CONTACT PERSONS FOR MORE INFORMATION: The NSB Office contact is Chris Blair, *cblair@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. The following persons will be available to provide technical support in accessing the YouTube video: Angel Ntumy (*antumy@associates.nsf.gov*); Phillip Moulden (*pmoulden@associates.nsf.gov*).

Supplemental Information: All open sessions of the meeting will be webcast live. The Zoom feed will be broadcast on the NSB YouTube channel at: Please feel free to share this link with your colleagues:

Tuesday, May 18—*https://www.youtube.com/watch?v=-tvEDxgN9uU*
Wednesday, May 19—*https://www.youtube.com/watch?v=9d9vYPNPNLE*

Please refer to the NSB website for additional information. You will find any updated meeting information and schedule updates (time, place, subject matter, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp.*

Members of the public are advised that the NSB provides some flexibility around meeting times. A meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting will start no later than 15 minutes after the noticed start time. If a meeting ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. NSB and committee meetings will not vary from noticed times by more than 15 minutes. Open meetings can also be watched in their entirety later through the YouTube link.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–10279 Filed 5–12–21; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2021–0090]

SHINE Medical Technologies, LLC; SHINE Medical Isotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a June 2, 2020, request from SHINE Medical Technologies, LLC from certain NRC regulations related to commercial grade dedication of equipment.

DATES: The exemption was issued on April 30, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0090 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–2021–0090. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann;

telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *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: Steven Lynch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1524, email: *Steven.Lynch@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: May 5, 2021.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Senior Project Manager, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

Attachment—Exemption

Nuclear Regulatory Commission

Docket No. 50–608

SHINE Medical Technologies, LLC

SHINE Medical Isotope Production Facility

I. Background and Request

SHINE Medical Technologies, LLC (SHINE) is the holder of a construction permit issued February 29, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16041A471), which authorizes SHINE to construct the SHINE Medical Isotope Production Facility (SHINE facility) in Janesville, Wisconsin, and is currently under construction. As authorized by the construction permit, the SHINE facility will house an irradiation facility and radioisotope production facility. The irradiation facility will consist of eight subcritical operating assemblies (or irradiation units), which would each be licensed as a utilization facility, as defined in title 10 of the *Code of Federal Regulations* (10 CFR) 50.2, ''Definitions,'' and supporting structures, systems, and components (SSCs) for the irradiation of low enriched uranium. The radioisotope production facility would consist of hot cell structures, licensed collectively as a production facility, as defined in 10 CFR 50.2, and associated SSCs for the processing of irradiated material and extraction and purification of medical radioisotopes. The irradiation facility and radioisotope production facility are collectively referred to as the SHINE Medical Isotope Production Facility (or SHINE facility). SHINE submitted an application for an operating license on July 17, 2019, which the U.S. Nuclear Regulatory Commission (NRC) staff accepted for docketing as indicated in a **Federal Register** (FR) notice published on October 15, 2019 (84 FR 55187). Issuance of the operating license would authorize the applicant to operate the SHINE facility for a 30-year period.

By letter dated June 2, 2020 (ADAMS Accession No. ML20154K754), SHINE requested an exemption from certain requirements of 10 CFR 21.3, ''Definitions,'' related to commercial grade dedication of equipment. Specifically, SHINE requested an exemption from the requirements in 10 CFR 21.3 for the definitions of ''commercial grade item,'' ''basic component,'' ''critical characteristic,'' ''dedication,'' and ''dedicating entity.'' SHINE proposed definitions that SHINE seeks permission to use in lieu of the current 10 CFR 21.3 definitions for the five terms listed, including the same ''commercial grade item'' definition that 10 CFR 21.3 requires for nuclear power plants. Approval of this exemption would provide SHINE the flexibility to procure facility-specific and other components for the construction of the SHINE facility.

SHINE is planning for the procurement of long lead-time components for the SHINE facility and wants to use the commercial grade dedication process for certain unique components.

The definition of ''commercial grade item'' required by 10 CFR 21.3, for a 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' facility (other than a nuclear power plant), states that a commercial grade item means an item that is: ''(i) [n]ot subject to design or specification requirements that are unique to those facilities or activities; (ii) [u]sed in applications other than those facilities or activities; and (iii) [t]o be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published description.'' In its exemption request, SHINE states that this required definition of commercial grade item restricts SHINE's ability to use commercial grade dedication of safety-related SSCs. SHINE also states that items (i) and (iii) stated above, are unnecessarily restrictive for defining commercial grade items. Furthermore, items (i) and (iii) stated above complicate and, in many cases, prohibit the procurement of certain components to support the design and construction of the SHINE Facility.

SHINE states that its proposed definitions for the five terms identified above would allow SHINE to employ an equally controlled and safe approach to item procurement. Additionally, SHINE stated that the proposed definitions will increase the flexibility to apply a commercial grade item procurement strategy for equipment procurements (1) to equipment that would not meet the 10 CFR 21.3 definition applicable to 10 CFR part 50 licensees that are not nuclear power plant licensees; and (2) in situations in which few or no suppliers are available with a quality assurance program that meets a quality assurance standard endorsed by the NRC and 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' procedures.

SHINE further stated that in 1995, in response to a petition filed on behalf of nuclear power plant operators, the NRC determined that the definition of ''commercial grade item'' was unnecessarily restrictive and resulted in very limited use of the commercial grade item designation used by power plant licensees. As a result, the NRC revised 10 CFR part 21 to provide licensees added flexibility in procuring commercial grade items for safety-related services for nuclear power plants. See Statement of Considerations (SOC), **Federal Register**, Volume 60, page 48369 (September 19, 1995).

If the exemption were granted, SHINE committed to ''revise the commercial grade dedication process to ensure SHINE or its approved sub-contractor assumes full responsibility as the dedicating entity in cases where SHINE or its approved sub-contractor applies the commercial grade item procurement strategy, for compliance with identifying and evaluating deviations,

reporting defects and failure to comply for the dedicated item, and maintaining auditable records of the dedication process and performs the dedication process.''

SHINE also committed that, prior to implementing the above commercial grade procurement strategy and dedication process, it will revise its Quality Assurance Program Description (QAPD) to reflect the commitments made in the exemption request dated June 2, 2020.

II. Discussion

Pursuant to 10 CFR 21.7, ''Exemptions,'' upon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of 10 CFR part 21 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. The exemption SHINE seeks would allow SHINE to use different definitions for five terms defined in 10 CFR 21.3, thereby providing SHINE the flexibility to implement item procurement for facility-specific and other components in support of the construction of the SHINE facility.

The NRC staff reviewed the information SHINE provided as well as similar exemptions granted to Shaw AREVA MOX Services (ADAMS Accession No. ML080030393), Louisiana Energy Services, LLC (ADAMS Accession No. ML083400454), and AREVA Enrichment Services, LLC (ADAMS Accession No. ML110310794). As part of its review, the NRC staff noted that the SOC stated that the commercial grade item, when properly and successfully dedicated, is deemed by the NRC to be equivalent in its safety function performance to the same or a similar item designed and manufactured under a 10 CFR part 50, Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' quality assurance program. NRC regulations do not require SHINE, a licensee authorized to construct eight non-reactor utilization facilities and one production facility, to have a 10 CFR part 50, Appendix B, quality assurance program. However, the NRC staff reviewed the SHINE QAPD using American National Standards Institute/American Nuclear Society (ANSI/ANS)—15.8–1995, ''Quality Assurance Program Requirements for Research Reactors,'' as endorsed by Regulatory Guide 2.5, Revision 1, ''Quality Assurance Program Requirements for Research and Test Reactors'' (ADAMS Accession No. ML093520099). The NRC staff found the SHINE QAPD acceptable for the design and construction of the proposed SHINE facility in NUREG–2198, ''Safety Evaluation Report Related to SHINE Medical Technologies, Inc. Construction Permit Application for a Medical Radioisotope Production Facility'' (ADAMS Accession No. ML16229A140), which supported the issuance of the SHINE construction permit. In its exemption request, SHINE stated that in all cases the applicable provisions of the ANSI/ANS–15.8–1995 will be used to conduct the dedication process. If the exemption is granted, SHINE committed to revising its QAPD to specify the following definitions of commercial grade item, basic component, critical characteristics, dedicating entity, and dedication (in lieu of the 10 CFR 21.3 definitions):

- *Commercial grade item:* A commercial grade item means a structure, system, or component, or part thereof that affects its safety function, that was not designed and manufactured as a basic component. Commercial grade items do not include items where the design and manufacturing process require in-process inspections and verifications to ensure that defects or failures to comply are identified and corrected (*i.e.,* one or more critical characteristics of the item cannot be verified).
- *Basic component:* A basic component means a structure, system, or component, or part thereof that affects their safety function, that is directly procured by the licensee or activity subject to the regulations in 10 CFR part 21 and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission would create a substantial safety hazard. In all cases, basic components include safety-related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.
- *Critical characteristics:* Critical characteristics are those important design, material, and performance characteristics of a commercial grade item that, once verified, will provide reasonable assurance that the item will perform its intended safety function.
- *Dedication:* Dedication is an acceptance process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended safety function and, in this respect, is deemed equivalent to an item designed and manufactured under an ANSI/ANS–15.8–1995 quality assurance program. This assurance is achieved by identifying the critical characteristics of the item and verifying their acceptability by inspections, tests, or analyses performed by the purchaser or third-party dedicating entity after delivery, supplemented as necessary by one or more of the following: commercial grade surveys; product inspections or witness at holdpoints at the manufacturer's facility, and analysis of historical records for acceptable performance. In all cases, the dedication process must be conducted in accordance with the applicable provisions of ANSI/ANS–15.8–1995. The process is considered complete when the item is designated for use as a basic component.
- *Dedicating entity:* Dedicating entity means the organization that performs the dedication process. Dedication may be performed by the manufacturer of the item, a third-party dedicating entity, or the licensee itself. The dedicating entity, pursuant to Section 21.21(c) of this part, is responsible for identifying and evaluating deviations, reporting defects and failure to comply for the dedicated item, and maintaining auditable records of the dedication process. In cases where the Licensee applies the commercial grade item procurement strategy and performs the dedication process, the Licensee would assume full responsibility as the dedicating entity.

The NRC staff determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC finds that the requested exemption is authorized by law.

The NRC staff determined that the requested exemption will not endanger life or property or the common defense and security. In adopting the revised definition of ''commercial grade item'' for nuclear power plants in 1995, the NRC determined that a commercial grade item, when properly and successfully dedicated, is deemed by the NRC to be equivalent in its safety function performance to the same or similar item designed and manufactured under a 10 CFR part 50, Appendix B, quality assurance program. While SHINE does not maintain a 10 CFR part 50 Appendix B, quality assurance program, the NRC staff reviewed the SHINE QAPD using ANSI/ANS–15.8–1995, as endorsed by Regulatory Guide 2.5. The NRC staff found the SHINE QAPD acceptable for the design and construction of the proposed SHINE facility with the issuance of NUREG–

2198. Additionally, in the current version of the SHINE QAPD (ADAMS Accession No. ML20105A316), SHINE defines safety-related SSCs as ''those physical SSCs whose intended functions are to prevent accidents that could cause undue risk to health and safety of workers and the public; and to control or mitigate the consequences of such accidents.'' The NRC staff approved of SHINE's use of a custom-definition of safety-related SSCs in NUREG–2198 because the 10 CFR 50.2 definition of ''safety-related structures, systems, and components'' did not apply to a facility that was not a power reactor and the custom definition was appropriate for the SHINE facility. The NRC staff similarly concludes that the definitions that SHINE proposes to use (in lieu of the those required by 10 CFR 21.3) are similar to those previously approved at other facilities and are appropriate for the SHINE facility, which has SSCs with unique design or specification requirements based on their intended safety function. Accordingly, the revision of the QAPD to incorporate the proposed definitions and the assumption by SHINE (or its approved sub-contractor) of full responsibility as the dedicating entity are appropriate to support procurement of certain unique items because they will provide a controlled and safe approach for item procurement for the construction of the first-of-its-kind SHINE facility. Therefore, the NRC finds that the requested exemption does not endanger life or property or the common defense and security.

The NRC staff determined that the requested exemption is in the public interest. The requested exemption would allow SHINE to implement a controlled and safe approach to item procurement for the construction of the SHINE facility. Additionally, consistent with the American Medical Isotopes Production Act of 2012 (42 U.S.C. 2065), construction of the SHINE facility supports the establishment of a domestically-produced commercial supply of molybdenum-99, which is in the interest of public health. Therefore, the NRC finds that the requested exemption is in the public interest.

III. Environmental Considerations

The granting of this exemption is categorically excluded under 10 CFR 51.22, ''Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,'' paragraph (c)(25), and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(I), that the requirements from which the exemption is sought involve other requirements of an administrative, managerial, or organizational nature. The NRC staff also determined that approval of this exemption involves no significant hazards consideration because authorizing the use of the specified definitions that differ from those in 10 CFR 21.3 does not authorize any physical changes to the facility or any of its safety systems, does not change any of the assumptions or limits used in SHINE's safety analyses, does not introduce any new failure modes, and allows procurement of commercial grade items, which if properly dedicated, will have comparable safety functions. As a result, there is no significant increase in the probability or consequences of an accident previously evaluated, there is no creation of the possibility of a new or different kind of accident from any accident previously evaluated, and there is no significant reduction in a margin of safety.

In addition, because the SHINE facility is under construction and an operating license has not been issued, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because the exemption does not affect any effluent release limits as provided in SHINE's technical specifications or by the regulations in 10 CFR part 20, ''Standards for Protection Against Radiation.'' There is no significant increase in individual or cumulative public or occupational radiation exposure because the exemption does not affect the limits on the release of any radioactive material or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because the exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in SHINE's safety analysis. Therefore, the NRC has determined that granting the exemption would not individually or cumulatively have a significant effect on the human environment.

IV. Conclusions

Based on its review, the NRC staff finds that the use of the SHINE-proposed definitions of commercial grade item, basic component, critical characteristics, dedication, and dedicating entity do not adversely affect public health and safety. Therefore, the use of commercial grade items by SHINE, which are properly dedicated, is acceptable. Further, the NRC staff considered the requirements of 10 CFR 21.7 and finds that granting this exemption from certain 10 CFR 21.3 definitions is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public's interest. Therefore, the NRC grants the exemption from 10 CFR 21.3 definitions of commercial grade item, basic component, critical characteristics, dedicating entity, and dedication, subject to the condition that (1) SHINE revise its QAPD consistent with the alternate definitions stated above and prior to assuming full responsibility as the dedicating entity or otherwise implementing its commercial grade procurement strategy and dedication process, and (2) SHINE shall submit the revised QAPD to the NRC consistent with the 10 CFR 50.34(b)(6)(ii) requirement to include managerial and administrative controls to be used to assure safe operation of the facility as part of the final safety analysis report for an operating license application.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of April 2021.

For the Nuclear Regulatory Commission.

/RA/

Brian W. Smith,

Deputy Director, Division of Advanced Reactors and Non-Power, Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–09903 Filed 5–13–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–026; NRC–2008–0252]

Southern Nuclear Operating Company Inc; Vogtle Electric Generating Plant Unit 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a March 6, 2020, request from Southern Nuclear Operating Company, Inc. (SNC), as applicable to Vogtle Electric Generating Plant (VEGP) Unit 4. Specifically, the NRC has exempted SNC from the requirement for VEGP Unit 4 to conduct an emergency preparedness exercise prior to its initial fuel load.

DATES: This exemption was issued on July 21, 2020.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the exemption was submitted by letter dated March 6, 2020 and is available in ADAMS under Package Accession No. ML20066G902.

FOR FURTHER INFORMATION CONTACT: Cayetano Santos Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270; email: *Cayetano.Santos@nrc.gov*.

- *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.

SUPPLEMENTARY INFORMATION:

I. Background

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC) are the holders of facility Combined License (COL) Nos. NFP–91 and NPF–92, which authorize the construction and operation of VEGP Units 3 and 4. The COLs, issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), provide, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC or the Commission now or hereafter in effect.

Section IV.F.2.a.(iii) of appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' to part 50 of 10 CFR states, in part, that for a combined license issued under 10 CFR part 52, if the applicant currently has an operating reactor at the site, an exercise, either full or partial participation, shall be conducted for each subsequent reactor constructed on the site. VEGP Units 3 and 4 are of the same reactor design (Westinghouse Electric Company (Westinghouse) AP1000 pressurized-water reactor), and VEGP Units 1, 2, 3, and 4 share the same operating site. In a letter dated March 6, 2020, SNC requested an exemption from the requirement to perform an emergency preparedness exercise for VEGP Unit 4.

The NRC staff's evaluation of SNC's exemption request for Unit 4 is based on VEGP Unit 3 first successfully completing an emergency preparedness exercise as required by section IV.F.2.a.(iii) of appendix E, and establishing an 8-calendar-year emergency preparedness exercise cycle that incorporates both VEGP Units 3 and 4 drill and exercise requirements prior to VEGP Unit 4 commencing initial fuel load. The justification for the exemption is that the successful completion of the VEGP Unit 3 partial participation exercise demonstrate all aspects of emergency response capabilities for both units, thereby making a separate exercise for VEGP Unit 4 to meet the requirements of section IV.F.2.a.(iii) of appendix E unnecessary.

In Part 5, ''Emergency Plan,'' of its December 31, 2008, Early Site Permit (ESP) Application (Revision 5) for VEGP Units 3 and 4, SNC included a complete and integrated emergency plan for VEGP Units 3 and 4, referred to as the ''ESP Plan'' (Docket No. 52–011; ADAMS Accession No. ML091540898). The NRC staff documented its review of the ESP Plan in Section 13.3, ''Emergency Planning,'' of NUREG–1923, ''Safety Evaluation Report for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant (VEGP) ESP Site,'' July 2009 (ADAMS Accession No. ML092290650), and included an evaluation of the emergency plan's description of proposed Units 3 and 4 exercises in Section 13.3.3.2.14, ''Exercises and Drills (10 CFR 50.47(b)(14); NUREG–0654/FEMA–REP–1, planning standard N).''

The NRC issued Early Site Permit No. ESP–004 for the VEGP ESP Site (*i.e.,* for Units 3 and 4) on August 26, 2009 (ADAMS Accession No. ML092290157). ESP–004, including the ESP Plan, was incorporated by reference into SNC's June 24, 2011, COL application for VEGP Units 3 and 4 (Docket Nos. 52–025 and 52–026, respectively; ADAMS Accession No. ML11180A086), and the Units 3 and 4 COLs were issued on February 10, 2012 (ADAMS Accession Nos. ML14100A106 and ML14100A135, respectively). The NRC staff documented its review of the COL application in Section 13.3, ''Emergency Planning,'' of NUREG–2124, ''Final Safety Evaluation Report—Related to the Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4,'' Volume 2, September 2012 (ADAMS Accession No. ML12271A048).

The NRC staff's reasonable assurance finding for the ESP Plan was subject to the satisfactory completion of the inspections, tests, analyses, and acceptance criteria (ITAAC) that were listed in NUREG–1923 Section [Table] 13.3.6, ''VEGP Unit 4 ITAAC,'' which includes ITAAC 8.0, ''Exercises and Drills.'' ITAAC 8.0 requires a limited participation exercise for Unit 4, in order to demonstrate the various emergency preparedness capabilities listed in the associated ITAAC acceptance criteria. The ESP Plan and Unit 4 ITAAC were included in SNC's Unit 4 COL application, and ITAAC 8.0 (consisting of Unit 4 ITAAC Nos. 870, E.3.9.08.01.01; 871, E.3.9.08.01.02; and 872, E.3.9.08.01.03) was included in Appendix C, Table E.3.9–8 of the Unit 4 COL.

Unit 4 COL ITAAC 870, 871, and 872, which address exercise-related aspects of emergency preparedness and response for Unit 4, were subsequently deleted by Unit 4 License Amendment No. 161 (September 5, 2018; ADAMS Package Accession No. ML19213A288). Prior to their deletion, ITAAC 870, 871, and 872 had been revised by Unit 4 License Amendment No. 94 (ADAMS Package Accession No. ML17256A028) (referenced by SNC in its exemption request) to change the ITAAC Program Commitment to conduct a partial participation exercise, and to consolidate duplicated or redundant ITAAC. Finally, while License Amendment 161 deleted the Unit 4 COL requirement in ITAAC 870, 871, and 872 to conduct a partial participation exercise, the separate exercise requirement in section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 remained

applicable to Unit 4 and is the subject of this exemption request.

II. Request/Action

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' SNC requested, by letter dated March 6, 2020 (ADAMS Accession No. ML20066G904), an exemption from the requirements of section IV.F.2.a.(iii) of appendix E to 10 CFR part 50, as applicable to VEGP Unit 4. Enclosure 1 to this letter includes the supporting justification for SNC's request (ADAMS Accession No. ML20066G906). Specifically, SNC requested an exemption for VEGP Unit 4 from the requirement in section IV.F.2.a.(iii) to appendix E of 10 CFR part 50 for an applicant who currently has an operating reactor at the site to perform an exercise, either full or partial participation, for each subsequent reactor constructed on the site. The exemption removes the requirement to perform an emergency preparedness exercise at VEGP Unit 4 prior to its initial fuel load.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to the health and safety of the public, and are consistent with the common defense and security; and (2) special circumstances are present. These special circumstances include, among other things, when the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

1. The Exemption Is Authorized by Law

The exemption removes the requirement in section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 for SNC to perform an emergency preparedness exercise, either full or partial participation, at VEGP Unit 4 prior to initial fuel load. The VEGP Unit 4 emergency preparedness response capabilities, emergency response facilities, and emergency response organization (ERO) are common to both VEGP Units 3 and 4 and have been evaluated during a VEGP Unit 3 partial participation exercise. These emergency preparedness response capabilities will continue to be evaluated under the 8-calendar-year emergency preparedness exercise cycle for the VEGP site (Units 1, 2, 3, and 4). The NRC staff has determined that granting SNC's requested exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations and that no other law precludes the requested changes. Therefore, the exemption is authorized by law.

2. The Exemption Presents No Undue Risk to Public Health and Safety

The NRC staff considered SNC's detailed justification supporting the proposed exemption from section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 for VEGP Unit 4's exercise prior to its initial fuel load. Based on its review of the information submitted with SNC's requested exemption, the NRC staff concluded that VEGP Unit 4 shares emergency preparedness program response capabilities with Vogtle Unit 3 under a common VEGP Emergency Plan Annex, which was subsequently demonstrated during VEGP Unit 3's initial partial participation exercise. In addition, future Unit 4 exercises will be conducted as part of the 8-calendar-year exercise cycle for the VEGP site (Units 1, 2, 3, and 4).

The VEGP Unit 4 capabilities that will have been demonstrated during the VEGP Unit 3 exercise comprise various principal functional areas of emergency response, as they are described in the applicable exercise-related requirements and guidance. Specifically, areas of demonstration during exercises are described in 10 CFR 50.47(b)(14), which identifies major portions of emergency response capabilities, and in sections IV.F.2.b and IV.F.2.j of appendix E to 10 CFR part 50, which identify key skills necessary to implement the principal functional areas of emergency response. In addition, section IV.F.2.a of appendix E calls for conducting an exercise that will test as much of the emergency plans as is reasonably achievable for each reactor site without mandatory public participation. The scope of exercise demonstrations is also addressed in related guidance, consisting of Section II.N.1 of NUREG–0654, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' November 1980 (ADAMS Accession No. ML040420012), which states that exercises should test the integrated capability and a major portion of the basic elements existing within emergency preparedness plans and organizations, and verify the capability to respond to an accident scenario requiring response. The successful completion of the Unit 3 partial participation exercise means that the exercise requirements addressed in this notice have been evaluated, and any deficiencies have been corrected.

The NRC staff finds that Units 3 and 4 are of the same reactor type and design (*i.e.,* Westinghouse AP1000 reactor), and that they share the same resources, requirements, capabilities, emergency response facilities, procedures, and ERO, which is facilitated by VEGP Units 3 and 4 being located side-by-side on the VEGP site. In addition, the NRC staff finds that the identified, shared emergency planning resources, requirements, capabilities, etc., are consistent with the requirements of the applicable regulations and guidance for demonstration of the principal functional areas of emergency response during an exercise. Further, inclusion of the VEGP Unit 4 exercise into the 8-calendar-year exercise cycle for the VEGP site would postpone its first exercise until after initial fuel load. This option is consistent with section IV.F.2.a.(iii) of appendix E to 10 CFR part 50, which states, in part, that this exercise may be incorporated in the exercise requirements of sections IV.F.2.b and IV.F.2.c of appendix E (which address the timing and coordination of exercises at reactor sites). Therefore, the NRC staff has determined that conducting a VEGP Unit 4 partial participation exercise prior to Unit 4's initial fuel load will not demonstrate any new aspects of emergency planning resources, capabilities, emergency response facilities, procedures, or ERO used to accomplish the principal functional areas of emergency response that were not already demonstrated during the VEGP Unit 3 partial participation exercise.

Because the VEGP Unit 4 emergency preparedness response capabilities and ERO were already demonstrated during a VEGP Unit 3 partial participation exercise and will continue to be evaluated under the 8-calendar-year emergency preparedness exercise cycle for the VEGP site, there is no change in risk to public health and safety. Therefore, the exemption does not present an undue risk to public health and safety.

3. The Exemption Is Consistent With the Common Defense and Security

The exemption from section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 removes the requirement for SNC to perform an emergency preparedness exercise at VEGP Unit 4 prior to initial fuel load. The licensee's successful completion of the Unit 3 partial participation exercise demonstrates the adequacy of

emergency preparedness response capabilities and ERO for both Units 3 and 4. Units 3 and 4 would also be incorporated into the 8-calendar-year emergency preparedness exercise cycle for the VEGP site. In addition, this exemption does not involve changes to the SNC Standard Emergency Plan or the VEGP Units 3 and 4 Standard Emergency Plan Annex and has no impact on plant security or safeguards. Therefore, the NRC staff has determined that this exemption does not affect the common defense and security.

4. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 requires, in part, that an emergency preparedness exercise be conducted for each subsequent reactor constructed on an existing reactor site. The underlying purpose of section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 for VEGP Unit 4 is to ensure that an adequate state of emergency preparedness response capability exists for VEGP Unit 4 through the conduct of an emergency preparedness exercise prior to Unit 4 initial fuel load. In addition, as the Commission described in the statement of consideration for the 2007 final rule (72 FR 49351, 49401, August 28, 2007) that added section IV.F.2.a.(iii) to appendix E to 10 CFR part 50, the requirement for emergency preparedness exercises for each subsequent reactor constructed at a site was intended to provide for the demonstration of ITAAC for various emergency preparedness requirements (*e.g.,* programs and facilities) that did not warrant their own specific, detailed ITAAC (separate from the exercise).

The exemption removes the requirement to perform an emergency preparedness exercise at VEGP Unit 4 prior to initial fuel load. Since all the emergency preparedness exercise ITAAC for VEGP Unit 4 were previously deleted by License Amendment 161, and the VEGP Unit 4 emergency preparedness response capabilities and ERO were demonstrated during the Unit 3 partial participation exercise, the underlying purpose of section IV.F.2.a.(iii) for the VEGP Unit 4 exercise is met under the terms of the exemption. Therefore, the NRC staff has determined that the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of the exemption from section IV.F.2.a.(iii) exist because requiring a separate exercise for Unit 4 is not necessary to meet the underlying purpose of the rule.

5. Environmental Consideration

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). The requested exemption seeks to remove the requirement in section IV.F.2.a.(iii) of appendix E to 10 CFR part 50 to conduct either a full or partial participation emergency preparedness exercise for VEGP Unit 4 prior to its initial fuel load, but does not make any physical changes to the facility, the approved SNC Standard Emergency Plan, the VEGP Units 3 and 4 Standard Emergency Plan Annex, or the facility operating procedures. Under 10 CFR 51.22(c)(25), granting an exemption from the requirements of any regulation of chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve certain categories of requirements, such as scheduling requirements related to the performance of an emergency preparedness exercise.

As required by 10 CFR 51.22(c)(25)(i), and using the criteria set out in 10 CFR 50.92(c), the NRC staff reviewed whether the exemption request involves no significant hazards consideration.

(1) Does the requested exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The exemption to 10 CFR part 50, appendix E, section IV.F.2.a.(iii) removes the requirement to perform an emergency preparedness exercise at VEGP Unit 4 prior to initial fuel load. The exemption does not alter the design, function, or operation of any plant equipment and does not involve or interface with any structure, system or component (SSC) accident initiator or initiating sequence of events, so the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. The exemption does not allow for a new fission product release path, nor does it result in a new fission product barrier failure mode or create a new sequence of events that would result in fuel cladding failures. The exemption does not involve any safety-related SSCs or functions used to mitigate an accident, thus the consequences of the accidents evaluated in the UFSAR are not affected. Therefore, granting this exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the requested exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The exemption does not alter the design, function, or operation of any plant equipment. The exemption does not create any new failure mechanisms, malfunctions, or accident initiators. The exemption does not affect the operation of any systems or equipment such that a new or different kind of accident, failure mode, or malfunction is created, or alter any SSC such that a new accident initiator or initiating sequence of events is created. Therefore, granting this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the requested exemption involve a significant reduction in a margin of safety?

No. The exemption does not affect an SSC, SSC design function, or method of performing or controlling a design function. The exemption does not affect safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the exemption. The exemption does not involve changes to the SNC Standard Emergency Plan or the VEGP Units 3 and 4 Standard Emergency Plan Annex, and therefore, there is no reduction in effectiveness in emergency planning, pursuant to 10 CFR 50.54(q). Therefore, granting this exemption does not involve a significant reduction in a margin of safety.

As all of the responses to the above questions are in the negative, under 10 CFR 51.22(c)(25)(i), the NRC staff has concluded that the exemption involves no significant hazards consideration.

The exemption does not alter the design, function, or operation of any plant equipment. There are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational features credited with controlling the release of effluents during plant operation or construction. Therefore, under 10 CFR 51.22(c)(25)(ii), the NRC staff concludes that the

exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

The exemption does not change plant radiation zones, radiological effluent release pathways and release quantities, or cause any changes to the controls required under 10 CFR part 20 that preclude a significant increase in public dose or occupational radiation exposure. Therefore, under 10 CFR 51.22(c)(25)(iii), the NRC staff concludes that the exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

The exemption does not alter the design, function, or operation of any plant equipment. No change to the facility is being made as a result of this exemption. Therefore, under 10 CFR 51.22(c)(25)(iv), the NRC staff concludes that the exemption does not involve a significant construction impact.

The exemption does not alter the design, function, or operation of any plant equipment, and does not involve any safety-related SSCs or functions used to mitigate an accident. No change to the facility is being made as a result of this exemption. Therefore, under 10 CFR 51.22(c)(25)(v), the NRC staff concludes that the exemption does not involve a significant increase in the potential for or consequences from radiological accidents.

The exemption involves scheduling requirements related to the performance of an emergency preparedness exercise. Therefore, under 10 CFR 51.22(c)(25)(vi)(G), the NRC staff concludes that the exemption involves a scheduling requirement.

Based on the evaluation above, the NRC staff concludes that the exemption meets the criteria of 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), an environmental impact statement or environmental assessment is not required for the NRC staff's consideration of this exemption request.

IV. Conclusion

Based on the above, the NRC staff concludes that, with the VEGP Unit 4 exemption from section IV.F.2.a.(iii) of appendix E to 10 CFR part 50, there is reasonable assurance that adequate protective measures can, and will, be taken in the event of a radiological emergency at VEGP Unit 4, and that VEGP Unit 4 continues to demonstrate compliance with 10 CFR 50.47(b)(14) and appendix E to 10 CFR part 50.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the health and safety of the public, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, given that a partial participation exercise for VEGP Unit 3 was successfully completed, the Commission has granted SNC an exemption from section IV.F.2.a.(iii) of appendix E to 10 CFR part 50, to eliminate the requirement to perform an emergency preparedness exercise at VEGP Unit 4 prior to its initial fuel load.

Dated: May 11, 2021.

For the Nuclear Regulatory Commission.

Gregory T. Bowman,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–10254 Filed 5–13–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0110]

Environmental Assessment 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 and updated decommissioning funding plans (DFPs) submitted by Sacramento Municipal Utility District (SMUD) for the Rancho Seco independent spent fuel storage installation (ISFSI).

DATES: The EA and FONSI referenced in this document are available on May 14, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0110. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6877, email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial and updated DFPs submitted by SMUD for the Rancho Seco ISFSI. The NRC staff has prepared a final EA and FONSI determination for SMUDS's initial and updated 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 35511). 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 table in this notice includes the facility 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–2021–0110. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Rancho Seco ISFSI
Docket No.	72–11.
Licensee	Sacramento Municipal Utility District.
Proposed Action	The NRC's review and approval of SMUD's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of SMUD's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), 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 and updated DFPs 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 SMUD's initial and updated DFPs. 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. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Rancho Seco 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 is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ''Environmental Assessment re: Final Rule: Decommissioning Planning'' (10 CFR Parts 20, 30, 40, 50, 70, and 72; RIN 3150–AI55). Washington, DC. February 2009. ADAMS Accession No. ML090500648. Sacramento Municipal Utility District. ISFSI DFPs, dated March 14, 2013. ADAMS Accession No. ML13098A100. Sacramento Municipal Utility District. ISFSI DFPs, dated March 23, 2015. ADAMS Accession No. ML15093A058. Sacramento Municipal Utility District. ISFSI DFPs, dated March 14, 2016. ADAMS Accession No. ML16102A097. Sacramento Municipal Utility District. ISFSI DFPs dated April 7, 2016. ADAMS Accession No. ML16106A109. U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File). May 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Sacramento Municipal Utility District's DFP Update for Rancho Seco ISFSI, dated April 3, 2018. ADAMS Accession No. ML18094A261. Sacramento Municipal Utility District. Response to Request for Additional Information Regarding DFPs for ISFSIs, dated April 16, 2018. ADAMS Accession No. ML18113A051. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Rancho Seco ISFSI DFP, dated May 20, 2016. ADAMS Accession No. ML16147A028. U.S. Nuclear Regulatory Commission. Final EA/FONSI for the SMUD Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(B) and (C) for Rancho Seco Nuclear Generating Station's ISFSI, dated May 7, 2021. ADAMS Accession No. ML21049A305.

Dated: May 11, 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. 2021–10241 Filed 5–13–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91803; File No. SR–CboeEDGX–2021–025]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Exchange's Process for Re-Opening Securities Listed on Other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause During the Early Trading Session, Pre-Opening Session, or Post-Closing Session

May 10, 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 April 26, 2021, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 a rule change to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session,[3] Pre-Opening Session,[4] or Post-Closing Session.[5] EDGX Rule 11.7 describes the Exchange's opening process for securities listed on other national securities exchanges, including the process for re-opening such securities following the resumption of trading after a halt, suspension, or pause. On November 5, 2020, the Exchange filed a proposed rule change to amend its re-opening process pursuant to EDGX Rule 11.7 for securities listed on the New York Stock Exchange LLC (''NYSE'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.[6] That filing was approved by the Commission on December 28, 2020.[7] The Exchange now proposes to further amend EDGX Rule 11.7 to adopt a harmonized re-opening process for securities listed on NYSE (''Tape A''), securities listed on exchanges other than The Nasdaq Stock Market LLC (''Nasdaq'') and NYSE (''Tape B''); and securities listed on Nasdaq (''Tape C'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session. The Exchange believes that the proposed harmonized process for Tape A, B, and C securities would simplify its procedures and provide a more effective re-opening process for securities that resume trading outside of Regular Trading Hours.[8] The Exchange also proposes to make non-substantive changes to Rule 11.7 to conform the text to Cboe BZX Exchange, Inc. (''BZX'') Rule 11.24.

As amended pursuant to SR-CboeEDGX–2020–055, EDGX Rule 11.7(e)(3) provides that during the Early Trading Session, Pre-Opening Session, or Post-Closing Session, Tape A securities that resume trading after a halt, suspension, or pause will be automatically re-opened pursuant to the Exchange's contingent open procedures, as described in EDGX Rule 11.7(d), after one second has passed following the Exchange's receipt of the first NBBO following such resumption of trading. This rule was adopted to automate the prior manual process that would otherwise be used to initiate the re-opening of Tape A securities when NYSE was not open for trading. Consistent with that intent, the Exchange proposed to continue to re-open Tape A securities using the same contingent open procedures that would apply when the Exchange manually initiated its re-opening process pursuant to EDGX Rule 11.7(e)(2). As a result, when the Exchange re-opens Tape A securities during pre- and post-market trading sessions today, orders are handled in time sequence and placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order. This differs from the standard processed used by the Exchange during Regular Trading Hours, where the Exchange seeks to execute queued orders at the midpoint of the national best bid or offer (''NBBO'').[9] After additional consideration, the Exchange believes that market participants and investors would be better served by utilizing its standard midpoint re-opening in these circumstances as doing so would promote greater consistency with the process used by the Exchange in other circumstances and may generally

[3] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* EDGX Rule 1.5(ii).

[4] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* EDGX Rule 1.5(s).

[5] The term ''Post-Closing Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* EDGX Rule 1.5(r).

[6] *See* Securities Exchange Act Release No. 90422 (November 13, 2020), 85 FR 73816 (November 19, 2020) (SR–CboeEDGX–2020–055).

[7] *See* Securities Exchange Act Release No. 90804 (December 28, 2020), 86 FR 158 (January 4, 2021) (Approval Order).

[8] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* EDGX Rule 1.5(y).

[9] *See* EDGX Rule 11.7(e)(1).

provide executions that better reflect the applicable market for the security.

The Exchange therefore proposes to amend EDGX Rule 11.7(e) such that the process for re-opening Tape A securities after the Exchange has determined to initiate a re-opening would generally mirror the standard process described in EDGX Rule 11.7(e)(1), which as discussed is designed to provide an execution at the midpoint of the NBBO. The determination of *whether* to re-open such Tape A securities would, however, continue to follow the process discussed in SR–CboeEDGX–2020–055. Thus, during the Early Trading Session, Pre-Opening Session, or Post-Closing Session, the re-opening process for Tape A securities would occur at the midpoint of the NBBO after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after a halt, suspension, or pause. Although the Exchange has determined to use a midpoint re-opening process similar to that currently described in EDGX Rule 11.7(e)(1), for the reasons discussed in SR–CboeEDGX–2020–055, it remains important that the trigger for initiating this process outside of Regular Trading Hours not be tied to the resumption of trading on the primary listing market as NYSE does not trade its listed securities at times when the Exchange is open for pre- and post-market trading.

In addition, the Exchange proposes to amend the process for re-opening Tape B and C securities to mirror the proposed process for Tape A securities, except that the Exchange would require the primary listing market to have begun quoting the security before it initiates its own re-opening process. As explained in SR–CboeEDGX–2020–055, the Exchange amended EDGX Rule 11.7 to permit Tape A securities listed on NYSE to re-open based on quoting activity on other national securities exchanges during pre- and post-market trading when NYSE does not trade its listed securities. However, this limitation does not exist for Tape B or C securities as the applicable primary listing markets for those securities each offer pre- and post-market trading sessions where market participants can trade their listed securities.[10] As a result, the Exchange believes that it is desirable for Tape B and C securities to be opened on the Exchange only *after* the primary listing exchange has begun trading its listed securities, consistent with the current EDGX Rule 11.7(e), which would continue to be applied during Regular Trading Hours. However, similar to the proposed process for re-opening Tape A securities, the Exchange would simplify the triggers for re-opening trading pursuant to EDGX Rule 11.7(e)(1) such that its re-opening process for Tape B and C securities during the Early Trading Session, Pre-Opening Session, and Post-Closing Session would occur at the midpoint of the NBBO after one second has passed following the publication of the first two-sided quotation by the listing exchange following the resumption of trading after a halt, suspension, or pause. In its effort to simplify the re-opening process employed during these timeframes, the Exchange would not retain a separate trigger to allow the re-opening process to be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange.

The Exchange also proposes to make a number of structural changes to EDGX Rule 11.7(e) to facilitate the amendments described above, and non-substantive changes to conform the rule text to BZX Rule 11.24. First, the Exchange proposes to structure EDGX Rule 11.7(e)(1) such that it would contain subparagraphs (A), (B), and (C), which each would describe applicable differences between the Exchange's opening process at the beginning of the Regular Trading Session, as described in EDGX Rule 11.7(a)(2) and (b), and the re-opening process employed by the Exchange after a halt. As amended, EDGX Rule 11.7(e)(1)(A) would describe the types of orders that are eligible for participation in the re-opening process. Further, the Exchange proposes to amend the text of the paragraph to partially conform to BZX Rule 11.24(e)(1). As proposed, EDGX Rule 11.7(e)(1)(A) would state that non-RHO[11] orders will be eligible for participation in the Re-Opening Process, but IOC,[12] FOK,[13] EDGX Post Only Orders,[14] and Minimum Execution Quantity Orders[15] will be cancelled or rejected, as applicable, and any ISO[16] that is not IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process.

As amended, EDGX Rule 11.7(e)(2)(B) would describe the Exchange's current re-opening process, which the Exchange now proposes to limit to Regular Trading Hours. Further, the Exchange proposes to partially conform EDGX Rule 11.7(e)(2)(B)(ii) with BZX Rule BZX Rule 11.24(e)(1). Specifically, as amended EDGX Rule 11.7(e)(2)(B)(ii) would provide that during Regular Trading Hours, the Re-Opening Process will occur at the (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

As proposed, EDGX Rule 11.7(e)(2) would contain language discussed above that describes the Exchange's re-opening process during the Early Trading Session, Pre-Opening Session, or After Hour Trading Session, *i.e.,* for Tape A, B, and C securities.[17]

Lastly, the Exchange proposes to amend EDGX Rule 11.7(e)(2) to reflect the changes discussed above. As amended, the lead in to EDGX Rule 11.7(e)(2) would state that this section applies where the conditions required to establish the price of the re-opening process in the now restructured EDGX Rule 11.7(e)(1)(B) or (C) have not occurred, which reflects the now renumbered sections of the rule, including language that is in current EDGX Rule 11.7(e)(1) and EDGX Rule 11.7(e)(3).[18]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[19] in general, and Section 6(b)(5) of the Act,[20] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and

[10] *See* Nasdaq Rules, Equity 1, Section 1(a)(9); NYSE Arca, Inc. Rule 7.34–E(a); NYSE American LLC Rule 7.34E(a).

[11] *See* Exchange Rule 11.6(q)(6) Regular Hours Only (''RHO'').

[12] *See* Exchange Rule 11.6(q)(1) Immediate-or-Cancel (''IOC'').

[13] *See* Exchange Rule 11.6(q)(3) Fill-or-Kill (''FOK'').

[14] *See* Exchange Rule 11.6(n)(4).

[15] *See* Exchange Rule 11.6(h).

[16] *See* Exchange Rule 11.8(c) Intermarket Sweep Order (''ISO'').

[17] The Exchange would also eliminate EDGX Rule 11.7(e)(3), which currently addresses the re-opening of Tape A securities listed on NYSE during pre- and post-market trading. As discussed, the Exchange is proposing to harmonize the process for re-opening Tape A, B, and C securities outside of Regular Trading Hours, and the harmonized process discussed in this proposed rule change would be described in EDGX Rule 11.7(e)(2)(C).

[18] The Exchange would also eliminate language that states that this section applies when the security has not otherwise been re-opened for trading on the Exchange pursuant to EDGX Rule 11.7(e)(3). As discussed, the content of EDGX Rule 11.7(e)(3) would be moved to EDGX Rule 11.7(e)(1)(C) with further amendments as discussed herein.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would implement a streamlined process for re-opening Tape A, B, and C securities during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.

The Exchange currently employs different processes for re-opening Tape A, B, and C securities during pre- and post-market trading. The Exchange believes, however, that market participants would be better served by a harmonized process that: (1) Ensures that the Exchange's automated re-opening process executes orders at the midpoint of the NBBO; and (2) eliminates unnecessary distinctions between the process utilized for Tape A, B, and C securities. Executing the Exchange's re-opening process during pre- and post-market trading at the midpoint of the NBBO is beneficial to market participants as the NBBO midpoint may more closely reflect market prices and conditions for the security being re-opened. As a result, the Exchange believes that using the NBBO midpoint to price its re-opening process for all securities would help to promote a fair and orderly market. In addition, using generally consistent triggers for initiating the Exchange's re-opening process in Tape A, B, and C securities that resume trading during pre- and post-market trading sessions would reduce the overall complexity of the re-opening process employed during these timeframes. The Exchange notes, however, that it would nevertheless require the primary listing market to begin trading its own securities prior to re-opening trading on the Exchange in Tape B and C securities. This limitation would not apply to Tape A securities that NYSE does not trade outside of its regular trading session as doing so would require unnecessary and inefficient manual intervention by the Exchange to manually initiate trading, as was the case prior to the filing and Commission approval of SR–CboeEDGX–2020–055. The Exchange believes that this distinction continues to be appropriate as it is based on applicable differences between each primary listing market's hours of operation and would continue to promote a more streamlined automated process for initiating the re-opening process in Tape A securities at times when NYSE does not trade its own listed securities.

The Exchange believes the proposed structural changes and non-substantive amendments to Rule 11.7(e)(1) will simplify the Exchange's rules and harmonize the text to the corresponding BZX rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate a more efficient and harmonized re-opening process for all securities that resume trading outside of Regular Trading Hours, and is not designed to address any competitive issues. All members would have their orders handled in the same manner based on the proposed changes to the Exchange's re-opening process, and other national securities exchanges are free to adopt the same or similar processes if they believe that the proposed process is beneficial for their own members. The Exchange therefore does not believe that the proposed rule change would have any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received 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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2021–025 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–CboeEDGX–2021–025. 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–CboeEDGX–2021–025 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10171 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91806; File No. SR–ICC–2021–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

May 10, 2021.

I. Introduction

On March 23, 2021, ICE Clear Credit LCC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update and formalize the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the ''Plans''). The proposed rule change was published for comment in the **Federal Register** on April 5, 2021.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

As a ''covered clearing agency,'' ICC is required to, among other things, ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.''[4] The Commission has previously clarified that it believes that such recovery and wind-down plans are ''rules'' within the meaning of Exchange Act Section 19(b) and Rule 19b–4 because such plans would constitute changes to a stated policy, practice or interpretation of a covered clearing agency.[5] The Plans have been in place at ICC for a number of years. However, ICC has now filed them with the Commission for the first time since becoming a ''covered clearing agency'' under the definition in Rule 17Ad–22(a)(5).[6]

B. Recovery Plan

The Recovery Plan describes the actions ICC takes to (i) restore ICC to a stable and sustainable condition in the event that it comes under severe stress and (ii) maintain effective arrangements for ensuring that losses that threaten ICC's viability as a going concern are allocated. The Recovery Plan consists of 14 sections, which are detailed below.

First, Section 1 of the Recovery Plan introduces and summarizes key aspects of ICC's plan for recovery and explain its purpose. Section 1 explains that the Recovery Plan relies on ICC's existing Rules and policies and procedures and describes recovery tools available to ICC.

Section 2 of the Recovery Plan provides an overview of ICC and the regulation to which it is subject, including key information regarding ICC's ownership structure, regulatory registrations, and designations. Section 2 explains that ICC's sole critical operation is providing CDS clearing services.

Section 3 of the Recovery Plan discusses the applicable regulatory requirements and obligations, including regulatory guidance ICC considered in writing the plan.

Section 4 provides an overview of the key elements in any recovery of ICC. First, Section 4 discusses the legal entities that are material to ICC for the Recovery Plan. The Recovery Plan defines a material legal entity (''MLE'') as a legal entity that is significant to the activities of ICC's critical operation and/or to the delivery of a critical service.[7] Section 4 explains the metrics and information that ICC considered to identify the MLEs. Moreover, Section 4 explains that there are two MLEs for the Recovery Plan: ICC itself and ICC's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''). With respect to ICC, Section 4 also explains (i) the requirements for ICC's Clearing Participants (''CPs''), such as operational capacity, financial responsibility, and capital; (ii) the governance arrangements and committees that have a direct and indirect role in default management and recovery, including the roles and responsibilities of the Board, Risk Committee, CDS Default Committee, and Advisory Committee, among others; (iii) ICC's key performance metrics in respect of the services that it provides; and (iv) ICC's management of collateral, including the forms of collateral that ICC accepts to satisfy initial margin (''IM'') and guaranty fund (''GF'') requirements and the monitoring of collateral counterparties.

As further explained in Section 4, the CDS Default Committee is responsible for assisting ICC during the execution of certain default management and recovery procedures and convenes upon the declaration of default. The Default Committee is comprised of up to three representatives from eligible CPs. For a CP to be eligible to serve on the Default Committee, the Board or its designee, after consultation with the ICC Risk Committee, needs to approve the CP for participation. The Recovery Plan lists the CPs currently eligible for participation on the Default Committee. Each member of the Default Committee is deemed seconded to ICC and takes actions in the best of interest of ICC.

Section 5 analyzes the critical services that are necessary to continue daily operations of CDS clearing services. Section 5 categorizes the critical services by those that are provided to ICC by ICE and those that are provided to ICC by external third parties.

Section 6 details the interconnections and interdependencies between ICC and other entities, including operational and financial interconnections. Section 6 explains the interconnection between ICE and ICC, including through services provided to ICC by ICE, such as accounting, human resources, audit, and facilities. Section 6 also details the IT systems and applications critical to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 91439 (March 30, 2021); 86 FR 17649 (April 5, 2021) (SR–ICC–2021–005) (''Notice'').

[4] 17 CFR 240.17Ad–22(e)(3)(ii).

[5] Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016).

[6] ICC became a ''covered clearing agency'' following a change in the definition of the term in Rule 17Ad–22(a)(5). The previous definition of ''covered clearing agency'' in Rule 17Ad–22(a)(5) stated that ''covered clearing agency'' means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). Under this definition, ICC was not a covered clearing agency. Under the revised definition, ''covered clearing agency'' means a registered clearing agency that provides the services of a central counterparty or central securities depository. Under the revised definition, ICC is a covered clearing agency. *See* Definition of ''Covered Clearing Agency'', Exchange Act Release No. 88616 (April 9, 2020), 85 FR 28853, 28854–55 (May 14, 2020).

[7] For purposes of the Recovery Plan, critical services are services and operations, such as information technology support and operations, human resources, and facilities, which are necessary to continue the ICC's critical operation (CDS central clearing services).

ICC's clearing operations, including those provided by ICE, those provided by external third parties, and those that ICC provides to itself, through in-house systems. Section 6 also explains how ICC uses financial entities and monitors financial entities that have multiple roles and relationships with ICC (such as a CP that also provides financial services to ICC). Finally, Section 6 analyzes ICC's contractual arrangements in the context of continuing services under those contracts during recovery.

Section 7 of the proposed Recovery Plan describes the potential stress scenarios that may prevent ICC from meeting obligations and providing services, as well as the recovery tools available to ICC to address such scenarios. Section 7 of the Recovery Plan categorizes stress scenarios as: (i) Uncovered credit losses and/or liquidity shortfalls triggered by a CP or multiple CPs defaulting (''CP default stress scenario''), and (ii) stress triggered by general business risks, operational risks, or other risks that may threaten ICC's viability as a going concern, other than a CP default (''non-CP default stress scenario''). Section 7 also discusses the monitoring mechanisms for both categories of scenarios, such as daily monitoring of GF and collateral requirements and daily review of back-testing and stress-testing results, as well as the process for notifying regulators of the initiation of the Recovery Plan. Finally, Appendix D further analyzes each scenario, including the triggering events and the specific steps ICC takes when the scenario occurs or appears likely to occur.

Section 8 of the proposed Recovery Plan describes the circumstances in which ICC initiates the Recovery Plan and the tools that are available to ICC to achieve recovery. Specifically, under both the CP default stress scenario and the non-CP default stress scenario, Section 8 defines the point at which ICC activates the Recovery Plan and the point at which ICC begins recovery. Section 8 then describes the recovery tools available to ICC. Appendix E further analyzes and summarizes these recovery tools, including whether the particular tool is mandatory under ICC's rules or voluntary and the specific governance steps that required to implement each tool. For a CP default stress scenario, these recovery tools include:

- Auctions to close out a defaulter's portfolio ((ICC Rule 20–605(d)(v) and (f)(ii));
- An insurance policy covering specified losses resulting from a CP default (ICC Rule 802);
- CPs' obligation to replenish their GF contribution to the required level in the event of any use of the GF contributions of non-defaulting CPs (ICC Rule 803(a)) and to make assessment contributions to the GF following a CP default and the consumption of the pre-funded GF (ICC Rule 803(b)), subject to a cap;
- Partial tear-up of remaining positions (ICC Rules 20–605(f)(iii) and 809) where ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulter's remaining portfolio; and
- Reduced gains distributions (''RGD'') (ICC Rule 808) for up to five consecutive business days, allowing ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to CPs, as ICC attempts a secondary auction or conducts a partial tear-up.

Section 8 also discusses the tools that are available to ICC to address a situation where ICC experiences liquidity shortfalls triggered by a default of one or more CPs and has insufficient liquid resources in the proper currency to meet payments obligations. These tools include entering into transactions to exchange certain sovereign debt securities for cash or to exchange U.S. dollar cash for Euro cash under one of ICC's committed repurchase or committed foreign exchange agreements, respectively.

Finally, Section 8 discusses the tools available to ICC in the event that ICC experiences severe stress triggered by a non-CP default stress scenario, including the application of resources from ICC and contributions from CPs to address certain investment and custodial losses. ICC Rule 811 provides a mechanism for allocating investment losses and custodial losses as between ICC and CPs, with ICC being responsible for a first loss position up to the amount of defined resources and with CPs being responsible for the remaining loss, in proportion to and capped at their margin and GF contributions. Additional tools to address non-CP default stress scenarios include insurance coverage, seeking additional capital through the ICE group, renegotiating certain agreements, and reducing personnel and other expenses.

Section 9 of the Recovery Plan describes the governance arrangements that provide oversight and direction in respect of the Recovery Plan, including design, implementation, testing, review, and ongoing maintenance. Specifically, overall responsibility for the Recovery Plan rests with the ICC Board. The ICC Board is responsible for reviewing and approving the Recovery Plan. The ICC Board has, in turn, delegated to the ICC President responsibility for implementing the Recovery Plan, as well as considering and developing any needed amendments or modifications to the Recovery Plan over time, and the ICC President is accountable to the ICC Board with respect to such matters. Accordingly, ICC management prepared the Recovery Plan under the direction of the ICC President.

Section 9 also describes how ICC considers feedback from CPs and customers in developing the Recovery Plan, including through detailed consultation with CPs as to overall design and implementation. Moreover, Section 9 describes how ICC considers the interests of CPs and customers on an ongoing basis, including through the ICC Risk Committee and CP representation on the ICC Board.

Finally, Section 9 describes the process for reviewing and approving the Recovery Plan, including changes to the Recovery Plan and testing. ICC Management, the ICC Risk Committee, and the ICC Board are responsible for reviewing and approving the Recovery Plan. Annually, the ICC General Counsel coordinates with ICC management to review and update the Recovery Plan. Moreover, ICC's General Counsel coordinates with ICC management to revise the Recovery Plan promptly when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing material amendments to the Recovery Plan and make a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is ultimately responsible for approval of revisions to the Recovery Plan. ICC notifies its regulatory authorities of changes to the Recovery Plan. Section 9 notes that ICC tests the Recovery Plan at least annually, as part of its annual default management drills, and ICC management provides the results of such testing, as well as any changes it recommends due to such testing, to the ICC Board and Risk Committee.

Section 10 of the Recovery Plan analyzes the financial resources that ICC maintains for recovery in compliance with relevant regulations, including the procedures it follows in case of any shortfall. This section also discusses the timing for implementing ICC's recovery tools and ICC's projected estimated recovery and wind-down costs. Specifically, Section 10 provides that ICC maintains capital in accordance

with SEC Rule 17Ad–22(e)(15) [8] as well as CFTC requirements and, on a voluntary basis, calculates what its regulatory capital requirement would be if ICC was subject to EU-based clearing house regulatory capital requirements. ICC maintains regulatory capital in an amount at least equal to the highest of these three requirements (Commission, CFTC, and EU). Section 10 provides that currently the EU regulatory capital requirement results in the highest capital requirement and therefore ICC maintains regulatory capital in accordance with this requirement, which results in ICC maintaining regulatory capital in an amount materially more than the amounts required by SEC Rule 17Ad–22(e)(15) [9] or CFTC requirements. Section 10 then describes how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Finally, Section 10 describes the estimated costs and time period for implementing the Recovery Plan and how ICC estimates these figures, and demonstrates how ICC's regulatory capital exceeds these costs.

The remaining sections provide additional relevant information for the Recovery Plan. Section 11 provides financial information relevant to ICC and ICE. Section 12 sets forth key systems used by ICC to generate reports to monitor and support clearing operations. Section 13 consists of the appendices to the Recovery Plan, including a glossary, diagrams and charts of clearing processes and financial service providers, and analyses related to different stress scenarios and recovery tools. Section 14 is an index of exhibits to the Recovery Plan.

C. Wind-Down Plan

The Wind-Down Plan establishes how ICC could be wound-down in an orderly manner. ICC only invokes the Wind-Down Plan where recovery actions in the proposed Recovery Plan fail to preserve ICC's viability as a going concern (and therefore recovery is not possible) and resolution is not triggered. ICC could also use the Wind-Down Plan where ICC makes a business decision to exit all clearing activities. The proposed Wind-Down Plan is divided into 12 sections, which are detailed below.

Similar to the proposed Recovery Plan, the Wind-Down Plan provides necessary background and context regarding ICC for wind-down planning. Section 1 of the Wind-Down Plan introduces the plan, summarizes key aspects of the Wind-Down Plan, and explains the plan's purpose. Section 2 provides an overview of ICC and the regulation to which it is subject, including key information regarding ICC's ownership structure and regulatory registrations and designations. Section 3 describes the regulatory requirements and obligations applicable to ICC, including regulatory guidance that ICC considered in writing the plan.

Section 4 of the Wind-Down Plan describes ICC's CPs and the governance arrangements that are relevant to wind-down, including the roles and responsibilities of the Board and Risk Committee. If ICC's recovery efforts fail, the ICC Board determines whether to implement the Wind-Down Plan and determines which options to use to achieve an orderly wind-down, taking into consideration the interests of CPs, through both the recommendations of the Risk Committee and the participation of CPs on the Board itself. ICC also regularly takes into account feedback of customers of CPs, both through its Advisory Committee and through direct communications with representatives of customers. Finally, Section 4 describes the ICC committees involved in the wind-down process, with the Risk Committee the principal committee involved in the wind-down process.

Next, Section 5 of the Wind-Down Plan describes the potential stress scenarios that could prevent ICC from meeting obligations and providing services, resulting in wind-down. Similar to the Recovery Plan, Section 5 categorizes the stress scenarios as: (i) CP default stress scenarios, and (ii) severe stress triggered by general business risks, operational risks, or other risks that may threaten ICC's viability as a going concern, other than a CP default (''non-CP default severe stress scenarios''). Appendix D further analyzes each scenario, including, among other things, the events triggering wind-down under each scenario. These triggering events fall into two broad categories: (i) A critical reduction in market participation, and (ii) a critical reduction in ICC's financial resources below regulatory capital requirements. With respect to a business decision to wind-down, the triggering event is the Board's decision to exit the business.

Section 6 examines ICC's options for wind-down, how ICC executes those options, and the potential obstacles to an orderly wind-down. ICC has three options for wind-down: (i) A transfer of CDS clearing activities from ICC to an alternative clearinghouse; (ii) the sale of ICC to another entity; or (iii) the termination of open positions. Although Section 6 presents the three options as alternatives, it also notes that the options could be used in combination with each other. Section 6 also notes that while the selection of the wind-down option depends on the circumstances, ICC prefers a transfer or sale and considers termination only if a transfer or sale cannot be achieved. Moreover, ICC could use any these options in the event ICC makes a business decision to exit all clearing activities.

To execute these options, the ICC Board first makes a decision to wind-down, and as noted above, that is only in the event that recovery fails to preserve ICC's viability as a going concern and resolution is not triggered. Section 6 notes that before the Board makes a wind-down decision, ICC first consults with, among others, market participants, potential alternative clearing houses, and regulators. Moreover, once the ICC Board makes the decision to wind-down, ICC informs both the CFTC and the Commission.

After the ICC Board agrees in principle to a wind-down, ICC staff undertakes an analysis under the direction of the Board and may consult with CPs, market participants, alternative clearing houses, swap execution platforms, and regulators with respect to the options and approaches to wind-down, to gain their input and relevant information for consideration by the ICC Board. The ICC Board ultimately decides which of the options to use. Section 6 notes that, to the extent possible, ICC's primary determinant of feasibility for wind-down options is the ability to continue providing centralized clearing of CDS with as little disruption as possible. If continuation is not feasible, the primary determinant is the ability to discontinue CDS clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders.

Section 6 sets forth the plans that ICC uses for executing each wind-down option, including the approach, timeline, potential impediments, and other considerations. The Board considers and approves the execution plan prior to implementation. Where the Board makes a business decision to wind-down, ICC executes wind-down using one or more of the wind-down options listed above, with an execution plan based on those provided in the Wind-Down Plan.

Finally, Section 6 discusses the potential obstacles to executing an orderly wind-down. These obstacles

[8] 17 CFR 240.17Ad–22(e)(15).

[9] 17 CFR 240.17Ad–22(e)(15).

include, among others: Staff retention; the ability to continue to receive key services from affiliates or third party vendors; risk of litigation; and finding an appropriate buyer.

Section 7 describes the interconnections and interdependencies between ICC and other entities. Similar to the Recovery Plan, Section 7 analyzes the legal entities that are material to ICC for the Wind-Down Plan, the critical services provided to ICC by ICE or external third parties, and ICC's operational and financial interconnections. This analysis identifies ICE as ICC's sole MLE for the purpose of wind-down and explains the interconnection between ICE and ICC, including through services provided to ICC by ICE, such as accounting, human resources, audit, and facilities.

Again, similar to the Recovery Plan, Section 7 also (i) details the critical services that are necessary to continue daily operations of CDS clearing services; (ii) categorizes the critical services by those that are provided to ICC by ICE and those that are provided to ICC by external third parties; (iii) describes the IT systems and applications critical to ICC's clearing operations; and (iv) explains how ICC uses financial service providers and how ICC monitors entities that have multiple roles and relationships with ICC (such as a CP that also provides financial services to ICC).

Section 8 of the Wind-Down Plan analyzes ICC's contractual arrangements in the context of continuing services during wind-down.

Section 9 of the Wind-Down Plan analyzes the financial resources maintained by ICC to support wind-down in compliance with relevant regulations, including the procedures to follow in case of any shortfall. This section also discusses the timing for executing the wind-down options and ICC's projected estimated recovery and wind-down costs. As with the Recovery Plan, this section of the Wind-Down Plan notes that ICC maintains capital in accordance with SEC Rule 17Ad–22(e)(15) [10] as well as CFTC requirements and, on a voluntary basis, calculates what its regulatory capital requirement would be if ICC was subject to EU-based clearing house regulatory capital requirements. ICC maintains regulatory capital in an amount at least equal to the highest of these three requirements (Commission, CFTC, and EU). Section 9 provides that currently the EU regulatory capital requirement results in the highest capital requirement and therefore ICC maintains regulatory capital in accordance with this requirement, which results in ICC maintaining regulatory capital in an amount materially more than the amounts required by SEC Rule 17Ad–22(e)(15) [11] or CFTC requirements. Section 9 then describes how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Section 9 describes the estimated costs and time period for implementing the Wind-Down Plan and how ICC estimates these figures, and demonstrates how ICC's regulatory capital exceeds these costs.

Section 10 of the Wind-Down Plan describes the governance arrangements that provide oversight and direction in respect of the Wind-Down Plan, including design, implementation, testing, review, and on-going maintenance. Specifically, overall responsibility for the Wind-Down Plan rests with the ICC Board. The ICC Board reviews and approves the Wind-Down Plan. As explained in Section 10, the ICC Board has delegated to the ICC President responsibility for implementing the Wind-Down Plan, as well as considering and developing any needed amendments or modifications to the Wind-Down Plan over time, and the ICC President is accountable to the ICC Board with respect to such matters. Accordingly, ICC management prepared the Wind-Down Plan under the direction of the ICC President.

Section 10 also notes that in developing and approving the Wind-Down Plan, ICC management and the ICC Board consider the legitimate interests of CPs, customers of CPs, and other relevant stakeholders, and that ICC considers the legitimate interests of such stakeholders in the execution and implementation of the Wind-Down Plan.

Section 10 describes the process for reviewing and approving the Wind-Down Plan, including changes to the Wind-Down Plan and testing. ICC Management, the ICC Risk Committee, and the ICC Board review and approve the Wind-Down Plan. Annually, the ICC General Counsel coordinates with ICC management to review and update the Wind-Down Plan. Moreover, ICC's General Counsel coordinates with ICC management to revise the Wind-Down Plan promptly when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing material amendments to the Wind-Down Plan and makes a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is ultimately responsible for approval of revisions to the Wind-Down Plan. ICC notifies its regulatory authorities of changes to the Wind-Down Plan. Section 10 notes that ICC tests the Recovery Plan at least annually, as part of its annual default management drills, and ICC management provides the results of such testing, as well as any changes it recommends due to such testing, to the ICC Board and Risk Committee.

Finally, Section 10 describes the governance for implementation of the Wind-Down Plan. As discussed elsewhere in the Wind-Down Plan, the ICC Board decides whether to wind-down and selects the option to use to achieve an orderly wind-down. ICC informs both the Commission and the CFTC of the decision to wind-down. The ICC President is responsible for implementing and overseeing the execution of the wind-down option chosen by the ICC Board.

The remaining sections provide additional relevant information for the Wind-Down Plan. Section 11 contains appendices, including a glossary, diagrams and charts of both clearing processes and financial service providers, and analyses related to different stress scenarios. Lastly, Section 12 is an index of exhibits to the Wind-Down Plan.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[12] After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act; [13] Rules 17Ad–22(e)(2)(i), (iii), and (v); [14] Rule 17Ad–22(e)(3)(ii); [15] and Rules 17Ad–22(e)(15)(i) and (ii).[16]

[10] 17 CFR 240.17Ad–22(e)(15).

[11] 17 CFR 240.17Ad–22(e)(15).

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[15] 17 CFR 240.17Ad–22(e)(3)(ii).

[16] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[17]

As discussed in greater detail below, the Commission believes that the Recovery Plan, generally, is designed to help ICC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, by providing a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Specifically, as described above, the Recovery Plan establishes triggers for the potential application of the recovery tools described in the Recovery Plan. The Commission believes that establishing such triggers alongside a list of available recovery tools helps ICC more promptly determine when and how it may need to manage a significant stress event, and, as needed, stabilize its financial condition.

Moreover, as described above, the Recovery Plan specifies the steps that ICC takes in recovery and the governance framework applicable to taking such steps. It analyzes the anticipated impact of the recovery tools, the incentives created by such tools, and the risks associated with using such tools. It also explains how the tools are transparent, measurable, manageable, and controllable. The Commission believes that by identifying the steps ICC takes and the tools it uses to bring about recovery in the face of losses, the Recovery Plan increases the likelihood that recovery is orderly, efficient, and successful. By increasing the likelihood of an orderly, efficient, and successful recovery, the Commission believes that the Recovery Plan enhances ICC's ability to maintain the continuity of its CDS clearing service during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate settlement of CDS transactions. The Commission also believes that the Recovery Plan helps assure the safeguarding of securities or funds in the custody or control of ICC by reducing the likelihood of a disorderly or unsuccessful recovery that could disrupt access to such securities or funds.

Further, the Commission believes that the Wind-Down Plan, generally, is designed to help ICC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible by providing a roadmap to wind-down designed to ensure the availability of ICC's services to the marketplace, while reducing disruption to the operations of CPs and financial markets. For example, as described above, the Wind-Down Plan provides for the wind-down of ICC's operations as well as addressing transfer of membership and critical services in the case that recovery tools fail to return ICC to financial viability. Moreover, under the Wind-Down Plan, the ICC Board seeks a wind-down option that allows the continuance of centralized clearing of CDS with as little disruption as possible. Further to that end, the Wind-Down Plan notes that while the selection of the wind-down option depends on the circumstances, ICC prefers a transfer or sale and considers termination only if a transfer or sale cannot be achieved. By establishing the Wind-Down Plan to enable continuity in ICC's critical services and membership in an orderly manner while winding down its services, the Commission believes that the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible.

Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody or control or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[18]

B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v)

Rules 17Ad–22(e)(2)(i), (iii), and (v) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; that support the public interest requirements in 17A of the Act[19] applicable to clearing agencies, and the objectives of owners and participants; and that specify clear and direct lines of responsibility.[20]

As described above, the Plans are designed to identify clear lines of responsibility concerning the recovery and wind-down of ICC including (i) the ongoing development of the Plans; (ii) the ongoing maintenance and testing of the Plans; (iii) reviews and approvals of the Plans and updates to the Plans; and (iv) the functioning and implementation of the Plans. As described above, the ICC General Counsel coordinates with ICC management to review and update the Plans annually, or more frequently when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing material amendments to the Plans and makes a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is responsible for approving revisions to the Plans. Moreover, the Plans describe the governance for implementation of recovery and wind-down, including the parties responsible for execution of recovery tools and wind-down options. The Plans also explain how ICC receives input from relevant stakeholders, including CPs through the ICC Risk Committee and CP representation on the ICC Board, and customers of CPs through ICC's Advisory Committee and direct communications with customer representatives.

In considering the above, the Commission believes that the Plans help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent by specifying lines of control and responsibility. The Commission also believes that the Plans help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act[21] applicable to clearing agencies, and the objectives of owners and participants, because they specify the process ICC takes to receive input from various ICC stakeholders. In addition, the Commission believes that the Plans help contribute to

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1.

[20] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[21] 15 U.S.C. 78q–1.

establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility because they identify who is responsible for the ongoing development, maintenance, reviews, approval, functioning, and implementation of the Plans.

Therefore, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).[22]

C. Consistency With Rule 17Ad–22(e)(3)(ii)

Rule 17Ad–22(e)(3)(ii) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[23]

As described above, the Recovery Plan provides a plan for ICC's recovery necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses by defining the recovery tools that ICC may use to address stress scenarios that could eventually prevent ICC from being able to provide its critical services as a going concern. For example, the Recovery Plan describes (i) the potential stress scenarios that may prevent ICC from being able to meet obligations and provide services; (ii) the mechanisms ICC uses to monitor for the occurrence of such scenarios; and (iii) the tools ICC uses to recover from those stress scenarios, including when and how ICC uses those tools. Moreover, the Recovery Plan discusses the tools that are available to ICC to address a situation where ICC experiences liquidity shortfalls triggered by a default of one or more CPs and has insufficient liquid resources in the proper currency to meet payments obligations. Therefore, the Commission believes the Recovery Plan helps ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes a plan for the recovery of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

As discussed above, the Wind-Down Plan provides a plan for orderly wind-down of ICC in the event the actions described in the Recovery Plan fail to preserve ICC's viability as a going concern and resolution is not triggered. Once triggered, the Wind-Down Plan is designed to maintain continued access to ICC's critical services and minimize market impacts while ICC seeks to ultimately wind-down its services. Moreover, the Wind-Down Plan provides options for wind-down and describes plans for executing those options, as well as the responsibilities of various groups at ICC. The ICC Board seeks a wind-down option that allows the continuance of centralized clearing of CDS with as little disruption as possible and gives preference to a transfer or sale, to minimize the disruption to the marketplace and ICC's CDS clearing service. Therefore, the Commission believes that the Wind-Down Plan helps ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes a plan for the orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3)(ii).[24]

D. Consistency With Rules 17Ad–22(e)(15)(i) and (ii)

Rules 17Ad–22(e)(15)(i) and (ii)[25] require that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage ICC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICC can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken and (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICC's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of ICC, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii).[26]

As discussed above, both of the Plans describe how ICC maintains capital in accordance with SEC Rule 17Ad–22(e)(15).[27] ICC does so by maintaining regulatory capital as if it was subject to EU-based clearing house regulatory capital requirements, which results in ICC maintaining an amount of capital exceeding what is required by Rule 17Ad–22(e)(15).[28] Moreover, the Plans describe how ICC ensures that it maintains this amount, including through monthly calculations of ICC's net assets and its regulatory capital requirements. The Plans also describe how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Finally, the Plans describes the estimated costs and time period for implementing recovery and wind-down and how ICC estimates these figures, and demonstrate how ICC's regulatory capital exceeds these costs.

Therefore, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(15)(i) and (ii).[29]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,[30] Rules 17Ad–22(e)(2)(i), (iii), and (v),[31] Rule 17Ad–22(e)(3)(ii),[32] and Rules 17Ad–22(e)(15)(i) and (ii).[33]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[34] that the proposed rule change (SR–ICC–2021–005) be, and hereby is, approved.[35]

[22] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[23] 17 CFR 240.17Ad–22(e)(3)(ii).

[24] 17 CFR 240.17Ad–22(e)(3)(ii).

[25] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[26] 17 CFR 240.17Ad–22(e)(3)(ii).

[27] 17 CFR 240.17Ad–22(e)(15).

[28] 17 CFR 240.17Ad–22(e)(15).

[29] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[32] 17 CFR 240.17Ad–22(e)(3)(ii).

[33] 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

[34] 15 U.S.C. 78s(b)(2).

[35] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91830; File No. SR–BX–2021–012]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell

May 10, 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 April 27, 2021, Nasdaq BX, Inc. (''BX'' 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 relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/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 purpose of this rule change is to relocate BX's equity and general rules from the current Rulebook into the new Rulebook shell.[3] The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below. The relocation and harmonization of these rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to update all cross-references within the Rulebook shell to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state ''this Rule'' where the rule is citing itself without a more specific cite included in the Rule. For example, if BX Rule 4619 refers currently to ''Rule 4619'' or ''this Rule 4619'' the Exchange will amend the phrase to simply ''this Rule.'' Except where the Exchange specifies below that it will retain the current rule numbering, the Exchange also proposes to conform the paragraph numbering and lettering to that used in the Rulebook shell for greater consistency, and to correct punctuation. The Exchange proposes to rename the term ''Commentary'' with ''Supplementary Material.'' Furthermore, the Exchange proposes to delete reserved rules, other than those within the 5000 Series Rules and 11100 Series Rules which are both being relocated without deleting the reserved rules, with the exception of Rules 5300 and 5400, which are currently reserved, and are being deleted. The Exchange also proposes to delete rules that are currently marked as deleted.

The Exchange proposes to update the references to the 9000 Series and 9600 Series to refer to the General 5, 9000 Series and General 5, 9600 Series respectively in connection with a prior rule change that incorporated Nasdaq General 5, Rule 9000 and 9600 Series into BX General 5.[4]

The Exchange also proposes to delete the following section headers that are currently within the BX Rules: 2100. General Standards; 2800. Special Products; 2900. Responsibilities to Other Brokers or Dealers;[5] 2000A. Business Conduct; 3000. Responsibilities Relating to Associated Persons, Employees, and Others' Employees; 3300. Trading; 4000. Listing and Trading on the Exchange; 4100, General; 4400, Other Listing Rules; 4600, Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market; 4610, Registration and Other Requirements; 4700, The Nasdaq BX Equities Market; 4750, Execution Services; 5000. BX Venture Market Listing Rules; 6000. Other Systems and Programs;[6] 7000A. Order Audit Trail Series; 7400A, Order Audit Trail System; and 11000. Uniform Practice Code.

General 1

The Exchange proposes to amend the section heading from General 1, General 1 to General 1, Section 1. The Exchange also proposes to retitle General 1, Section 1 from ''General Provisions'' to ''Definitions.'' The Exchange proposes to update the citations within General 1, Section 10 (Exchange Review Council) to account for rule relocations proposed herein and remove the word ''Rules'' associated with the citations.

General 2

The Exchange proposes to relocate Rule 4615 (Sponsored Participants) to General 2, Section 22, which is currently reserved, to harmonize the Exchange's rule numbering to that of Nasdaq PHLX LLC (''Phlx'') General 2, Section 22, which currently sets forth the same rule on Phlx.

General 3

The Exchange proposes to reword references to the Nasdaq Rule 1000 Series to Nasdaq General 3, Rule 1000 Series to reflect the placement and numbering of the rule within the

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Previously, the Exchange filed to relocate other rules within its Rulebook. *See* Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

[4] *See* Securities and Exchange Act Release No. 88938 (June 1, 2020), 85 FR 33235 (May 26, 2020) (SR–BX–2020–009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC).

[5] BX proposes to delete the other non-substantive rule text under this header which replicates the header and indicates that Rule 2910 was deleted.

[6] BX proposes to delete the non-substantive reference to 6800 which is reserved under this header.

Nasdaq Rulebook.[7] The Exchange proposes to update the citation to Nasdaq Rule 0120 within General 3, Section 1. Nasdaq Rule 0120 was relocated to General 1 within SR–NASDAQ–2019–098.[8] The Exchange also proposes to update citations to Rules 3010 and 3011 within General 3, Section 1. Rule 3010 was relocated to General 9, Section 20 and Rule 3011 was relocated to General 9, Section 37 within SR–BX–2019–039.[9] Similarly, Nasdaq Rule 3010 was relocated to General 9, Section 20 and Nasdaq Rule 3011 was relocated to General 9, Section 37 within SR–NASDAQ–2019–039.[10]

General 9

The Exchange proposes to relocate Rule 2170 (Disruptive Quoting and Trading Activity Prohibited) to General 9, Section 53, and to reserve General 9, Section 52. The Exchange also proposes to re-number certain subsections under proposed new General 9, Section 53 to conform to the numbering in Nasdaq General 9, Section 53. In particular, relocating Rule 2170 to General 9, Section 53 will harmonize the Exchange's rule numbering to that of Phlx General 9, Section 53, which currently sets forth the same rule prohibiting disruptive quoting and trading activity on Phlx. Because this Rule is being added to General 9, which applies to both the Exchange's equities and options markets, the Exchange proposes to delete a duplicate rule in Options 9, Section 4, which applies only to the options market. The Exchange proposes to relocate Rule 2843, Account Approval, to General 9, Section 64 to harmonize the Exchange's rules to that of Phlx General 9, Section 64. The proposed rule numbering is to ensure that the Exchange's General 9 rules mirror its affiliated exchanges' General 9 rules as closely as practicable.

The Exchange also proposes to relocate Rule 4570 (Custodian of Books and Records) to General 9, Section 71 similar to Nasdaq. Also, BX proposes to reserve Sections 54–70, except Section 64.

The Exchange further proposes to update several obsolete cross-references throughout General 9 that presently refer to rules that were already moved to the Rulebook shell under SR–BX–2019–039.[11] The Exchange also proposes to update the cross-references to Rule 2310A (within General 9, Section 12(b)), and Rule 2310A (within General 9, Section 18(c)(1)(C)(iv)) to relocated Equity 10, Section 1, and update the references to General 4, Section 1.1200 Series and General 4, Section 1.1210 (within General 9, Section 20(b)) by replacing ''Section 1.'' with the word ''Rule''.

Equity 1

The Exchange proposes to amend the section header from Equity 1, Equity 1 to Equity 1, Section 1. The Exchange also proposes to add ''(a)'' before the phrase ''When used in the Equity Rules . . .'' to conform to the paragraph lettering of the Rulebook shell. Lastly, the Exchange proposes to relocate the defined terms currently within Rule 4701(a)–(l) into Equity 1, Section 1(a)(6), subsections (1)–(4) and (8)–(18). With respect to current Rule 4701(a), which contains the term ''Nasdaq BX Equities Market'' or ''System'', BX notes this term currently exists within Equity 1, Section 1(6), however, BX proposes to add portions of Rule 4701(a) that are not currently described within Equity 1, Section 1(6). Current Rule 4701(a) provides, ''(a) The term ''Nasdaq BX Equities Market'' or ''System'' shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises: . . .''. The Exchange notes that provisions of Rule 4701(a) starting with the phrase ''The System comprises . . .'' are not contained in the current definition of ''Nasdaq BX Equities Market'' or ''System'' at Equity 1, Section 1(6), and therefore, the Exchange proposes to relocate those provisions to proposed Equity 1, Section 1(a)(6). The Exchange notes that the remainder of the rule text within Rule 4701(a) was duplicative with the rule text within Equity 1, Section 1(6) and therefore, the Exchange proposes to delete the duplicative text.

Equity 2

The Exchange proposes to relocate the following rules into Equity 2 which is titled Equity Market Participants. The Exchange proposes to instead title this section ''Market Participants'' to conform to Nasdaq's Rulebook Structure.[12]

Shell rule	Current rule
Section 1	4601. Scope.
Section 2	4200. Definitions.[13]
Section 3	4611. Nasdaq BX Market Participant Registration.
Section 4	4612. Registration as an Equities Market Maker.
Section 5	4613. Market Maker Obligations.[14]
Section 6	4614. Stabilizing Bids.
Section 7	4616. Reports.
Section 8	4617. Normal Business Hours.
Section 9	4618. Clearance and Settlement.
Section 10	4619. Withdrawal of Quotations.
Section 11	4620. Voluntary Termination of Registration.
Section 12	4621. Suspension and Termination of Quotations.
Section 13	4622. Termination of Exchange Service.
Section 14	4623. Alternative Trading Systems.
Section 15	4624. Penalty Bids and Syndicate Covering Transactions.
Section 16	4625. Obligation to Provide Information.[15]
Section 17	4626. Limitation of Liability.

[7] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2020–079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

[8] The Exchange previously relocated certain definitions within Rule 0120, ''Definitions'' into General 1 and Equity 1. The definitions applicable to General 3 are located within General 1. *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[9] *See supra* note 3.

[10] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[11] *See supra* note 3.

[12] *See* Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR–NASDAQ–2020–079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

Shell rule	Current rule
Section 18	4627. Obligation to Honor System Trades.
Section 19	4628. Compliance with Rules and Registration Requirements.
Section 20	4631. Customer Disclosures.

Equity 3

The Exchange proposes to re-title Equity 3, from ''Equity Trading Rules'' to ''BX Venture Market Listing Rules.'' The Exchange proposes to relocate to Equity 3 the Rule 5000 Series BX Venture Market Listing Rules without changing the rule numbers. The Exchange proposes to delete Rules 5300 and 5400, which are reserved. The Exchange also proposes to correct the spelling of the word ''decision'' within Rule 5815, Review of Staff Determinations by Hearings Panel.

Equity 3A

The Exchange proposes to add a new Equity 3A, titled ''Other Listing Rules and Rules Regarding Unlisted Trading Privileges.'' The Exchange proposes to relocate the following rules into Equity 3A:

Shell rule	Current rule
Section 1	4201. Operation of Listing Standards.
Section 2	4420. Additional Quantitative Listing Criteria.
Section 3	4421. Derivative Securities Traded under Unlisted Trading Privileges.
Section 4	4450. Additional Quantitative Maintenance Criteria.

The Exchange proposes to remove reserved sections and re-letter and re-number the remaining sections in Rules 4201, 4420, 4421, and 4450.

Equity 4

The Exchange proposes to re-title Equity 4, currently ''Limit Up Limit Down,'' to ''Equity Trading Rules.'' The Exchange proposes to relocate Rules 4110, 4120, 4121, 4702, 4703, 4752, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4770 and 4780 into Equity 4 and retain the current rule numbers. Within Rule 4110 the Exchange is adding a reference to Equity 3A because the listing standards, as proposed herein, are set forth in the Rule 5000 Series under Equity 3 and in Equity 3A. Equity 3A contains current Rules 4201, 4420, 4421 and 4450. The Exchange proposes to relocate the rule text of IM–4120–3, Circuit Breaker Securities Pilot, to the end of Rule 4120. Also, a reference to Rule 4751(f) is being updated to Rule 4703(g) within Rule 4756, Discretionary Orders, to correct the current citation.

Equity 5

The Exchange proposes to relocate the 7000A Series Rules to Equity 5 as follows:

Shell rule	Current rule
Section 1	7410A. Definitions.[16]
Section 2	7420A. Applicability.
Section 3	7430A. Synchronization of Member Business Clocks.
Section 4	7440A. Recording of Order Information.[17]
Section 5	7450A. Order Data Transmission Requirements.[18]
Section 6	7460A. Violation of Order Audit Trail System Rules.[19]

The Exchange proposes to delete Rule 7470A which is currently reserved.

Equity 6

The Exchange proposes to title Equity 6, which is currently reserved, to ''BX Risk Management Service; Other Systems and Programs,'' and to relocate the following rules into Equity 6:

Shell rule	Current rule
Section 1	Reserved.
Section 2	Reserved.
Section 3	4764. BX Kill Switch.
Section 4	4765. Exchange Sharing of Participant Risk Settings, excluding Commentary.
Section 5	Commentary to 4765. Exchange Sharing of Participant Risk Settings (Re-titled as ''Risk Settings'').

[13] The Exchange proposes to amend the current rule text of Rule 4200(a), which refers to the Rule 4000 Series, to refer to Equity 2. The definitions within current Rule 4200(a)(1) and (2) are federal rules which apply to Equity 2 in general and the definition within Rule 4200(a)(3) is simply a defined term. The defined terms are only used in Equity 2.

[14] BX proposes a minor technical amendment to change an ''a'' to ''an'' within the first sentence of proposed Section 5.

[15] The Exchange will not port over the reference to IM–4120–1 into the Rulebook shell as this Rule does not currently exist in the BX Rulebook.

[16] The Exchange proposes to update a cross reference currently within Rule 7410A(o) that defines ''Proprietary Trading Firm.'' Within that defined term, there is a reference to Rule 0210(g), which refers to the term ''customer''. The current reference to Rule 0210(g) is an error and should have referred to Rule 0120(g). The Exchange previously relocated certain definitions within Rule 0120, ''Definitions'' into General 1 and Equity 1. The term ''customer'' was relocated to BX Equity 1. *See supra* note 3. That definition of customer is the same definition as in current Rule 7410A(a) which is being relocated within this proposal to proposed Equity 5, Section 1(c). The Exchange proposes to utilize the definition of the term ''customer'' within Equity 5, Section 1(c) within proposed new Equity 5, Section 1(o).

[17] The Exchange proposes to update the reference within current Rule 7440A, Recording of Order Information, to IM–2110–2 to General 9, Section 1. IM–2110–2 was relocated to General 9, Section 1 in SR–BX–2019–039. *See supra* note 3.

[18] The Exchange proposes to amend the term ''Equity Rule of the 7400A Series'' within proposed Section 5, Order Data Transmission Requirements, to instead provide ''Section within Equity 5.''

[19] The Exchange is amending the reference to Rule 2210 to instead refer to General 9, Section 1. Rule 2210 was relocated to General 9, Section 1 in SR–BX–2019–039. *See supra* note 3.

Shell rule	Current rule
Section 6	Reserved.

Equity 8

The Exchange proposes to reserve Equity 8 which is currently titled ''Uniform Practice Code.'' This section does not currently contain any rules.

Equity 8A

The Exchange proposes to add an Equity 8A, which will be reserved.

Equity 9

The Exchange proposes to re-title Equity 9, currently ''Supplementary Conduct Rules,'' to ''Business Conduct.'' This section does not currently contain any rules. The Exchange proposes to relocate the following rules into Equity 9:

Shell rule	Current rule
Section 1	3220. Adjustment of Open Orders.
Section 2	3230. Clearing Agreements.
Section 3	3310. Publication of Transactions and Quotations.
Section 4	IM–3310. Manipulative and Deceptive Quotations.
Section 5	3320. Offers at Stated Prices.
Section 6	3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.
Section 7	3350. Suspension of Trading.
Section 8	3351. Trading Practices.
Section 9	3360. Short-Interest Reporting.
Section 10	3370. Prompt Receipt and Delivery of Securities.
Section 11	3380. Order Entry and Execution Practices.
Section 12	3381. SEC Rule 19c–1—Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges.
Section 13	*3385. SEC Rule 19c–3—Governing Off-Board Trading by Members of National Securities Exchanges.*
Section 14	3390. SEC Rule 604—Display of Customer Limit Orders.
Section 15	2844. Suitability.
Section 16	2845. Discretionary Accounts.[20]
Section 17	2846. Supervision of Accounts.
Section 18	2847. Customer Complaints.
Section 19	2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants.
Section 20	2849. Maintenance of Records.

A reference to ''NASD'' is being updated to refer to ''FINRA'' within proposed Equity 9, Section 1, Adjustment of Open Orders. The Exchange proposes to update two obsolete cross-references in Equity 9, Section 4 (Manipulative and Deceptive Quotations) that currently point to Rules 2110 and 2120. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook shell under SR–BX–2019–039.[21] Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) was likewise relocated to General 9, Section 1 of the Rulebook shell under SR–BX–2019–039. The Exchange proposes to capitalize the ''The'' before ''Options Clearing Corporation'' within new Section 13, SEC Rule 19c–3—Governing Off-Board Trading by Members of National Securities Exchanges. Finally, the Exchange proposes to reserve Section 21 through Section 23.

Equity 10

The Exchange proposes to re-title Equity 10, which is currently titled ''BX Venture Listing Rules,'' to ''Other Products and Securities,'' and to relocate the following rules into Equity 10:

Shell rule	Current rule
Section 1	2310A. Direct Participation Programs.
Section 2	2830. Investment Company Securities.
Section 3	2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants.
	2841. General.
	2842. Definitions.
Section 4	2850. Position Limits.
Section 5	2851. Exercise Limits.
Section 6	2852. Reporting Requirements.
Section 7	2853. Liquidation of Index Warrant Positions.
Section 8	4630. Trading in Commodity-Related Securities.

Equity 11

The Exchange proposes to add new Equity 11, titled ''Uniform Practice Code,'' and relocate the current Rule 11000 Series into new Equity 11 without renumbering the rules.

The Exchange proposes to correct a spelling error in the title of IM–11110 to provide ''Refusal to Abide by Rulings of

[20] The Exchange amended the reference in proposed new Section 16(b) of this rule to ''General 9, Sections 19 and 45.''

[21] *See supra* note 3.

the Exchange's Regulation Department Staff''. The spelling of the word ''Staff'' is being amended.

The Exchange proposes to correct the spelling of the word ''certificate'' and remove the apostrophe within IM–11710. Uniform Reclamation Form.

The Exchange also proposes to update an obsolete cross-reference in IM–11720 (Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled) that currently points to Rule 2110. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook shell under SR–BX–2019–039.[22]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating the equity and general rules into the new Rulebook shell together with other rules which have already been relocated.[25] The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq affiliated markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the BX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of the BX equity and general rules into their new location in the shell will facilitate the use of the Rulebook by members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq affiliated market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text. The renumbering, re-lettering, deleting reserved and already deleted rules, amending cross-references and other minor technical changes will bring greater transparency to BX's Rules. The Exchange's affiliates have already filed similar rule changes to relocate their respective equity and general rules into the same location in each Rulebook for ease of reference.[26] The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks.

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 Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the equity and general rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules and to promote easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks. Renumbering, re-lettering, deleting reserved rules and already deleted rules, and amending cross-references will bring greater transparency to BX's Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[29] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[30] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.[31] Waiver of the operative delay would allow the Exchange to immediately relocate its rules and continue to file other rules that are affected by this relocation in a timely manner. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the 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–BX–2021–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[22] *See supra* note 3.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* note 3.

[26] The Nasdaq Stock Market LLC previously filed to relocate its equity and general rules. *See* Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR–NASDAQ–2020–079). *See also* Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR–Phlx–2021–04).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] The current proposed rule change amends or relocates certain rules that were amended within SR–BX–2021–006, and those amendments within SR–BX–2021–006 are effective but not yet operative. *See* Securities Exchange Act Release No. 91370 (March 19, 2021), 86 FR 15996 (March 25, 2021) (SR–BX–2021–006). The current proposed rule change does not affect the operative date of those amendments within SR–BX–2021–006.

[32] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–BX–2021–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–BX–2021–012 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10176 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34267; File No. 812–15143]

Teachers Insurance and Annuity Association of America, et al.

May 10, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''Act'').

APPLICANTS: Teachers Insurance and Annuity Association of America (''TIAA'') and TIAA Separate Account VA–3 (the ''Separate Account,'' and together with TIAA, the ''Applicants'').

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to section 26(c) of the Act, approving the proposed substitution (''Substitution'') of Vanguard Institutional Index Fund (''Replacement Fund'') for shares of Vanguard 500 Index Fund (''Original Fund'') held by the Separate Account to fund certain variable annuity insurance contracts (collectively, the ''Contracts'').

FILING DATES: The application was filed on July 13, 2020 and amended on November 13, 2020, February 26, 2021, and April 22, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 4, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Aneal Krishnamurthy, *aneal.krishnamurthy@tiaa.org.*

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Special Counsel, at (202) 551–6764 or Kaitlin C. Bottock, Branch Chief at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov.search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. TIAA is a stock life insurance company organized under the laws of the state of New York. TIAA is the depositor and sponsor of the Separate Account.

2. The Separate Account is registered with the Commission under the Act as a unit investment trust. The Separate Account is divided into subaccounts and each sub account invests in a single underlying mutual fund, such as the Original Fund (all such underlying fund, ''investment options'').

3. The Original Fund and the Replacement Fund are each registered under the 1940 Act as an open-end, management investment company and its securities are registered under the 1933 Act. The Original Fund and the Replacement Fund are each advised by The Vanguard Group, Inc., which is not an affiliate of the Applicants.

4. The Contracts are registered under the Securities Act of 1933, as amended (the ''1933 Act''). The Contracts allow Contract owners to allocate Contract value to one or more of the investment options available in the Separate Account.

5. As set forth under each Contract, as well as in the prospectus for each Contract, the Companies reserve the right to substitute shares of the underlying fund for shares of another underlying fund.

6. The Applicants propose to replace shares of the Admiral share class of the Original Fund in the Separate Account with shares of the Institutional Plus share class of the Replacement Fund.

7. The Applicants state they are seeking the Substitution because the Original Fund, thought it provides a relatively low ''Admiral'' share class, does not have an institutional share class which TIAA's clients are demanding. Additional information for the Existing Fund and the Replacement Fund, including investment objectives, principal investment strategies, principal risks, and performance, as well as the fees and expenses of the Existing Fund and the Replacement Fund, can be found in the application.

8. The Applicants state that the Substitution will be described in a supplement to the prospectuses (''Supplement'') for the Contract filed with the Commission and delivered to all affected Contract owners at least 30 days before the Substitution Date. The Supplement will advise Contract owners that, for a period beginning 30 days before the Substitution Date through at least 30 days following the Substitution Date, Contract owners are permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund or the Replacement Fund to any other available investment option offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees

that would otherwise be applicable under the terms of the Contracts.

9. The Applicants will send the Supplements to all affected Contract owners. Prospective purchasers and new purchasers of Contracts will be provided with a Contract prospectus and the Supplement, as well as the prospectus and any supplements for the Replacement Fund.

10. In addition to the Supplement distributed to Contract owners, within five business days after the Substitution Date, affected Contract owners will be sent a written confirmation of the completed Substitution. The confirmation statement will include a statement that reiterates the free transfer rights disclosed in the Supplement.

11. The Substitution will be effected at the relative net asset value in conformity with section 22(c) of the Act and rule 22c–1 thereunder. The Substitution will be effected by TIAA, on behalf of the Separate Account, by redeeming its Original Fund shares in cash on the Substitution Date and simultaneously purchasing shares of the Replacement Fund for the exact amount of the redemption proceeds.

12. TIAA or an affiliate will pay all expenses incurred in connection with the Substitution. No costs of the Substitution will be borne directly or indirectly by Contract owners. Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Companies under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitution than before the Substitution. In addition, the Substitution will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitution.

13. The Applicants state that the Contract value for each Contract owner impacted by the Substitution will not change as a result of the Substitution. In addition, the Applicants also state that the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitution. The Applicants further state that the effect Substitution may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Fund and the Replacement Fund, which the Applicants cannot predict. The Applicants further note that, at the time of the Substitution, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

14. The Applicants state that TIAA will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Replacement Fund, advisors, their underwriters or their respective affiliates in connection with the assets attributable to the Contracts affected by the Substitution at a higher rate than it had received from the Original Fund, advisors, underwriters or their respective affiliates, including, without limitation, 12b–l distribution, shareholder service, administrative or other service fees, revenue sharing or other arrangements. In addition, the Applicants state that the Substitution is not motivated by any financial consideration paid or to be paid to the Insurance Company or its affiliates by the Replacement Fund, its investment advisor or underwriter, or their affiliates.

Legal Analysis

1. The Applicants request that the Commission issue an order pursuant to section 26(c) of the Act approving the Substitution. Section 26(c) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. The Applicants submit that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In particular, the Applicants point to the following: (a) The Contracts permit the Substitution, as permitted by applicable law and the New York Insurance Department; (b) the prospectus for the Contracts contain appropriate disclosure of these rights; (c) the Substitution will be described in the Supplements delivered to all affected Contract owners at least 30 days before the Substitution Date; (d) the Supplements also will advise Contract owners that, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date, Contract owners are permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund to any other available subaccounts offered under their Contract without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts; (e) the Replacement Fund and the Existing Fund have substantially similar investment objectives, principal investment strategies, and principal risks; and (f) the net operating expenses of the Replacement Fund are lower than those of the Existing Fund. The Applicants assert that, based on the terms noted above, and subject to the conditions set forth below, the Substitution does not raise the concerns underlying section 26(c).

Applicants' Conditions

The Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitution will not be effected unless TIAA determines that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitution can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitution.

2. TIAA or its affiliates will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitution. The proposed Substitution will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

3. The Substitution will be effected at the relative net asset values of the respective shares in conformity with section 22(c) of the Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitution will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The Substitution will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the Substitution.

5. Affected Contract owners will be permitted to make at least one transfer of Contract value from the sub-account investing in the Original Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract

without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Applicants will not exercise any right they may have under the Contracts to impose restrictions on transfers between the sub-accounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

6. All affected Contract owners will be notified via the Supplement at least 30 days before the Substitution Date about: (i) The intended Substitution of the Existing Fund with the Replacement Fund; (ii) the intended Substitution Date; and (iii) information with respect to transfers as set forth in Condition 5 above. In addition, the Applicants will deliver to all affected Contract owners, at least 30 days before the Substitution Date, a prospectus for the Replacement Fund.

7. The Companies will deliver to each affected Contract owner within five business days of the Substitution Date, a written confirmation which will include: (a) A confirmation that the Substitution was carried out as previously notified; (b) a restatement of the information set forth in the Supplement; and (c) the values of the Contract owners' positions in the Original Fund before the Substitution and the Replacement Fund after the Substitution.

8. Applicants and their affiliates will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, their investment advisors or underwriters (or their affiliates) in connection with assets attributable to Contracts affected by the Substitution at a higher rate than they had received from the Original Fund, its investment advisors or underwriters (or their affiliates), including without limitation 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

9. The obligations of the TIAA and the rights of affected Contract owners under the Contracts will not be altered in any way.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10159 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91802; File No. SR–CboeEDGA–2021–011]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Exchange's Process for Re-Opening Securities Listed on Other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause During the Early Trading Session, Pre-Opening Session, or Post-Closing Session

May 10, 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 April 26, 2021, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 a rule change to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), 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

Purpose

The purpose of the proposed rule change is to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session,[3] Pre-Opening Session,[4] or Post-Closing Session.[5] EDGA Rule 11.7 describes the Exchange's opening process for securities listed on other national securities exchanges, including the process for re-opening such securities following the resumption of trading after a halt, suspension, or pause. On November 5, 2020, the Exchange filed a proposed rule change to amend its re-opening process pursuant to EDGA Rule 11.7 for securities listed on the New York Stock Exchange LLC (''NYSE'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.[6] That filing was approved by the Commission on December 28, 2020.[7] The Exchange now proposes to further amend EDGA Rule 11.7 to adopt a harmonized re-opening process for securities listed on NYSE (''Tape A''), securities listed on exchanges other than The Nasdaq Stock Market LLC (''Nasdaq'') and NYSE (''Tape B''); and securities listed on Nasdaq (''Tape C'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or Post-Closing Session. The Exchange believes that the proposed harmonized process for Tape A, B, and C securities would simplify its procedures and provide a more effective re-opening process for securities that resume trading outside of Regular Trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* EDGA Rule 1.5(ii).

[4] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* EDGA Rule 1.5(s).

[5] The term ''Post-Closing Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* EDGA Rule 1.5(r).

[6] *See* Securities Exchange Act Release No. 90419 (November 13, 2020), 85 FR 73829 (November 19, 2020) (SR–CboeEDGA–2020–029).

[7] *See* Securities Exchange Act Release No. 90804 (December 28, 2020), 86 FR 158 (January 4, 2021) (Approval Order).

Hours.[8] The Exchange also proposes to make non-substantive changes to Rule 11.7 to conform the text to Cboe BZX Exchange, Inc. (''BZX'') Rule 11.24.

As amended pursuant to SR–CboeEDGA–2020–029, EDGA Rule 11.7(e)(3) provides that during the Early Trading Session, Pre-Opening Session, or Post-Closing Session, Tape A securities that resume trading after a halt, suspension, or pause will be automatically re-opened pursuant to the Exchange's contingent open procedures, as described in EDGA Rule 11.7(d), after one second has passed following the Exchange's receipt of the first NBBO following such resumption of trading. This rule was adopted to automate the prior manual process that would otherwise be used to initiate the re-opening of Tape A securities when NYSE was not open for trading. Consistent with that intent, the Exchange proposed to continue to re-open Tape A securities using the same contingent open procedures that would apply when the Exchange manually initiated its re-opening process pursuant to EDGA Rule 11.7(e)(2). As a result, when the Exchange re-opens Tape A securities during pre- and post-market trading sessions today, orders are handled in time sequence and placed on the EDGA Book, routed, cancelled, or executed in accordance with the terms of the order. This differs from the standard processed used by the Exchange during Regular Trading Hours, where the Exchange seeks to execute queued orders at the midpoint of the national best bid or offer (''NBBO'').[9] After additional consideration, the Exchange believes that market participants and investors would be better served by utilizing its standard midpoint re-opening in these circumstances as doing so would promote greater consistency with the process used by the Exchange in other circumstances and may generally provide executions that better reflect the applicable market for the security.

The Exchange therefore proposes to amend EDGA Rule 11.7(e) such that the process for re-opening Tape A securities after the Exchange has determined to initiate a re-opening would generally mirror the standard process described in EDGA Rule 11.7(e)(1), which as discussed is designed to provide an execution at the midpoint of the NBBO. The determination of *whether* to re-open such Tape A securities would, however, continue to follow the process discussed in SR–CboeEDGA–2020–029. Thus, during the Early Trading Session, Pre-Opening Session, or Post-Closing Session, the re-opening process for Tape A securities would occur at the midpoint of the NBBO after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after a halt, suspension, or pause. Although the Exchange has determined to use a midpoint re-opening process similar to that currently described in EDGA Rule 11.7(e)(1), for the reasons discussed in SR–CboeEDGA–2020–029, it remains important that the trigger for initiating this process outside of Regular Trading Hours not be tied to the resumption of trading on the primary listing market as NYSE does not trade its listed securities at times when the Exchange is open for pre- and post-market trading.

In addition, the Exchange proposes to amend the process for re-opening Tape B and C securities to mirror the proposed process for Tape A securities, except that the Exchange would require the primary listing market to have begun quoting the security before it initiates its own re-opening process. As explained in SR–CboeEDGA–2020–029, the Exchange amended EDGA Rule 11.7 to permit Tape A securities listed on NYSE to re-open based on quoting activity on other national securities exchanges during pre- and post-market trading when NYSE does not trade its listed securities. However, this limitation does not exist for Tape B or C securities as the applicable primary listing markets for those securities each offer pre- and post-market trading sessions where market participants can trade their listed securities.[10] As a result, the Exchange believes that it is desirable for Tape B and C securities to be opened on the Exchange only *after* the primary listing exchange has begun trading its listed securities, consistent with the current EDGA Rule 11.7(e), which would continue to be applied during Regular Trading Hours. However, similar to the proposed process for re-opening Tape A securities, the Exchange would simplify the triggers for re-opening trading pursuant to EDGA Rule 11.7(e)(1) such that its re-opening process for Tape B and C securities during the Early Trading Session, Pre-Opening Session, and Post-Closing Session would occur at the midpoint of the NBBO after one second has passed following the publication of the first two-sided quotation by the listing exchange following the resumption of trading after a halt, suspension, or pause. In its effort to simplify the re-opening process employed during these timeframes, the Exchange would not retain a separate trigger to allow the re-opening process to be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange.

The Exchange also proposes to make a number of structural changes to EDGA Rule 11.7(e) to facilitate the amendments described above, and non-substantive changes to conform the rule text to BZX Rule 11.24. First, the Exchange proposes to structure EDGA Rule 11.7(e)(1) such that it would contain subparagraphs (A), (B), and (C), which each would describe applicable differences between the Exchange's opening process at the beginning of the Regular Trading Session, as described in EDGA Rule 11.7(a)(2) and (b), and the re-opening process employed by the Exchange after a halt. As amended, EDGA Rule 11.7(e)(1)(A) would describe the types of orders that are eligible for participation in the re-opening process. Further, the Exchange proposes to amend the text of the paragraph to partially conform to BZX Rule 11.24(e)(1). As proposed, EDGA Rule 11.7(e)(1)(A) would state that non-RHO[11] orders will be eligible for participation in the Re-Opening Process, but IOC,[12] FOK,[13] EDGA Post Only Orders,[14] and Minimum Execution Quantity Orders[15] will be cancelled or rejected, as applicable, and any ISO[16] that is not IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process.

As amended, EDGA Rule 11.7(e)(2)(B) would describe the Exchange's current re-opening process, which the Exchange now proposes to limit to Regular Trading Hours. Further, the Exchange proposes to partially conform EDGA Rule 11.7(e)(2)(B)(ii) with BZX Rule BZX Rule 11.24(e)(1). Specifically, as amended EDGA Rule 11.7(e)(2)(B)(ii) would provide that during Regular Trading Hours, the Re-Opening Process will occur at the (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO

[8] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* EDGA Rule 1.5(y).

[9] *See* EDGA Rule 11.7(e)(1).

[10] *See* Nasdaq Rules, Equity 1, Section 1(a)(9); NYSE Arca, Inc. Rule 7.34–E(a); NYSE American LLC Rule 7.34E(a).

[11] *See* Exchange Rule 11.6(q)(6) Regular Hours Only (''RHO'').

[12] *See* Exchange Rule 11.6(q)(1) Immediate-or-Cancel (''IOC'').

[13] *See* Exchange Rule 11.6(q)(3) Fill-or-Kill (''FOK'').

[14] *See* Exchange Rule 11.6(n)(4).

[15] *See* Exchange Rule 11.6(h).

[16] *See* Exchange Rule 11.8(c) Intermarket Sweep Order (''ISO'').

when the first two-sided quotation published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

As proposed, EDGA Rule 11.7(e)(2) would contain language discussed above that describes the Exchange's re-opening process during the Early Trading Session, Pre-Opening Session, or After Hour Trading Session, *i.e.,* for Tape A, B, and C securities.[17]

Lastly, the Exchange proposes to amend EDGA Rule 11.7(e)(2) to reflect the changes discussed above. As amended, the lead in to EDGA Rule 11.7(e)(2) would state that this section applies where the conditions required to establish the price of the re-opening process in the now restructured EDGA Rule 11.7(e)(1)(B) or (C) have not occurred, which reflects the now renumbered sections of the rule, including language that is in current EDGA Rule 11.7(e)(1) and EDGA Rule 11.7(e)(3).[18]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[19] in general, and Section 6(b)(5) of the Act,[20] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would implement a streamlined process for re-opening Tape A, B, and C securities during the Early Trading Session, Pre-Opening Session, or Post-Closing Session.

The Exchange currently employs different processes for re-opening Tape A, B, and C securities during pre- and post-market trading. The Exchange believes, however, that market participants would be better served by a harmonized process that: (1) Ensures that the Exchange's automated re-opening process executes orders at the midpoint of the NBBO; and (2) eliminates unnecessary distinctions between the process utilized for Tape A, B, and C securities. Executing the Exchange's re-opening process during pre- and post-market trading at the midpoint of the NBBO is beneficial to market participants as the NBBO midpoint may more closely reflect market prices and conditions for the security being re-opened. As a result, the Exchange believes that using the NBBO midpoint to price its re-opening process for all securities would help to promote a fair and orderly market. In addition, using generally consistent triggers for initiating the Exchange's re-opening process in Tape A, B, and C securities that resume trading during pre- and post-market trading sessions would reduce the overall complexity of the re-opening process employed during these timeframes. The Exchange notes, however, that it would nevertheless require the primary listing market to begin trading its own securities prior to re-opening trading on the Exchange in Tape B and C securities. This limitation would not apply to Tape A securities that NYSE does not trade outside of its regular trading session as doing so would require unnecessary and inefficient manual intervention by the Exchange to manually initiate trading, as was the case prior to the filing and Commission approval of SR–CboeEDGA–2020–029. The Exchange believes that this distinction continues to be appropriate as it is based on applicable differences between each primary listing market's hours of operation and would continue to promote a more streamlined automated process for initiating the re-opening process in Tape A securities at times when NYSE does not trade its own listed securities.

The Exchange believes the proposed structural changes and non-substantive amendments to Rule 11.7(e)(1) will simplify the Exchange's rules and harmonize the text to the corresponding BZX rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate a more efficient and harmonized re-opening process for all securities that resume trading outside of Regular Trading Hours, and is not designed to address any competitive issues. All members would have their orders handled in the same manner based on the proposed changes to the Exchange's re-opening process, and other national securities exchanges are free to adopt the same or similar processes if they believe that the proposed process is beneficial for their own members. The Exchange therefore does not believe that the proposed rule change would have any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received 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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2021–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[17] The Exchange would also eliminate EDGA Rule 11.7(e)(3), which currently addresses the re-opening of Tape A securities listed on NYSE during pre- and post-market trading. As discussed, the Exchange is proposing to harmonize the process for re-opening Tape A, B, and C securities outside of Regular Trading Hours, and the harmonized process discussed in this proposed rule change would be described in EDGA Rule 11.7(e)(2)(C).

[18] The Exchange would also eliminate language that states that this section applies when the security has not otherwise been re-opened for trading on the Exchange pursuant to EDGA Rule 11.7(e)(3). As discussed, the content of EDGA Rule 11.7(e)(3) would be moved to EDGA Rule 11.7(e)(1)(C) with further amendments as discussed herein.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2021–011. 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–CboeEDGA–2021–011 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10170 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91831; File No. SR–CboeBZX–2021–038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 10, 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 May 3, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. 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://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), 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 amend its Fee Schedule for its equity options platform (''BZX Options'') in connection with certain fee codes and volume tiers, effective May 3, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share and currently the Exchange represents only approximately 7.5% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract, which varies depending on the Member's capacity (Customer, Firm, Market Maker, etc.), whether the order adds or removes liquidity, and whether the order is in Penny or Non-Penny Program Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

In particular, the Fee Codes and Associated Fees section of the Fee Schedule lists all available fee codes for orders on BZX Options. Currently, fee code PP is appended to all Non-Customer (*i.e.,* Firm, Broker Dealer, Joint Back Office, Market Maker, Away Market Maker and Professional capacities) orders that remove liquidity in Penny securities and assesses a fee of $0.50. The proposed rule change amends fee code PP so that it applies only to Market Maker, Away Market Maker and Professional orders that remove liquidity in Penny securities (the rate of $0.50 remains the same), and adopts fee code PD, which would apply to Firm, Broker Dealer and Joint Back Office orders that remove liquidity in Penny securities and also assesses the same rate of $0.50. In order to reflect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 27, 2021), available at *https://markets.cboe.com/us/options/market_statistics/.*

amended description for fee code PP, the proposed rule change updates the title of the ''Non-Customer Penny Take Volume Tiers'' in footnote 3 of the Fee Schedule, which are, and will continue to be, applicable to fee code PP, to the ''Market Maker, Away Market Maker and Professional Penny Take Volume Tiers''.

In particular, the proposed rule change restructures fee code PP to create a remove Penny liquidity fee code specific to Firm, Broker Dealer and Joint Back Office (PD) in order to adopt tiered pricing specific to these capacities (along with the remove Penny liquidity Customer fee code (PC)). As such, the proposed rule change adopts new Customer, Firm, Broker Dealer and Joint Back Office Take Volume Tiers in footnote 14 [4] of the Fee Schedule, which, as proposed, are applicable to new fee code PD and existing fee code PC.[5] Specifically, proposed Tier 1 offers an additional rebate of $0.01 per contract for qualifying orders (*i.e.,* yielding fee code PD or PC) where a Member has (1) a Step-Up ADRV [6] in Customer orders from March 2021 greater than or equal to 35,000 contracts, and (2) a Step-Up ADRV in Firm, Broker Dealer or Joint Back Office orders from March 2021 greater than or equal to 10,000 contracts. Proposed Tier 2 offers an additional rebate of $0.02 per contract for qualifying orders where a Member has (1) a Step-Up ADRV in Customer orders from March 2021 greater than or equal to 70,000 contracts, and (2) Member has a Step-Up ADRV in Firm, Broker Dealer or Joint Back Office orders from March 2021 greater than or equal to 20,000 contracts. The Exchange believes that a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office (as well as Customer) capacities may better facilitate the agency order flow executed particularly by these market participants on the Exchange. The Exchange recognizes that these types of Members can provide a different type of order flow than that of liquidity providers, such as Market Makers and Professionals. Particularly, Firm, Broker Dealer and Joint Back Office Members can be an important source of liquidity as they specifically facilitate Customer trading activity. Customer order flow, in turn, is important as it continues to attract liquidity to the Exchange. Enhanced liquidity on the Exchange benefits all market participants by providing more trading opportunities, signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem.

The proposed rule change also adds fee codes PC and PD to footnote 5 of the Fee Schedule, which provides a Routing Firm Member with the rebate that corresponds to orders that yield certain fee codes (PY, PA, PF, PN, NY, NA, NF, or NN).[7] A Routing Firm Member is a Member that acts as an options routing firm on behalf of one or more other Exchange Members and is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm who will accept and clear any resulting transaction). Because the Routing Firm is responsible for the decision to route an order to the Exchange, the Exchange believes that such Member should be provided the rebate when orders that yield fee code PC or PD are executed. In connection with this change, the Exchange also proposes to append footnote 5 to fee codes PC and PD in the Fee Codes and Associated Fees table of the Fee Schedule.

The Exchange also proposes to restructure its NBBO Setter Tiers under footnote 4 of the Fee Schedule. Currently, the Exchange offers five NBBO Setter Tiers that provide additional rebates between $0.01 and $0.05 per contract for qualifying orders (*i.e.,* that yield fee code PM, PN, XM or XN [8] and establish a new NBBO) where a Member meets certain liquidity thresholds. First, the proposed rule change eliminates the following tiers:

- Tier 1, which currently provides an additional rebate of $0.01 per contract per qualifying order (*i.e.,* yielding fee code PM, PN, XM or XN [9] and establishes a new NBBO) where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.20% of average OCV and (2) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal 0.05% of average OCV;
- Tier 4, which currently provides an additional rebate of $0.04 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 1.80% of average OCV, (2) an ADAV in Non-Customer Non-Penny orders greater than or equal to 0.20% of average OCV, and (3) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal to 0.50% of average OCV; and
- Tier 5, which currently provides an additional rebate of $0.05 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 2.55% of average OCV, (2) an ADAV in Non-Customer Non-Penny orders greater than or equal to 0.25% of average OCV, and (3) has an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal to 0.80% of average OCV.

Next, the proposed rule change amends Tier 2 and Tier 3 (new Tier 1 and Tier 2, respectively, as a result of the proposed deletion of the above-listed tiers). Current Tier 2 provides an additional rebate of $0.02 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.40% of average OCV, and (2) an ADAV in Firm, Market Maker, Away Market Maker orders that establish a new NBBO greater than or equal to 0.15% of average OCV. Tier 3 currently provides an additional rebate of $0.03 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.75% of average OCV, and (2) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a

[4] As a result, the proposed change moves the Index License Surcharge Fees table, currently in footnote 14, to new footnote 15, and also reflects this update by amending footnote 14, currently appended to fee codes BM, BN, BO, GM, GN and GO in the Fee Codes and Associated Fees section, to footnote 15.

[5] Orders yielding fee code PC are Customer orders that remove liquidity in Penny Securities and are assessed a fee of $0.50.

[6] ''ADRV'' means average daily removed volume calculated as the number of contracts removed, per day.

[7] Fee codes NA, NF, NN and NY are appended to liquidity adding orders in Non-Penny Pilot [sic] securities that are Professional, Firm/Broker Dealer/Joint Back Office, Away Market-Maker and Customer orders, respectively. Fee codes PA, PF, PN and PY are appended to liquidity adding orders in Penny Securities that are Professional, Firm/Broker Dealer/Joint Back office, Away Market-Maker and Customer orders, respectively.

[8] Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.29, orders yielding fee code PN are Away Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.26, orders yielding fee code XM are Market Maker orders in XSP options that add liquidity and are offered a rebate of $0.29, and orders yielding fee code XN are Away Market Maker orders in XSP that add liquidity and are offered a rebate of $0.26.

[9] Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.29, orders yielding fee code PN are Away Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.26, orders yielding fee code XM are Market Maker orders in XSP options that add liquidity and are offered a rebate of $0.29, and orders yielding fee code XN are Away Market Maker orders in XSP that add liquidity and are offered a rebate of $0.26.

new NBBO greater than or equal to 0.30% of average OCV. The proposed rule change deletes the first prong of criteria in each of current Tier 2 and Tier 3 (new Tier 1 and Tier 2, as proposed) and updates the second prong of criteria in each of current Tier 2 and Tier 3 by increasing the threshold of ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO as a percentage of average OCV from 0.15% to 0.25% in current Tier 2 (new Tier 1) and from 0.30% to 0.45% in Tier 3 (new Tier 2). The proposed rule change also decreases the additional rebate in current Tier 2 (new Tier 1) from $0.02 to $0.01 and in current Tier 3 (new Tier 2) from $0.03 to $0.02.

The Exchange also proposes to restructure its Market Maker Penny Add Volume Tiers under footnote 6 of the Fee Schedule. The Exchange currently offers 13 Market Maker Penny Add Volume Tiers that provide enhanced rebates between $0.33 and $0.48 per contract for qualifying Market Maker orders (*i.e.,* that yield fee code PM or XM) where a Member meets certain liquidity thresholds. First, it proposes to consolidate the Market Maker Penny Add Volume Tiers by eliminating the following tiers:

- Tier 3, which currently offers an enhanced rebate of $0.40 per contract for qualifying orders (*i.e.,* yielding fee code PM or XM) where a Member has (1) an ADAV [10] in Market Maker orders greater than or equal to 0.15% of average OCV,[11] and (2) an ADRV in Market Maker orders greater than or equal to 0.15% of average OCV;
- Tier 4, which currently offers an enhanced rebate of $0.40 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV, and (2) on BZX Equities an ADV [12] greater than or equal to 0.60% of average TCV; [13]
- Tier 6, which currently offers an enhanced rebate of $0.41 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.25% of average OCV, and (2) an ADRV in Market Maker orders greater than or equal to 0.25% of average OCV;
- Tier 9, which currently offers an enhanced rebate of $0.42 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV, and (2) an ADRV in Market Maker orders greater than or equal to 0.35% of average OCV;
- Tier 10, which currently offers an enhanced rebate of $0.43 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.15% of average OCV, (2) a Step-Up ADAV in Market-Maker orders from September 2020 greater than or equal to 0.10% of average OCV, (3) on BZX Equities an ADV greater than or equal to 0.60% of average TCV, and (4) on BZX Equities a Step-Up ADV from September 2020 greater than or equal to 0.05% of average TCV;
- Tier 11, which currently offers an enhanced rebate of $0.44 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.20% of average OCV, (2) a Step-Up ADAV in Market Maker orders from September 2020 greater than or equal to 0.15% of average OCV, (3) on BZX Equities an ADV greater than or equal to 0.60% of average TCV, and (4) on BZX Equities a Step-Up ADV from September 2020 greater than or equal to 0.10% of average TCV; and
- Tier 12, which currently offers an enhanced rebate of $0.44 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV, (2) an ADAV in Market Maker Non-Penny orders greater than or equal to 0.15% of average OCV, and (3) on BZX Equities an ADV greater than or equal to 1.00% of average TCV.

As a result of the elimination of the above-listed tiers, the proposed rule change updates current Tier 5 to new Tier 3, current Tier 7 to new Tier 4, current Tier 8 to new Tier 5, current Tier 13 to new Tier 6 and current Tier 14 to new Tier 7. The criteria and enhanced rebates offered under each of these tiers remains the same, save for Tier 8 (new Tier 5). The proposed rule change updates the criteria in current Tier 8 (new Tier 5), in which a Member must have an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV, by decreasing the threshold of ADAV in Market Maker orders as a percentage of average OCV from 0.50% to 0.45%. The current enhanced rebate offered under current Tier 8 (new Tier 5) remains the same ($0.42). Finally, the proposed rule change amends the Market Maker Penny Add Volume Tiers by adopting new Tier 8, which offers an enhanced rebate of $0.48 per contract for qualifying orders where a Member has an ADAV in Market Maker orders greater or equal to 1.50% of average OCV.

The Exchange proposes to eliminate the above-listed Market Maker Penny Add Volume Tiers and NBBO Setter Tiers as it no longer wishes to, nor is it required to, maintain such tiers. More specifically, the proposed rule change deletes these tiers as the Exchange would rather consolidate the Market Maker Penny Add Volume Tiers and NBBO Setter Tiers, many of which have not been achieved in several months, and redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes that the proposed updates to and addition of tiers under the Market Maker Add Volume Penny Tiers and the NBBO Setter Tiers are intended to continue to encourage increased Market Maker order flow as well as NBBO setting order flow to the Exchange, which may facilitate tighter spreads and more price improvement opportunities, signaling increased activity from other market participants, and thus ultimately contributing to deeper and more liquid markets and a more robust and well-balanced market ecosystem on the Exchange, to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [16] 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,

[10] ''ADAV'' means average daily added volume calculated as the number of contracts added, per day.

[11] ''OCC Customer Volume'' or ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[12] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[13] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[17] including the Exchange,[18] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume and/or growth thresholds.

In particular, the Exchange believes that proposed fee code PD, applicable to Firm, Broker Dealer and Joint Back Office orders that remove liquidity in Penny Securities, is reasonable, equitable and not unfairly discriminatory because current fee code PP already applies in the same manner to such Members' orders, and assesses the same rate ($0.50), as proposed fee code PD. Like fee code PP, proposed fee code PD and its corresponding rate will apply automatically and uniformly to all qualifying orders. The proposed rule change merely splits up the Member capacities to which fee code PP currently applies across two fee codes so that the Exchange may create a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office orders that remove Penny liquidity (along with the remove Penny liquidity Customer fee code (PC)). In addition to this, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to allow Routing Firm Members to receive the corresponding rebates on orders yielding fee codes PC and PD and identified as Designated Give Ups because these are the primary rebates in place on the Exchange and reflect the primary remove liquidity that the Exchange is seeking to attract from Routing Firms. The Fee Schedule already permits this for Designated Give Ups specified on orders that yield eight other fee codes. By providing a rebate directly to the party making the routing decision to direct certain orders to the Exchange (*i.e.,* the Routing Firm), which is consistent with both the Exchange's historic practice and the purpose behind a rebate (*i.e.,* to incentivize the order being directed to the Exchange), the Exchange believes that the proposed rule change will result in increased remove liquidity on the Exchange, to the benefit of all Exchange participants (as described in further detail below).

The Exchange believes that a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office (as well as Customer) orders that remove Penny liquidity is reasonable and equitable because it is designed to facilitate increased agency order flow executed particularly by these market participants on the Exchange. As described above, the Exchange recognizes that these types of Members can provide a different type of order flow than that of liquidity providers, such as Market Makers and Professionals. Particularly, Firm, Broker Dealer and Joint Back Office Members can be an important source of liquidity as they specifically facilitate Customer trading activity. Customer order flow, in turn, is important as it continues to attract liquidity to the Exchange. Enhanced liquidity on the Exchange benefits all market participants by providing more trading opportunities, signaling an increase in Market-Maker activity, which facilitates tighter spreads, in turn signaling a corresponding increase in order flow from other market participants, and ultimately contributing overall towards a robust and well-balanced market ecosystem.

The Exchange also believes that the proposed criteria in Tier 1 and Tier 2 under the new Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers is reasonable as it is comparable to other criteria offered under similar Take Volume Tiers which also incorporate Step-Up average volume over a baseline month.[19] The Exchange believes that incorporating Step-Up ADRV into the criteria under the new tiers is reasonably designed to encourage Members to submit remove order flow to the Exchange. The Exchange believes an increase in liquidity executing orders may attract more liquidity adding order flow to take advantage of the increase in execution opportunities, thereby contributing to deeper, more liquid markets and price discovery. In addition to this, the Exchange believes that the proposed additional rebates that correspond to each new tier are reasonable as they are reasonably based on the difficulty of satisfying the proposed tiers' criteria and thus appropriately reflect the incremental difficulty between achieving Tier 1 and Tier 2, which requires a higher number of contracts over which a Member must increase liquidity-taking order flow. The Exchange believes that the proposed additional rebates are in line with the additional rebates currently offered under other volume tiers in the Fee Schedule.[20]

The Exchange believes it is reasonable to eliminate certain tiers, many of which have been unused for several months, under the Market Maker Penny Add Volume Tiers and the NBBO Setter Tiers in order to consolidate these tiered pricing programs and redirect resources and funding into other programs and tiers intended to incentivize increased order flow. The Exchange again notes that it is not required to maintain such tiers.

The Exchange believes that modestly easing the criteria in Market Maker Penny Add Volume Tier 5 (current Tier 8) and adopting new Tier 8 is reasonable as it is designed to encourage Market Makers to increase their order flow to

[17] *See, e.g.,* NYSE Arca Options Fee Schedule, Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest tiers, which provide discounted amounts between $0.02 and $0.04 per contract for members reaching certain thresholds of customer posted interest and professional/non-customer liquidity removing interest; *and* Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between $0.01 and $0.17 per contract for Market Maker orders where Members meet certain volume thresholds;

[18] *See, e.g.,* BZX Options Fee Schedule, footnote 6, Market Maker Penny Add Volume Tiers; footnote 4, NBBO Setter Tiers; *and* footnote 8, Firm, Broker Dealer, and Joint Back Office Non-Penny Add Volume Tiers.

[19] *See* BZX Options Fee Schedule, footnote 6, Market Maker Penny Add Volume Tiers.

[20] *See* BZX Options Fee Schedule, footnote 4, NBBO Setter Tiers, rates under which are comparable as existing and as proposed in this filing.

the Exchange to achieve the proposed tiers. More specifically, the Exchange believes that adopting a new tier may encourage Members to increase their ADAV in Market Makers orders over a modestly higher percentage of average OCV and that reducing the difficulty of achieving an existing tier offers alternative criteria to the Market Maker Penny Add Volume Tiers, as restructured, for Members to strive to achieve by submitting the requisite add volume order flow. An increase in Market Maker add volume, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also believes that the proposed criteria in Tier 5 (current Tier 8) and new Tier 8, and the proposed enhanced rebate in new Tier 8 and existing rebate in Tier 5 (current Tier 8), reasonably reflect the incremental difficulty in achieving the remaining Market Maker Penny Add Volume Tiers, and are in line with the criteria and enhanced rebates offered under the remaining Market Maker Penny Add Volume Tiers. Indeed, the Exchange believes that the difficulty in achieving the proposed criteria under Tier 5 (current Tier 8), while modestly reduced, remains in line with the difficulty in achieving different, yet comparable criteria in Tier 4 (current Tier 7), which continues to offer the same enhanced rebate of $0.42. Also, the criteria in proposed Tier 8 is incrementally more difficult than criteria in Tier 7 (current Tier 14) (1.50% of ADAV over average OCV as compared to 0.75%), therefore, the Exchange believes that the proposed enhanced rebate of $0.48, as compared to the $0.46 rebate that corresponds to Tier 7, is appropriate.

Likewise, the Exchange believes that the amended criteria in NBBO Setter Tier 1 (current Tier 2) and Tier 2 (current Tier 3) continues to be reasonably designed to encourage Members to increase their liquidity on the Exchange, specifically NBBO setting add volume order flow. The Exchange believes that the proposed modifications to existing criteria in Tier 1 (current Tier 2) and Tier 2 (current Tier 3) results in incrementally less difficult criteria to achieve, as the proposed rule change removes the entire threshold requirement in prong 1 under each while only modestly increasing the remaining percentage of ADAV in Firm and Market Maker (including Away Market Maker) orders that establish a new NBBO over average OCV. As such, the Exchange believes that the proposed criteria, modestly reduced in difficulty, will incentivize Members to increase their NBBO setting add volume order flow to achieve the proposed tiers, which benefits all market participants by incentivizing continuous display of and opportunity to execute at the best prices, signaling other market participants to take the additional execution opportunities provided by such liquidity. The Exchange also believes the modest reduction in the corresponding additional rebates offered in Tier 1 (current Tier 2) and Tier 2 (current Tier 3) appropriately reflect the modest reduction in the difficulty in achieving the respective tier criteria.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because the Customer, Firm, Broker Dealer and JBO Remove Penny Tiers, Market Maker Add Penny Tiers and NBBO Setter Tiers, as proposed, will continue to apply uniformly to all qualifying Members, in that all Members that submit the requisite order flow per each tier program have the opportunity to compete for and achieve the proposed tiers. The additional/enhanced rebates (proposed and existing) will apply automatically and uniformly to all Members that achieve the proposed corresponding criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the proposed tiers, the Exchange believes that at least three Market Makers will reasonably be able to compete for and achieve the proposed criteria in each of the proposed Market Maker Penny Add Volume Tiers (Tier 5 and Tier 8); between two and three Market Makers will reasonably be able to compete for and achieve the proposed criteria in each of the proposed NBBO Setter Tiers (Tier 1 and Tier 2); and between two and three Members will reasonably be able to compete for and achieve the proposed criteria in each of the proposed Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers (Tier 1 and Tier 2). The Exchange notes, however, that the proposed tiers are open to any Member that satisfies the tiers' criteria. The Exchange lastly notes that it does not believe the proposed tiers will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the criteria in any of the proposed tiers, the Member will merely not receive the corresponding additional/enhanced rebate.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible to achieve the tiers' proposed criteria, have a reasonable opportunity to meet the tiers' proposed criteria and will all receive the corresponding rebates (as existing and proposed) if such criteria is met. Overall, the proposed change is designed to attract additional Customer and agency order flow, Market Maker order flow, and NBBO setting order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to strive to increase such order flow to the Exchange to meet the proposed criteria. Such order flow, as described above, brings different, yet key, liquidity and trading activity to the Exchange, resulting in overall tighter spreads, more execution opportunities at improved prices, and/or deeper levels of liquidity, which ultimately improves price

[21] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

transparency, provides continuous trading opportunities and enhances market quality on the Exchange, and generally continues to encourage Members to send orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem to the benefit of all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[22] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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.'' [23] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[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' . . . .''.[24] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–038 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–CboeBZX–2021–038. 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–CboeBZX–2021–038 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10178 Filed 5–13–21; 8:45 am]

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[22] *See supra* note 3.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91807; File No. SR–NYSE–2020–89]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 7.35C

May 10, 2021.

On October 23, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder,[2] a proposed rule change to: (1) Provide the Exchange the authority to facilitate a Trading Halt Auction if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (''MWCB Halt'') by 3:30 p.m.; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM Interest would not be cancelled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions. The proposed rule change was published for comment in the **Federal Register** on November 12 2020.[3] On December 18, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to February 10, 2020.[5] On February 5, 2021, the Exchange filed Amendment No. 1 to the proposed rule change which replaced and superseded the proposed rule change in its entirety.[6] On February 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On March 17, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety.[9] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on November 12 2020.[11] The 180th day after publication of the Notice is May 11, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change as amended by Amendment No. 2. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates July 10, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2020–89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10174 Filed 5–13–21; 8:45 am]

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[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12, 2020) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90726 (Dec. 20, 2020), 85 FR 84431 (Dec. 28, 2020).

[6] In Amendment No. 1, the Exchange removed one of the proposed changes from the original proposal. Specifically, the Exchange removed the proposed change to adopt a new definition of Auction Reference Price for exchange-facilitated Core Open Auctions and to amend the temporary rule related to such auctions set forth in Commentary .04 to Rule 7.35C. This aspect of the original proposal is now the subject of a separate proposed rule change filed by the Exchange on February 8, 2021 (SR–NYSE–2021–13).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 91095 (Feb. 10, 2021), 86 FR 9978 (Feb. 17, 2020).

[9] In Amendment No. 2, the Exchange removed several more proposed changes from the original proposal, as modified by Amendment No. 1. Specifically, the Exchange removed the proposed changes to make permanent the temporary rules pertaining to: (i) Permitting the CEO to determine that the Exchange will facilitate a Trading Halt Auction in one or more securities following a MWCB Halt if the security has not reopened by 3:30 p.m. Eastern Time, and (ii) establishing wider Auction Collars for Trading Halt Auctions following a MWCB Halt.

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* note 3.

[12] *Id.*

[13] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91804; File No. SR–CboeBYX–2021–012]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Exchange's Process for Re-Opening Securities Listed on Other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause During the Early Trading Session, Pre-Opening Session, or After Hours Trading Session

May 10, 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 April 26, 2021, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 rule change to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session,[3] Pre-Opening Session,[4] or After Hours Trading Session.[5] BYX Rule 11.23 describes the Exchange's opening process for securities listed on other national securities exchanges, including the process for re-opening such securities following the resumption of trading after a halt, suspension, or pause. On November 5, 2020, the Exchange filed a proposed rule change to amend its re-opening process pursuant to BYX Rule 11.23 for securities listed on the New York Stock Exchange LLC (''NYSE'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.[6] That filing was approved by the Commission on December 28, 2020.[7] The Exchange now proposes to further amend BYX Rule 11.23 to adopt a harmonized re-opening process for securities listed on NYSE (''Tape A''), securities listed on exchanges other than The Nasdaq Stock Market LLC (''Nasdaq'') and NYSE (''Tape B''); and securities listed on Nasdaq (''Tape C'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session. The Exchange believes that the proposed harmonized process for Tape A, B, and C securities would simplify its procedures and provide a more effective re-opening process for securities that resume trading outside of Regular Trading Hours.[8]

As amended pursuant to SR–CboeBYX–2020–032, BYX Rule 11.23(e)(3) provides that during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session, Tape A securities that resume trading after a halt, suspension, or pause will be automatically re-opened pursuant to the Exchange's contingent open procedures, as described in BYX Rule 11.23(d), after one second has passed following the Exchange's receipt of the first NBBO following such resumption of trading. This rule was adopted to automate the prior manual process that would otherwise be used to initiate the re-opening of Tape A securities when NYSE was not open for trading. Consistent with that intent, the Exchange proposed to continue to re-open Tape A securities using the same contingent open procedures that would apply when the Exchange manually initiated its re-opening process pursuant to BYX Rule 11.23(e)(2). As a result, when the Exchange re-opens Tape A securities during pre- and post-market trading sessions today, orders are handled in time sequence and placed on the BYX Book, routed, cancelled, or executed in accordance with the terms of the order. This differs from the standard processed used by the Exchange during Regular Trading Hours, where the Exchange seeks to execute queued orders at the midpoint of the national best bid or offer (''NBBO'').[9] After additional consideration, the Exchange believes that market participants and investors would be better served by utilizing its standard midpoint re-opening in these circumstances as doing so would promote greater consistency with the process used by the Exchange in other circumstances and may generally provide executions that better reflect the applicable market for the security.

The Exchange therefore proposes to amend BYX Rule 11.23(e) such that the process for re-opening Tape A securities after the Exchange has determined to initiate a re-opening would generally mirror the standard process described in BYX Rule 11.23(e)(1), which as discussed is designed to provide an execution at the midpoint of the NBBO. The determination of *whether* to re-open such Tape A securities would, however, continue to follow the process discussed in SR–CboeBYX–2020–032. Thus, during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session, the re-opening process for Tape A securities would occur at the midpoint of the NBBO after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after a halt, suspension, or pause. Although the Exchange has determined to use a midpoint re-opening process similar to that currently described in BYX Rule 11.23(e)(1), for the reasons discussed in SR–CboeBYX–2020–032, it remains important that the trigger for initiating this process outside of Regular Trading Hours not be tied to the resumption of trading on the primary listing market as NYSE does not trade its listed securities at times when the Exchange is open for pre- and post-market trading.

In addition, the Exchange proposes to amend the process for re-opening Tape B and C securities to mirror the proposed process for Tape A securities, except that the Exchange would require the primary listing market to have begun quoting the security before it initiates its own re-opening process. As explained in SR–CboeBYX–2020–032, the Exchange amended BYX Rule 11.23 to permit Tape A securities listed on NYSE to re-open based on quoting activity on other national securities exchanges during pre- and post-market trading when NYSE does not trade its listed securities. However, this limitation does not exist for Tape B or C securities as the applicable primary listing markets for those securities each offer pre- and post-market trading sessions where market participants can trade their listed securities.[10] As a result, the Exchange believes that it is desirable for Tape B and C securities to be opened on the Exchange only *after* the primary listing exchange has begun trading its listed securities, consistent with the current BYX Rule 11.23(e), which would continue to be applied during Regular Trading Hours. However, similar to the proposed process for re-opening Tape A securities, the Exchange would simplify the triggers for re-opening trading pursuant to BYX Rule 11.23(e)(1) such that its re-opening process for Tape B and C securities during the Early Trading Session, Pre-Opening Session, and After Hours Trading Session would occur at the midpoint of the NBBO after one second has passed following the publication of the first two-sided quotation by the listing exchange following the resumption of trading after a halt, suspension, or pause. In its effort to

[3] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* BYX Rule 1.5(ee).

[4] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* BYX Rule 1.5(r).

[5] The term ''After Hours Trading Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* BYX Rule 1.5(c).

[6] *See* Securities Exchange Act Release No. 90421 (November 13, 2020), 85 FR 73826 (November 19, 2020) (SR–CboeBYX–2020–032).

[7] *See* Securities Exchange Act Release No. 90804 (December 28, 2020), 86 FR 158 (January 4, 2021) (Approval Order).

[8] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BYX Rule 1.5(w).

[9] *See* BYX Rule 11.23(e)(1).

[10] *See* Nasdaq Rules, Equity 1, Section 1(a)(9); NYSE Arca, Inc. Rule 7.34–E(a); NYSE American LLC Rule 7.34E(a).

simplify the re-opening process employed during these timeframes, the Exchange would not retain a separate trigger to allow the re-opening process to be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange.

Finally, the Exchange proposes to make a number of structural changes to BYX Rule 11.23(e) to facilitate the amendments described above. First, the Exchange proposes to structure BYX Rule 11.23(e)(1) such that it would contain subparagraphs (A), (B), and (C), which each would describe applicable differences between the Exchange's opening process at the beginning of the Regular Trading Session, as described in BYX Rule 11.23(a)(2) and (b), and the re-opening process employed by the Exchange after a halt. As amended, (1) BYX Rule 11.23(e)(1)(A) would describe the types of orders that are eligible for participation in the re-opening process; (2) BYX Rule 11.23(e)(2)(B) would describe the Exchange's current re-opening process, which the Exchange now proposes to limit to Regular Trading Hours; and (3) BYX Rule 11.23(e)(2)(C) would contain language discussed above that describes the Exchange's re-opening process during the Early Trading Session, Pre-Opening Session, or After Hour Trading Session, *i.e.,* for Tape A, B, and C securities.[11] Second, the Exchange proposes to amend BYX Rule 11.23(e)(2) to reflect the changes discussed above. As amended, the lead in to BYX Rule 11.23(e)(2) would state that this section applies where the conditions required to establish the price of the re-opening process in the now restructured BYX Rule 11.23(e)(1)(B) or (C) have not occurred, which reflects the now renumbered sections of the rule, including language that is in current BYX Rule 11.23(e)(1) and BYX Rule 11.23(e)(3).[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would implement a streamlined process for re-opening Tape A, B, and C securities during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

The Exchange currently employs different processes for re-opening Tape A, B, and C securities during pre- and post-market trading. The Exchange believes, however, that market participants would be better served by a harmonized process that: (1) Ensures that the Exchange's automated re-opening process executes orders at the midpoint of the NBBO; and (2) eliminates unnecessary distinctions between the process utilized for Tape A, B, and C securities. Executing the Exchange's re-opening process during pre- and post-market trading at the midpoint of the NBBO is beneficial to market participants as the NBBO midpoint may more closely reflect market prices and conditions for the security being re-opened. As a result, the Exchange believes that using the NBBO midpoint to price its re-opening process for all securities would help to promote a fair and orderly market. In addition, using generally consistent triggers for initiating the Exchange's re-opening process in Tape A, B, and C securities that resume trading during pre- and post-market trading sessions would reduce the overall complexity of the re-opening process employed during these timeframes. The Exchange notes, however, that it would nevertheless require the primary listing market to begin trading its own securities prior to re-opening trading on the Exchange in Tape B and C securities. This limitation would not apply to Tape A securities that NYSE does not trade outside of its regular trading session as doing so would require unnecessary and inefficient manual intervention by the Exchange to manually initiate trading, as was the case prior to the filing and Commission approval of SR–CboeBYX–2020–032. The Exchange believes that this distinction continues to be appropriate as it is based on applicable differences between each primary listing market's hours of operation and would continue to promote a more streamlined automated process for initiating the re-opening process in Tape A securities at times when NYSE does not trade its own listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate a more efficient and harmonized re-opening process for all securities that resume trading outside of Regular Trading Hours, and is not designed to address any competitive issues. All members would have their orders handled in the same manner based on the proposed changes to the Exchange's re-opening process, and other national securities exchanges are free to adopt the same or similar processes if they believe that the proposed process is beneficial for their own members. The Exchange therefore does not believe that the proposed rule change would have any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received 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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[11] The Exchange would also eliminate BYX Rule 11.23(e)(3), which currently addresses the re-opening of Tape A securities listed on NYSE during pre- and post-market trading. As discussed, the Exchange is proposing to harmonize the process for re-opening Tape A, B, and C securities outside of Regular Trading Hours, and the harmonized process discussed in this proposed rule change would be described in BYX Rule 11.23(e)(2)(C).

[12] The Exchange would also eliminate language that states that this section applies when the security has not otherwise been re-opened for trading on the Exchange pursuant to BYX Rule 11.23(e)(3). As discussed, the content of BYX Rule 11.23(e)(3) would be moved to BYX Rule 11.23(e)(1)(C) with further amendments as discussed herein.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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–CboeBYX–2021–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2021–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–CboeBYX–2021–012 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10172 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91833; File No. SR–OCC–2021–005]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning The Options Clearing Corporation's Synthetic Futures Model

May 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2021, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC is filing a proposed rule change to expand the use of an existing OCC margin model. The proposed changes to OCC's STANS Methodology Description are contained in confidential Exhibit 5 of filing SR–OCC–2021–005. Material proposed to be added to the STANS Methodology Description as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

In 2019, OCC implemented a new model for Volatility Index Futures.[6] The enhanced model included: (1) The daily re-estimation of prices and correlations using ''synthetic'' futures;[7] (2) an enhanced statistical distribution for modeling price returns for synthetic futures (*i.e.,* an asymmetric Normal Reciprocal Inverse Gaussian (or ''NRIG'') distribution); and (3) a new anti-procyclical floor for variance estimates. The main feature of the enhanced model was the replacement of the use of the underlying index itself as a risk factor[8] (*e.g.,* the VIX) with risk factors that are based on observed futures prices (*i.e.,* the ''synthetic'' futures contracts). These risk factors are then used in the generation of Monte Carlo scenarios for the futures by using volatility and correlations obtained from the existing simulation models in OCC's propriety margin system, the System for Theoretical Analysis and Numerical Simulations (''STANS'').[9] Additionally, the model has the ability to accommodate negative prices and interest rates.

On July 10, 2020, OCC filed a proposed rule change to expand the use of the model, currently known as the ''Synthetic Futures Model,'' to Cboe's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[6] *See* Securities Exchange Act Release No. 85870 (May 15, 2019), 84 FR 23096 (May 21, 2019) (SR–OCC–2019–801) and Securities Exchange Act Release No. 85873 (May 16, 2019), 84 FR 23620 (May 16, 2019) (SR–OCC–2019–002). Certain indices are designed to measure the volatility implied by the prices of options on a particular reference index or asset (''Volatility Indexes''). For example, the Cboe Volatility Index (''VIX'') is designed to measure the 30-day expected volatility of the Standard & Poor's 500 index (''SPX''). OCC clears futures contracts on Volatility Indexes. These futures contracts are referred to herein as ''Volatility Index Futures.''

[7] A ''synthetic'' futures time series, for the intended purposes of OCC, relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis.

[8] A ''risk factor'' within OCC's margin system may be defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product.

[9] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20). A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/.*

AMERIBOR Futures.[10] On September 30, 2020, OCC filed another proposed rule change to further expand the use of the Synthetic Futures Model to Treasury yield index futures listed by Small Exchange Inc. (''Small'').[11] OCC now proposes to extend the use of the Synthetic Futures Model to certain other products planned to be listed by Small.

Proposed Changes

Small plans to launch new futures products linked to Light Sweet Crude Oil (WTI) (''Crude Oil Futures''). OCC proposes to extend the use of its Synthetic Futures Model to these Small Crude Oil Futures. The Synthetic Futures Model maps the price risk factor of a traded futures product to a synthetic time series constructed from the traded prices of similar tenor futures in history. This allows the model to capture differences in volatility of futures across the term structure. Such differences in volatility are exhibited for futures products whose underlying deliverable is linked to a different tenor of a market observable risk factor such as interest rates, volatility or commodity prices such as crude oil. As a result, OCC believes that the Synthetic Futures Model would provide more appropriate margin coverage for Small Crude Oil Futures than other models in OCC's inventory.[12]

OCC proposes to make minor modifications to the STANS Methodology Description to note that the STANS methodology generally, and Synthetic Futures Model specifically, would be used to generate margin requirements for Small Crude Oil Futures. Consistent with the existing STANS Methodology Description, OCC would use a fixed NRIG asymmetry parameter for Crude Oil Futures, which OCC believes is better suited to the risk profile of the product as the asymmetry of returns is primarily on the left-tail (or negative returns) and already captured by the GARCH model specifications. Consistent with the original implementation of the Synthetic Futures Model, the Small Crude Oil Futures will also use proportional returns in the calibration. OCC would initially use a fixed scale factor for purposes of determining the long-run variance floor until sufficient data for the Small Crude Oil Futures is available for this scale factor to be calibrated on a regular basis. The scale factor setting will be reviewed periodically based on the futures data and adjusted, if appropriate. Finally, the model will use market prices of futures after the product launch and use proxy data[13] for historical dates prior to product launch to support the model calibration.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act[14] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act[15] requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The proposed rule change would make minor changes to the STANS Methodology Description so that the Synthetic Futures Model can be used to model Small Crude Oil Futures. OCC believes the Synthetic Futures Model may provide better margin coverage for these products than other margin models maintained by OCC. OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses that may result from the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. Moreover, OCC believes that accurate calculation of margin requirements is necessary to help OCC manage the risk of a Clearing Member default without recourse to the assets of non-defaulting Clearing Members, which supports the safeguarding of securities and funds in OCC's custody or control. OCC therefore believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Exchange Act Rules 17Ad–22(e)(6)(i), (iii), and (v)[17] further require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things: (1) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. OCC believes that using the Synthetic Futures Model for Small Crude Oil Futures would produce margin levels commensurate with the risks and particular attributes of the product in question, generate margin requirements to cover OCC's potential future exposure to its participants, and appropriately take into account relevant product risk factors for Small Crude Oil Futures.[18] In this way, OCC believes the proposed rule change is consistent with the requirements of Rules 17Ad–22(e)(6)(i), (iii), and (v).[19]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[20] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. The Synthetic Futures Model would be used for Small Crude Oil Futures for all Clearing Members upon the launch of the new products. As a result, OCC does not believe that the proposed rule change would unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user. Moreover, OCC expects that the Small Crude Oil Futures would account for a small part of OCC's overall clearing activity given the newness of the product and the size of OCC's futures clearing business as a share of OCC's total cleared product set. OCC therefore does not believe that the proposed rule change would have any

[10] *See* Securities Exchange Act Release No. 89392 (July 24, 2020), 85 FR 45938 (July 30, 2020) (SR–OCC–2020–007).

[11] *See* Securities Exchange Act Release No. 90139 (October 9, 2020), 85 FR 65886 (October 16, 2020) (SR–OCC–2020–012). On December 6, 2019, OCC filed a proposed rule change to execute an Agreement for Clearing and Settlement Services between OCC and Small in connection with Small's intention to operate as a designated contract market regulated by the Commodity Futures Trading Commission (''CFTC''). *See* Securities Exchange Act Release No. 87774 (December 17, 2019), 84 FR 70602 (December 23, 2019) (SR–OCC–2019–011).

[12] For example, OCC also maintains a ''Generic Futures Model,'' which is a simple model based on the cost of carry that is primarily used to margin equity-like futures such as SPX futures and can be used to model certain interest rates futures. This model has certain limitations (*e.g.,* the model cannot currently accommodate negative prices and rates).

[13] The proxy data for Small Crude Oil futures will be constructed from similar tenor ICE WTI futures.

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(6)(i), (iii), and (v).

[18] OCC has provided backtesting analysis for the proposed change in confidential Exhibit 3 to File No. SR–OCC–2021–005.

[19] 17 CFR 240.17Ad–22(e)(6)(i), (iii), and (v).

[20] 15 U.S.C. 78q–1(b)(3)(I).

impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act,[21] and Rule 19b–4(f)(4)(ii) thereunder,[22] the proposed rule change is filed for immediate effectiveness because it effects a change in an existing service of OCC that (i) primarily affects the clearing operations of OCC with respect to products that are not securities and (ii) does not significantly affect any securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.

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.[23]

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–OCC–2021–005 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–OCC–2021–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2021–005 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10187 Filed 5–13–21; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(4)(ii).

[23] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91809; File No. SR–NSCC–2021–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Increase the National Securities Clearing Corporation's Minimum Required Fund Deposit

May 10, 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 April 26, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules & Procedures (''Rules'') [3] in order to increase the minimum Required Fund Deposit for each Member.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing to increase the minimum Required Fund Deposit, as described in greater detail below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein are defined in the Rules, *available at https://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

The Minimum Required Fund Deposit

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[4] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[5] The aggregate of all Members' Required Fund Deposits, together with certain other deposits required under the Rules, constitutes the Clearing Fund of NSCC, which it would access, among other instances, should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.[6] Currently, each Member is required to maintain a minimum Required Fund Deposit amount of $10,000.[7] If a Member's Required Fund Deposit, as calculated by Procedure XV, is less than $10,000 on a given day, NSCC requires a deposit to bring the Member's Required Fund Deposit up to $10,000. The first 40% of a Member's Required Fund Deposit, but no less than the minimum Required Fund Deposit amount of $10,000, is required to be in cash.[8]

NSCC's margining methodologies are designed to mitigate market, liquidity and other risks. NSCC regularly assesses its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. In connection with such regular reviews, NSCC has determined that there are circumstances where the current minimum Required Fund Deposit amount is insufficient to manage NSCC's risk in the event of an abrupt or sudden increase in a Member's activity.

NSCC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit.[9] NSCC compares the Required Fund Deposit [10] for each Member with the simulated liquidation gains/losses using the actual positions in the Member's portfolio, and the actual historical security returns. A backtesting deficiency occurs when NSCC determines that a Member's Required Fund Deposit would not have been adequate to address the projected liquidation losses estimated from a Member's settlement activity based on the backtesting results. NSCC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99% confidence target (*i.e.,* greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies.[11] NSCC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason. Backtesting deficiencies highlight exposure that could subject NSCC to potential losses under normal market conditions in the event that a Member defaults.

While multiple factors may contribute to a Member's backtesting deficiency, a position increase by a Member after the calculation of such Member's Required Fund Deposit may be a factor that leads to the Member incurring backtesting deficiencies due to the additional exposure that is not mitigated until the collection of the Required Fund Deposit occurs intraday, or on the next business day. This factor is heightened for those Members that maintain a low or minimum Required Fund Deposit because there are less deposits to mitigate the additional exposure caused by a position increase.

Typical examples where Members may be maintaining a minimum Required Fund Deposit amount of $10,000 include (1) when a new Member has activated its clearing accounts at NSCC and is growing its business; (2) when a Member generally has limited or infrequent transaction activity; and (3) when a Member is winding down its business and is in the process of retiring its NSCC membership. In each of these circumstances, an abrupt increase in clearing activity following a period of low or no clearing activity could cause NSCC to be under-margined with respect to the Member and may result in backtesting deficiencies. Therefore, NSCC is proposing to increase the minimum Required Fund Deposit amount of $10,000 to address the risk that NSCC becomes under-margined in circumstances when a Member is subject to the current minimum Required Fund Deposit amount. As discussed below, NSCC has observed that Members that maintain a Required Fund Deposit of less than $250,000 disproportionately account for the number of Members with a confidence target below 99% due to repeat backtesting deficiencies.

In determining the appropriate minimum Required Fund Deposit amount, NSCC reviewed varying minimum Required Fund Deposit amounts to determine the anticipated effects of increasing the minimum Required Fund Deposits on Clearing Fund coverage and on backtesting results. NSCC also conducted a review of minimum deposit requirements of registered clearing agencies and foreign central counterparty clearing houses (''CCPs'') to compare NSCC's minimum Required Fund Deposit with the deposits required by registered clearing agencies and foreign CCPs. As discussed below, based on the results of the reviews and the comparison of other registered clearing agencies and foreign

[4] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) (''Procedure XV''), *supra* note 3. NSCC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[5] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services) of the Rules, *supra* note 3.

[6] Procedure XV, *supra* note 3.

[7] Section 1 of Rule 4, *supra* note 3.

[8] Section II.(A) of Procedure XV, *supra* note 3.

[9] See Model Risk Management Framework (''Model Risk Management Framework''), Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (NSCC–2017–008) (sets forth the model risk management practices of NSCC and states that Value at Risk (''VaR'') and Clearing Fund requirement coverage backtesting would be performed on a daily basis or more frequently) and Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009) (amends the Model Risk Management Framework).

[10] Members may be required to post additional collateral to the Clearing Fund in addition to their Required Fund Deposit amount. *See e.g,* Rule 15 (Assurance of Financial Responsibility and Operational Capability), *supra* note 3 (providing that adequate assurances of financial responsibility of a Member may be required, such as increased Clearing Fund deposits). For backtesting comparisons, NSCC uses the Required Fund Deposit amount, without regard to the actual, total collateral posted by the Member to the Clearing Fund.

[11] The 99% confidence target is consistent with Rule 17Ad–22(e)(6)(iii) which requires NSCC to calculate margin to cover its ''potential future exposure'' which is defined in Rule 17Ad–22(a)(13) to mean the ''maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure.'' 17 CFR 240.17Ad–22(a)(13), (e)(6)(iii).

CCPs, NSCC believes that a proposed minimum Required Fund Deposit amount of $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage, while minimizing the impact to Members.

NSCC conducted a review of backtesting deficiencies during the period from June 3, 2019 to May 29, 2020 (''Impact Study Period'') to determine the anticipated backtesting coverage using $250,000 as the minimum Required Fund Deposit amount and amounts lower and higher than $250,000. The results of the reviews indicated that using $250,000 as its minimum Required Fund Deposit amount would improve NSCC's rolling twelve-month Clearing Fund coverage and reduce the number of Members with backtesting coverage below 99%.[12] Based on a review of backtesting deficiencies during the Impact Study Period, approximately 22% of backtesting deficiencies occurred with Members that maintained a Required Fund Deposit of less than $250,000. In addition, those Members that maintained a Required Fund Deposit of less than $250,000 had a disproportionate amount of repeat backtesting deficiencies and were more likely to have backtesting coverage below the 99% confidence target. During the Impact Study Period, 29 Members fell below the 99% confidence target. Deficiencies that occurred for Members with a Required Fund Deposit lower than $250,000 accounted for 22% of the total backtesting deficiencies, while Members that maintained a Required Fund Deposit lower than $250,000 constituted approximately 45% of the Members that fell below the 99% confidence target. If the proposed changes had been in place, those Members would constitute only 27% of Members that fell below the 99% confidence target which is comparable to those Members' overall representation as a class. Approximately 88% of the deficiencies that occurred on the days when Members maintained a Required Fund Deposit of less than $250,000 would have been eliminated during that period if the Required Fund Deposit were $250,000 or higher. During the Impact Study Period, NSCC observed a total of 227 backtesting deficiencies. If a minimum requirement of $250,000 had been assessed, 44 deficiencies would have been eliminated across 13 Members. Overall a $250,000 minimum requirement would have increased NSCC's twelve-month coverage by 0.14% to 99.41%, eliminated 44 deficiencies, improved rolling twelve-month coverage for 7 Members to above 99% compared to 5 Members if a $100,000 minimum Required Fund Deposit had been applied, and improved the rolling twelve-month coverage for 6 additional Members. The review of backtesting deficiencies during the Impact Study Period also indicated that raising the minimum Required Fund Deposit to $250,000 would decrease backtesting deficiencies to a greater extent than raising it to a lower amount such as $100,000 and would increase the Clearing Fund coverage to a greater extent.[13]

NSCC's review of the requirements of other clearing agencies and foreign CCPs indicated that NSCC's minimum Required Fund Deposit requirement of $10,000 was significantly lower than minimum deposits or equivalent required by such other entities.[14] While the minimum required fund deposits of such other entities is not dispositive as to the risk borne by NSCC or the proper fund deposit amounts to offset such risk, it is indicative of the amounts that users of other similarly situated entities can expect to pay as a minimum required fund deposit to use the services of the clearing agencies and foreign CCPs and the impact to such users. The comparison shows that entities using other clearing agencies and foreign CCPs pay significantly more in minimum fund deposits to use similar services than the minimum Required Fund Deposit amount at NSCC.

Based on the backtesting results discussed above and the impact to Members of raising the minimum Required Fund Deposit amount to $250,000, NSCC believes that raising it to $250,000 is the appropriate minimum Required Fund Deposit amount that will minimize the financial impact to its Members while maximizing risk management of activity that is guaranteed at the point of validation or comparison by NSCC.

As is currently provided for in the Rules, NSCC is proposing to continue to require that Members deposit an amount equal to the minimum Required Fund Deposit in cash.[15] NSCC permits Members to satisfy their Required Fund Deposit obligations through a combination of cash and open account indebtedness secured by Eligible Clearing Fund Securities.[16] Cash deposits are fungible. NSCC would be therefore be further strengthening its liquidity resources by requiring each Member to deposit a baseline of $250,000 in cash to the Clearing Fund.

Proposed Rule Changes

In order to implement the proposed increase in the minimum Required Fund Deposit amount to $250,000, Section 1 of Rule 4 would be revised to state that the minimum Required Fund Deposit for each Member shall be $250,000. In addition, Section II.(A) of Procedure XV would be revised to replace the minimum contribution amount from $10,000 to $250,000. Section II.(A) of Procedure XV currently provides that no less than $10,000, the minimum Required Fund Deposit, of a Member's Required Fund Deposit must be in cash.[17] To reflect the increase in the minimum Required Fund Deposit, NSCC would also increase the minimum cash requirement to $250,000 to match the proposed increased minimum Required Fund Deposit amount.

Implementation Timeframe

NSCC would implement the proposed changes no later than 20 Business Days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes that the proposed changes described above are consistent with the requirements of the Act and the

[12] Backtesting percentages indicate the risk that a minimum Required Fund Deposit will be insufficient to manage risk in the event of a Member's default. A backtesting coverage that is below the 99% confidence target for a Member means that the Member has more than two backtesting deficiency days in a rolling twelve-month period. As indicated above, consistent with Rule 17Ad–22(e)(6)(iii), NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99% confidence target to determine if there is an identifiable cause of repeat backtesting deficiencies. *See supra* note 9.

[13] Over the Impact Study Period, if the minimum Required Fund Deposit had been set to $250,000 compared to $100,000, there would have been 10 more backtesting deficiencies eliminated; overall increasing the 12-month backtesting coverage percentage by 0.03% to 99.41%.

[14] For example, the minimum initial contribution for The Options Clearing Corporation (''OCC'') is $500,000. *See* Rule 1002(d) of the OCC Rules, *available at https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.* The minimum Required Fund Deposit for both the Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') of Fixed Income Clearing Corporation (''FICC'') is $100,000. *See* Rule 4 of FICC GSD Rulebook, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf* and Rule 4 of the FICC MBSD Clearing Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

[15] Section II.(A) of Procedure XV, *supra* note 3.

[16] Rule 4, Section 1, *supra* note 3.

[17] Section II.(A) of Procedure XV, *supra* note 3.

rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[18] and Rules 17Ad–22(e)(4)(i) and (e)(6)(iii), each promulgated under the Act,[19] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[20] NSCC believes the proposed changes are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because they are designed to enable NSCC to require the necessary margin for Members who maintain a minimum Required Fund Deposit to limit its exposure to such Members in the event of a Member default. Having adequate margin for such Members would help ensure that NSCC does not need to use its own resources, or the Eligible Clearing Fund Securities and funds of non-defaulting Members, to cover losses in the event of a default of such Members. Specifically, the proposed rule change seeks to remedy potential situations that are described above where NSCC could be under-margined. By ensuring that Members that maintain the minimum Required Fund Deposit amount are adequately covering NSCC's risk of loss, NSCC would be reducing the risk of losses, which would need to be addressed by using non-defaulting Members' securities or funds, or NSCC funds. In addition, by requiring that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available additional collateral that is easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Members' securities or funds, or NSCC funds. Therefore, NSCC believes the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of NSCC, consistent with Section 17(b)(3)(F) of the Act.[21]

Rule 17Ad–22(e)(4)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to Members and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence.[22]

As described above, NSCC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, as a review of backtesting deficiencies during the Impact Study Period has indicated, raising the minimum Required Fund Deposit amount to $250,000 would decrease the number of backtesting deficiencies and help ensure that NSCC maintains the coverage of credit exposures for more Members at a confidence level of at least 99%. In addition, by requiring that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available collateral that is easier to access when Members default further reducing the risk of losses, which would require using non-defaulting Members' securities or funds, or NSCC funds. Therefore, NSCC believes that the proposed changes would enhance NSCC's ability to effectively identify, measure, monitor and manage its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[23]

Rule 17Ad–22(e)(6)(iii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its Members by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default.[24] NSCC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit paying particular attention to Members that have backtesting deficiencies below the 99% confidence target. Such backtesting deficiencies highlight exposure that could subject NSCC to potential losses if a Member defaults. As discussed above, NSCC has determined that approximately 22% of all backtesting deficiencies occur for those Members that maintain a Required Fund Deposit of less than $250,000 and that approximately 88% of the deficiencies of those Members would have been eliminated during the Impact Study Period if the Required Fund Deposit were $250,000 or higher. By raising the minimum Required Fund Deposit amount to $250,000, NSCC believes it can decrease the backtesting deficiencies by Members, and thus decrease exposure to such Members in the event of a default. NSCC believes that the increase in margin for those Members that currently maintain a Required Fund Deposit of less than $250,000 would improve the probabilities that the margin maintained by such Members is sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(iii) under the Act.[25]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes that the proposed changes to increase the minimum Required Fund Deposit could have an impact on competition. Specifically, NSCC believes that the proposed changes could burden competition because they would result in larger Required Fund Deposits for Members in cash that currently have Required Fund Deposits of less than $250,000. The proposed changes could impose more of a burden on those Members that have lower operating margins, lower cash reserves or higher costs of capital compared to other Members. NSCC believes that any burden on competition imposed by the proposed changes would not be significant and would be both necessary and appropriate in furtherance of NSCC's efforts to mitigate risks and meet the requirements of the Act, as described in this filing and further below.

NSCC believes that any burden on competition presented by the proposed changes to increase the minimum Required Fund Deposit amount would not be significant. As discussed above, NSCC believes that the increase to $250,000 is consistent with what users of other similarly situated registered clearing agencies and foreign CCPs are expected to pay as a required deposit for similar services. In addition, by limiting

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(iii).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(4)(i).

[23] *Id.*

[24] 17 CFR 240.17Ad–22(e)(6)(iii).

[25] 17 CFR 240.17Ad–22(e)(6)(iii).

the proposed Required Fund Deposit to $250,000 rather than a higher minimum Required Fund Deposit, NSCC would be minimizing the financial impact to its Members while maximizing risk management of activity that is guaranteed at the point of validation or comparison by NSCC.

While an increase to $100,000 rather than $250,000 would also reduce backtesting deficiencies, it would not reduce it to the same extent as if the minimum Required Fund Deposit were raised to $250,000. If the minimum Required Fund Deposit were raised to $250,000 rather than $100,000, NSCC would have observed 10 more backtesting deficiencies eliminated. If the minimum Required Fund Deposit was increased to $100,000, the 12-month rolling backtesting coverage percentage across NSCC would improve from 99.27% to 99.38%; an increase to $250,000 would improve the coverage to 99.41%. Backtesting deficiencies highlight exposure that could subject NSCC to potential losses under normal market conditions in the event that a Member defaults. NSCC believes that the additional reduction in exposure that would occur if the minimum Required Fund Deposit were raised to $250,000 rather than $100,000 justifies added expense to the Members who currently have a minimum Required Fund Deposit of less than $250,000.

Even if the burden were deemed significant with respect to certain Members, NSCC believes that the above described burden on competition that may be created by the proposed changes would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act,[26] because, as described above, the Rules must be designed to assure the safeguarding of securities and funds that are in NSCC's custody or control or which it is responsible.

More specifically, NSCC believes these proposed changes are necessary to support NSCC's compliance with Rules 17Ad–22(e)(4)(i) and 17Ad–22(e)(6)(iii) under the Act,[27] which require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to Members and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence; and (y) cover its credit exposures to its Members by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default.

As described above, NSCC believes increasing the minimum Required Fund Deposit amount to $250,000 would decrease the number of backtesting deficiencies and ensure that NSCC maintains the coverage of credit exposures for more Members at a confidence level of at least 99%. This outcome is consistent with Rule 17Ad–22(e)(6)(iii) which requires that NSCC calculate sufficient margin to cover its ''potential future exposure'' which is defined as the ''maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure.'' [28] NSCC also believes that the increase in margin for those Members that currently maintain a Required Fund Deposit of less than $250,000 would help ensure that the margin deposited by such Members is sufficient to cover NSCC's potential future exposure in the interval between the last margin collection and the close out of positions following a Member default. Therefore, NSCC believes that these proposed changes would better limit NSCC's credit exposures to Members, consistent with the requirements of Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(iii) under the Act.[29]

NSCC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described in detail above. The proposal would enable NSCC to produce margin levels more commensurate with the risks it faces as a central counterparty. The increase in minimum Required Fund Deposit would be in relation to the credit exposure risks presented by the class of Members that currently maintain a Required Fund Deposit of less than $250,000, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar risk, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. In addition, based on the comparison of other registered clearing agencies and foreign CCPs, NSCC believes that the increase to $250,000 is consistent with what users of other similarly situated registered clearing agencies and foreign CCPs are expected to pay and would not be a significant burden on Members. In many cases, other registered clearing agencies and foreign CCPs require greater minimum fund deposit amounts. In addition, based on the results of the review of backtesting deficiencies during the Impact Study Period as discussed above, NSCC believes that a proposed minimum Required Fund Deposit of $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage, while minimizing the impact to Members by not raising the minimum Required Fund Deposit above $250,000. Therefore, because the proposed changes are designed to provide NSCC with a more appropriate and complete method of managing the risks presented by each Member and to minimize the impact to Members, NSCC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

NSCC believes that it has designed the proposed changes in a way that is both necessary and appropriate to meet compliance with its obligations under the Act. Specifically, the proposal to increase the minimum Required Fund Deposit amount to $250,000 would better limit NSCC's credit exposures to its Members. In addition, by continuing to require that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available additional collateral that is easier for NSCC to access upon a Member's default, further limiting its credit exposure to Members. Therefore, as described above, NSCC believes the proposed changes are necessary and appropriate in furtherance of NSCC's obligations under the Act, specifically Section 17A(b)(3)(F) of the Act [30] and Rules 17Ad–22(e)(4)(i) and 17Ad–22(e)(6)(iii) under the Act.[31] For these reasons, the proposed changes are not designed to be an artificial barrier to entry but a necessary and appropriate changes to address specific risk.

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(iii).

[28] 17 CFR 240.17Ad–22(e)(6)(iii). *See also* 17 CFR 240.17Ad–22(a)(13) (definition of ''potential future exposure'').

[29] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(iii).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(iii).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC conducted Member outreach with each Member that had an average Required Fund Deposit of less than $500,000 for the twelve-month period ending May 2019 to provide notice and an opportunity to discuss the proposed changes. One Member stated that it had an objection to the proposal to raise the minimum Required Fund Deposit from $10,000 to $250,000 and stated that (i) the proposed changes would solely burden the least active and lowest risk firms, (ii) the proposed changes do not have correlation with risk or any appropriate cost allocation at NSCC, (iii) the proposed changes are purely a tax on small firms and NSCC is intent on creating artificial barriers to entry through unjustified capital requirements and (iv) the current policies, procedures and standards are more than adequate to guard against risk at the small firm-level.[32]

First, the proposed changes would not solely burden the least active and lowest risk firms. Members that maintain a minimum Required Fund Deposit of less than $250,000 do include smaller firms and firms that conduct infrequent activity, but they also consist of newer firms that are ramping up activity and firms that are winding down, regardless of size.

Second, the proposed changes are designed to address risk. Backtesting results indicate that deficiencies that occurred for Members with a Required Fund Deposit lower than $250,000 accounted for 22% of the total backtesting deficiencies, while Members that maintained a Required Fund Deposit lower than $250,000 constituted approximately 45% of the Members that fell below the 99% confidence target during the Impact Study Period. If the proposed changes had been in place, those Members would constitute only 27% of Members that fell below the 99% confidence target which is comparable to those Members' overall representation as a class. Backtesting deficiencies indicate a risk that Required Fund Deposit will be insufficient to manage risk in the event of such Member's default. For the reasons outlined above, NSCC determined that raising the minimum Required Fund Deposit to $250,000 was the appropriate amount to both mitigate the risk in the event of default and minimize the burden on members by not raising the minimum Required Fund Deposit to a higher amount.

Third, the proposed increase to the Required Fund Deposit is not purely a tax on small firms and is not intended as an artificial barrier to entry. While the proposed changes would be an added expense on certain smaller firms that currently have a Required Fund Deposit of less than $250,000, it would apply to all firms regardless of size and so would not be disproportionally applied. Backtesting deficiencies indicate that firms with a minimum Required Fund Deposit expose NSCC and other Members to risk in the event of such Member's default. Raising the Required Fund Deposit to $250,000 would mitigate the risks presented by those Members who have a required Fund Deposit of less than $250,000 as outlined above. In addition, as indicated above, although the proposed changes may be more of a burden on those Members that have lower operating margins, lower cash reserves or higher costs of capital compared to other Members, NSCC believes that the increase in Required Fund Deposit is necessary and appropriate as it would apply in relation to the credit exposure risks presented by the class of Members that currently maintain a Required Fund Deposit of less than $250,000. As observed in the Impact Study Period, 46 Members would be impacted by the proposed $250,000 minimum Required Fund Deposit. On average, 18 Members maintained excess deposit greater than the proposed increase. Therefore, 28 Members on average would have been required to deposit additional funds if the proposal had been implemented. In addition, the 46 Members that would be impacted by the proposed $250,000 minimum Required Fund Deposit, maintained excess net capital[33] or equity capital[34] (as applicable) (''ENC'') in excess of $800 thousand on average over the Impact Study Period, ranging between an average $834 thousand to $211.5 billion, with 98% of the impacted Members having on average an ENC above $2.5 million, which can be used to estimate impacted Members' ability to satisfy additional Required Fund Deposit amounts required by the proposal.

Fourth, as indicated by the backtesting results, NSCC believes that the current minimum Required Fund Deposit does indicate risk with respect to those Members that maintain a minimum Required Fund Deposit of less than $250,000 and the increase in the minimum Required Fund Deposit would reduce that risk. NSCC believes that increasing the minimum Required Fund Deposit to $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage which will reduce risk for all Members, while minimizing the impact to Members by not raising the minimum Required Fund Deposit to a higher amount which would create more of a burden.

Finally, the Member stated that while it objected to raising the minimum Required Fund Deposit to $250,000, it would not object to an increase to $100,000. NSCC observed that the increase would have improved the Clearing Fund 12-month backtesting coverage percentage to 99.41% overall, and eliminated 10 additional backtesting deficiencies during the Impact Study Period provided by a minimum $250,000 Required Fund Deposit as compared to a minimum $100,000 Required Clearing Fund Deposit. NSCC's findings validate raising the minimum to $250,000. While an increase to a minimum Required Fund Deposit to $100,000 would also represent an improvement of the Clearing Fund coverage, the number of deficiencies eliminated would be fewer. If the minimum Required Fund Deposit had been $250,000 during the Impact Study Period, NSCC would have observed an increase in the number of eliminated deficiencies compared to if the minimum Required Fund Deposit had been $100,000. Backtesting deficiencies indicate a risk that the minimum Required Fund Deposit would be insufficient in the event of a Member's default. NSCC believes the elimination of such additional backtesting deficiencies, together with the improvement of the overall Clearing Fund coverage percentage to 99.41%, if the minimum Required Fund Deposit were raised to $250,000 rather than $100,000, reflect a reduction in risk that justifies raising the minimum Required Fund Deposit to $250,000 rather than $100,000. As a result, NSCC believes that $250,000 is the appropriate minimum Required Fund Deposit amount that will minimize the financial impact to its Members while maximizing risk management of activity

[32] The letter sent by the Member also contained comments relating to another proposal that are not addressed herein.

[33] For this purpose, excess net capital is the amount, as of a particular date, equal to the difference between the net capital of a broker or dealer and the minimum net capital such broker or dealer must have to comply with the requirements of Rule 15c3–1(a) of the Act (17 CFR 240.15c3–1(a)), or any successor rule or regulation thereto.

[34] For this purpose, equity capital is defined as the amount defined on the Consolidated Report of Condition and Income (*i.e.,* a ''Call Report'' that is required to be filed by banks and trust companies).

that is guaranteed at the point of validation or comparison by NSCC.

NSCC completed an additional round of outreach to all NSCC Members in April 2021 and did not receive any written comments. NSCC will notify the Commission of any additional written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2021–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2021–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–005 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10175 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91801; File No. SR–CboeBZX–2021–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Exchange's Process for Re-Opening Securities Listed on Other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause During the Early Trading Session, Pre-Opening Session, or After Hours Trading Session

May 10, 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 April 26, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 a rule change is to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's process for re-opening securities listed on other national securities exchanges following the resumption of trading after a halt, suspension, or pause during the Early Trading Session,[3] Pre-Opening Session,[4] or After Hours Trading Session.[5] BZX Rule 11.24 describes the Exchange's opening process for securities listed on other national securities exchanges, including the process for re-opening such securities following the resumption of trading after a halt, suspension, or pause. On November 5, 2020, the Exchange filed a

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* BZX Rule 1.5(ee).

[4] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* BZX Rule 1.5(r).

[5] The term ''After Hours Trading Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* BZX Rule 1.5(c).

proposed rule change to amend its re-opening process pursuant to BZX Rule 11.24 for securities listed on the New York Stock Exchange LLC (''NYSE'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.[6] That filing was approved by the Commission on December 28, 2020.[7] The Exchange now proposes to further amend BZX Rule 11.24 to adopt a harmonized re-opening process for securities listed on NYSE (''Tape A''), securities listed on exchanges other than The Nasdaq Stock Market LLC (''Nasdaq'') and NYSE (''Tape B''); and securities listed on Nasdaq (''Tape C'') following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session. The Exchange believes that the proposed harmonized process for Tape A, B, and C securities would simplify its procedures and provide a more effective re-opening process for securities that resume trading outside of Regular Trading Hours.[8]

As amended pursuant to SR–CboeBZX–2020–083, BZX Rule 11.24(e)(3) provides that during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session, Tape A securities that resume trading after a halt, suspension, or pause will be automatically re-opened pursuant to the Exchange's contingent open procedures, as described in BZX Rule 11.24(d), after one second has passed following the Exchange's receipt of the first NBBO following such resumption of trading. This rule was adopted to automate the prior manual process that would otherwise be used to initiate the re-opening of Tape A securities when NYSE was not open for trading. Consistent with that intent, the Exchange proposed to continue to re-open Tape A securities using the same contingent open procedures that would apply when the Exchange manually initiated its re-opening process pursuant to BZX Rule 11.24(e)(2). As a result, when the Exchange re-opens Tape A securities during pre- and post-market trading sessions today, orders are handled in time sequence and placed on the BZX Book, routed, cancelled, or executed in accordance with the terms of the order. This differs from the standard processed used by the Exchange during Regular Trading Hours, where the Exchange seeks to execute queued orders at the midpoint of the national best bid or offer (''NBBO'').[9] After additional consideration, the Exchange believes that market participants and investors would be better served by utilizing its standard midpoint re-opening in these circumstances as doing so would promote greater consistency with the process used by the Exchange in other circumstances and may generally provide executions that better reflect the applicable market for the security.

The Exchange therefore proposes to amend BZX Rule 11.24(e) such that the process for re-opening Tape A securities after the Exchange has determined to initiate a re-opening would generally mirror the standard process described in BZX Rule 11.24(e)(1), which as discussed is designed to provide an execution at the midpoint of the NBBO. The determination of *whether* to re-open such Tape A securities would, however, continue to follow the process discussed in SR–CboeBZX–2020–083. Thus, during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session, the re-opening process for Tape A securities would occur at the midpoint of the NBBO after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after a halt, suspension, or pause. Although the Exchange has determined to use a midpoint re-opening process similar to that currently described in BZX Rule 11.24(e)(1), for the reasons discussed in SR–CboeBZX–2020–083, it remains important that the trigger for initiating this process outside of Regular Trading Hours not be tied to the resumption of trading on the primary listing market as NYSE does not trade its listed securities at times when the Exchange is open for pre- and post-market trading.

In addition, the Exchange proposes to amend the process for re-opening Tape B and C securities to mirror the proposed process for Tape A securities, except that the Exchange would require the primary listing market to have begun quoting the security before it initiates its own re-opening process. As explained in SR–CboeBZX–2020–083, the Exchange amended BZX Rule 11.24 to permit Tape A securities listed on NYSE to re-open based on quoting activity on other national securities exchanges during pre- and post-market trading when NYSE does not trade its listed securities. However, this limitation does not exist for Tape B or C securities as the applicable primary listing markets for those securities each offer pre- and post-market trading sessions where market participants can trade their listed securities.[10] As a result, the Exchange believes that it is desirable for Tape B and C securities to be opened on the Exchange only *after* the primary listing exchange has begun trading its listed securities, consistent with the current BZX Rule 11.24(e), which would continue to be applied during Regular Trading Hours. However, similar to the proposed process for re-opening Tape A securities, the Exchange would simplify the triggers for re-opening trading pursuant to BZX Rule 11.24(e)(1) such that its re-opening process for Tape B and C securities during the Early Trading Session, Pre-Opening Session, and After Hours Trading Session would occur at the midpoint of the NBBO after one second has passed following the publication of the first two-sided quotation by the listing exchange following the resumption of trading after a halt, suspension, or pause. In its effort to simplify the re-opening process employed during these timeframes, the Exchange would not retain a separate trigger to allow the re-opening process to be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange.

Finally, the Exchange proposes to make a number of structural changes to BZX Rule 11.24(e) to facilitate the amendments described above. First, the Exchange proposes to structure BZX Rule 11.24(e)(1) such that it would contain subparagraphs (A), (B), and (C), which each would describe applicable differences between the Exchange's opening process at the beginning of the Regular Trading Session, as described in BZX Rule 11.24(a)(2) and (b), and the re-opening process employed by the Exchange after a halt. As amended, (1) BZX Rule 11.24(e)(1)(A) would describe the types of orders that are eligible for participation in the re-opening process; (2) BZX Rule 11.24(e)(2)(B) would describe the Exchange's current re-opening process, which the Exchange now proposes to limit to Regular Trading Hours; and (3) BZX Rule 11.24(e)(2)(C) would contain language discussed above that describes the Exchange's re-opening process during the Early Trading Session, Pre-Opening Session, or After Hour Trading Session,

[6] *See* Securities Exchange Act Release No. 90420 (November 13, 2020), 85 FR 73832 (November 19, 2020) (SR–CboeBZX–2020–083).

[7] *See* Securities Exchange Act Release No. 90804 (December 28, 2020), 86 FR 158 (January 4, 2021) (Approval Order).

[8] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[9] *See* BZX Rule 11.24(e)(1).

[10] *See* Nasdaq Rules, Equity 1, Section 1(a)(9); NYSE Arca, Inc. Rule 7.34–E(a); NYSE American LLC Rule 7.34E(a).

i.e., for Tape A, B, and C securities.[11] Second, the Exchange proposes to amend BZX Rule 11.24(e)(2) to reflect the changes discussed above. As amended, the lead in to BZX Rule 11.24(e)(2) would state that this section applies where the conditions required to establish the price of the re-opening process in the now restructured BZX Rule 11.24(e)(1)(B) or (C) have not occurred, which reflects the now renumbered sections of the rule, including language that is in current BZX Rule 11.24(e)(1) and BZX Rule 11.24(e)(3).[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would implement a streamlined process for re-opening Tape A, B, and C securities during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

The Exchange currently employs different processes for re-opening Tape A, B, and C securities during pre- and post-market trading. The Exchange believes, however, that market participants would be better served by a harmonized process that: (1) Ensures that the Exchange's automated re-opening process executes orders at the midpoint of the NBBO; and (2) eliminates unnecessary distinctions between the process utilized for Tape A, B, and C securities. Executing the Exchange's re-opening process during pre- and post-market trading at the midpoint of the NBBO is beneficial to market participants as the NBBO midpoint may more closely reflect market prices and conditions for the security being re-opened. As a result, the Exchange believes that using the NBBO midpoint to price its re-opening process for all securities would help to promote a fair and orderly market. In addition, using generally consistent triggers for initiating the Exchange's re-opening process in Tape A, B, and C securities that resume trading during pre- and post-market trading sessions would reduce the overall complexity of the re-opening process employed during these timeframes. The Exchange notes, however, that it would nevertheless require the primary listing market to begin trading its own securities prior to re-opening trading on the Exchange in Tape B and C securities. This limitation would not apply to Tape A securities that NYSE does not trade outside of its regular trading session as doing so would require unnecessary and inefficient manual intervention by the Exchange to manually initiate trading, as was the case prior to the filing and Commission approval of SR–CboeBZX–2020–083. The Exchange believes that this distinction continues to be appropriate as it is based on applicable differences between each primary listing market's hours of operation and would continue to promote a more streamlined automated process for initiating the re-opening process in Tape A securities at times when NYSE does not trade its own listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate a more efficient and harmonized re-opening process for all securities that resume trading outside of Regular Trading Hours, and is not designed to address any competitive issues. All members would have their orders handled in the same manner based on the proposed changes to the Exchange's re-opening process, and other national securities exchanges are free to adopt the same or similar processes if they believe that the proposed process is beneficial for their own members. The Exchange therefore does not believe that the proposed rule change would have any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received 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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–035 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–CboeBZX–2021–035. 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

[11] The Exchange would also eliminate BZX Rule 11.24(e)(3), which currently addresses the re-opening of Tape A securities listed on NYSE during pre- and post-market trading. As discussed, the Exchange is proposing to harmonize the process for re-opening Tape A, B, and C securities outside of Regular Trading Hours, and the harmonized process discussed in this proposed rule change would be described in BZX Rule 11.24(e)(2)(C).

[12] The Exchange would also eliminate language that states that this section applies when the security has not otherwise been re-opened for trading on the Exchange pursuant to BZX Rule 11.24(e)(3). As discussed, the content of BZX rule 11.24(e)(3) would be moved to BZX Rule 11.24(e)(1)(C) with further amendments as discussed herein.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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–CboeBZX–2021–035 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10169 Filed 5–13–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16970 and #16971; Tennessee Disaster Number TN–00126]

Presidential Declaration of a Major Disaster for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4601–DR), dated 05/08/2021.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/25/2021 through 04/03/2021.

DATES: Issued on 05/08/2021.

Physical Loan Application Deadline Date: 07/07/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/08/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Davidson, Williamson, Wilson.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Cannon, Cheatham, Dekalb, Dickson, Hickman, Marshall, Maury, Robertson, Rutherford, Smith, Sumner, Trousdale.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.500
Homeowners without Credit Available Elsewhere	1.250
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	3.000
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16970 C and for economic injury is 16971 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–10219 Filed 5–13–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before July 13, 2021.

ADDRESSES: Send all comments to Michael Donadieu, Senior Examiner, Office of SBIC Examinations, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Donadieu, Senior Examiner, Office of SBIC Examinations, 202–205–7281, *michael.donadieu@sba.gov,* Heath Morris, Director, Office of SBIC Examinations, 202–798–3620, *Heath.Morris@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) Forms 856 and 856A are used by SBA examiners as part of their examination of licensed small business investment companies (SBICs). This information collection obtains representations from an SBIC's management regarding certain obligations, transactions and relationships of the SBIC and helps SBA to evaluate the SBIC's financial condition and compliance with applicable laws and regulations.

Solicitation of Public Comments

SBA is requesting comments 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.

Summary of Information Collection

OMB Control Number: 3245–0118

Title: Disclosures Statement Leveraged Licensees; Disclosure Statement Non-leveraged Licensees.

Description of Respondents: SBA Examiners.

Form Numbers: SBA Forms 856 and 856A.

Total Estimated Annual Responses: 598.

Total Estimated Annual Hour Burden: 276.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–10186 Filed 5–13–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before July 13, 2021.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, 202–619–0511, *louis.cupp@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Investment Companies will use this form to request a determination of eligibility for SBA leverage in form of a deferred interest ''energy saving debenture'' that may be used only to make an ''Energy Saving Qualified Investment''. Eligibility is based on whether a Small Business to be financed with leverage proceeds is ''primarily engaged'' in Energy Savings Activities as defined in the SBIC program regulations.

Solicitation of Public Comments

SBA is requesting comments 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.

Summary of Information Collection

OMB Control Number 3245–0379

Title: Financing Eligibility Statement for Usage of Energy Saving Debenture.

Description of Respondents: Small Business Investment Companies.

Form Number: SBA Form 2428.

Total Estimated Annual Responses: 5.

Total Estimated Annual Hour Burden: 50.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–10184 Filed 5–13–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16974 and #16975; Virginia Disaster Number VA–00095]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–4602–DR), dated 05/10/2021.

Incident: Severe Winter Storms.

Incident Period: 02/11/2021 through 02/13/2021.

DATES: Issued on 05/10/2021.

Physical Loan Application Deadline Date: 07/09/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/10/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Amelia, Appomattox, Bedford, Brunswick, Campbell, Caroline, Charlotte, Cumberland, Dinwiddie, Essex, Floyd, Franklin, Goochland, Greensville, Halifax, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Richmond.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16974 7 and for economic injury is 16975 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–10224 Filed 5–13–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16972 and #16973; Tennessee Disaster Number TN–00128]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4601–DR), dated 05/08/2021.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/25/2021 through 04/03/2021.

DATES: Issued on 05/08/2021.

Physical Loan Application Deadline Date: 07/07/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on

05/08/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Campbell, Cannon, Cheatham, Claiborne, Clay, Davidson, Decatur, Fentress, Grainger, Hardeman, Henderson, Hickman, Jackson, Madison, Maury, McNairy, Moore, Overton, Scott, Smith, Wayne, Williamson, Wilson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16972 C and for economic injury is 16973 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–10223 Filed 5–13–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Youth Access to American Jobs in Aviation Task Force; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Youth Access to American Jobs in Aviation Task Force (YIATF).

DATES: The meeting will be held on June 9, 2021, from 9 a.m.–3:30 p.m. Eastern Daylight Time.

Requests for accommodations to a disability must be received by May 26, 2021.

Requests to submit written materials to be reviewed during the meeting must be received no later than May 26, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the virtual meeting may access the event live on the FAA's *Twitter, Facebook* and *YouTube* channels. For copies of meeting minutes along with all other information, please visit the YIATF internet website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/797.*

FOR FURTHER INFORMATION CONTACT: Ms. Aliah Duckett, Federal Aviation Administration, by email at *S602YouthTaskForce@faa.gov* or phone at 202–267–8361. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The FAA established the Task Force by charter on October 3, 2019, under Public Law 115–254. The Task Force is required by statute to develop and provide independent recommendations and strategies to the FAA Administrator to: (1) Facilitate and encourage high school students in the United States to enroll in and complete career and technical education courses, including science, technology, engineering, and mathematics (STEM), that will prepare them to pursue a course of study related to an aviation career at an institution of higher education, a community college, or trade school; (2) facilitate and encourage these students to enroll in a course of study related to an aviation career, including aviation manufacturing, engineering and maintenance, at an institution of higher education, including a community college or trade school; and (3) identify and develop pathways for students to secure registered apprenticeships, workforce development programs, or careers in the aviation industry of the United States.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Subcommittee Presentations
- Review of Action Items
- Closing Remarks

A detailed agenda will be posted on the YIATF internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the YIATF internet website.

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream on the FAA social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Task Force by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2021–10183 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request for Disposal of 5.1 Acres of Land at Dillant-Hopkins Airport, Swanzey, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the City of Keene, NH to dispose of 5.1 acres of land Dillant-Hopkins Airport, Swanzey, NH. The notice is required under the 2018 FAA Reauthorization Act, Airport Improvement Program. The land is not required for aeronautical use. Given its location, the disposal of land will not affect existing or future aviation development at the airport. An avigation easement will be placed on the property to ensure conformance with airport airspace requirements. The regulations require that 90% of the proceeds be reinvested in federal grant program. The remaining 10% will be placed in the airport's operating and maintenance fund.

DATES: Comments must be received on or before June 14, 2021.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on May 6, 2021.

Julie Seltsam-Wilps,

Deputy Director.

[FR Doc. 2021–09994 Filed 5–13–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA–2019–0172]

Pipeline Safety; Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection requests (ICR) summarized below are being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** notice soliciting comments on the following information collections with a 60-day comment period was published on December 17, 2020.

DATES: Comments must be submitted on or before June 14, 2021.

Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. 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 *www.dot.gov/privacy.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Only the redacted copy will be placed in the public docket. Submissions containing CBI should be sent to Angela Hill, DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202/680–2034 or by email at *Angela.Hill@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under procedures established by the Paperwork Reduction Act of 1995,[1] before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information. On December 17, 2020, PHMSA published a notice in the **Federal Register** soliciting comments on several proposed revisions to Form PHMSA F7100.2–1, ''Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems,'' and Form PHMSA F7100.4–1, ''Underground Natural Gas Storage Facility Annual Report,'' both under OMB Control No. 2137–0522.[2] PHMSA also proposed changes to Form PHMSA F7100.2, ''Incident Report—Gas Transmission and Gathering Systems,'' under OMB Control No. 2137–0635.

During the 60-day comment period, PHMSA received comments from the National Association of Pipeline Safety Representatives (NAPSR) and a joint comment from the American Gas Association, the American Petroleum Institute, the American Public Gas Association, and the Interstate Natural Gas Association of America (collectively, the Associations).

The comments received are organized by topic area, summarized, and addressed below.

A. Form PHMSA F7100.2–1 Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems

The Associations suggested that PHMSA modify the instructions for Part G to clarify that operators are only required to report baseline and reassessment data for moderate consequence area (MCA) segments subject to 49 CFR 192.710. The Associations recommended that § 192.710 be added to the form after ''MCA'' on Part G, sections d–h.

PHMSA appreciates the Associations making the important distinction between MCA segments and segments required to be assessed under § 192.710. PHMSA has implemented the Associations' suggestion by replacing ''MCA'' with ''§ 192.710'' in Part G, sections d–h, to provide clarity. Further, PHMSA's proposed changes did not recognize this important distinction in Parts F and L of the form. Accordingly, PHMSA has changed ''MCA'' to ''§ 192.710'' throughout Parts F and L.

The Associations commented that PHMSA should further clarify which relief valve and emergency shutdown (ESD) events must be reported under Part G1 of the annual form. Per the Associations, the instructions should clarify that leaks are not reportable in Part G1 since they are already included in Part M. The Associations commented that relief valve ''chatter,'' which can generally be rectified by adjustment of the relief device, is not reportable under Part G1. They suggested reporting only ''confirmed'' activations/events and stated that the proposed reporting changes do not require operators to implement new procedures to identify relief valve activations. The Associations suggested that the proposed changes should simply require operators to report the number of relief valve activations and ESD events that are observed (and currently recorded as abnormal operating conditions) by operator personnel. The Associations also recommended that PHMSA should not begin requiring the reporting of any intentional release data under Part G1

[1] 44 U.S.C. 3501 *et seq.*

[2] 85 FR 82028.

until the 2022 calendar year annual reports (due in March 2023) since operators need time to modify processes to collect and report relief valve activations and ESD events in the form PHMSA proposes to collect it.

PHMSA is not implementing the changes suggested by the Associations regarding the reporting of relief valve and ESD events. PHMSA is withdrawing its proposal to move reporting of these events from the incident form (Form PHMSA F7100.2) to the annual form (Form PHMSA F7100.2–1) at this time because PHMSA's initial proposal inadvertently omitted notice to the public that the annual form would include an additional requirement that operators report the volume of natural gas released during these events. As currently noticed, PHMSA would not be able to collect the amount of gas released from relief valve and ESD events after making the change from the incident to the annual reports. The volume of gas released is important data that PHMSA currently collects via the incident reports so no changes will be made at this time to avoid any disruption in the data collected. PHMSA intends to address this issue in a future information collection amendment and will consider all of the comments provided at that time.

NAPSR requested that a section for reporting excavation damages be added to the Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems. NAPSR commented that, for consistency, the added section should reflect the ''causes'' from the existing Section D of the Gas Distribution Annual Report (Form PHMSA F7100.1–1). The addition would include excavation damage, root cause, and the total number of one-call ticket requests by state. NAPSR stated this addition will provide for accurate and consistent statistical data across all pipeline types.

PHMSA did not propose the change requested by NAPSR in the 60-day notice, so it cannot be added to this information collection proposal. PHMSA intends to address this issue in a future information collection change.

B. Form PHMSA F7100.2 Incident Report—Gas Transmission and Gathering Systems

The Associations recommended additional changes to ensure a clear distinction between ''intentional'' and ''unintentional'' releases through relief valves and ESDs.

PHMSA is not implementing the changes suggested by the Associations regarding the reporting of relief valve and ESD events. As explained above, PHMSA is withdrawing its proposal to move reporting of relief valve activation and ESD events from the incident report (Form PHMSA F 7100.2) to the annual report (Form PHMSA F 7100.2–1) at this time because PHMSA's initial proposal inadvertently omitted notice that operators would be required to report the volume of natural gas released during these events on the annual report. PHMSA intends to address this issue in a future information collection change and will consider these comments at that time.

C. Form PHMSA F7100.4–1 Underground Natural Gas Storage Facility Annual Report

The Associations recommended adding an additional category of wells as Part C10c in the report. The Associations stated that by adding ''number of wells plugged and abandoned during the calendar year'' as an additional category in C10, there would be no duplication among counts in C10. PHMSA agrees and has added C10c.

The Associations recommended that PHMSA clarify what is meant by ''wells plugged but not abandoned'' and stated they believe this category is not intended to include temporary plugs.

PHMSA agrees and has modified the instructions for the report by explicitly excluding ''temporary bridge plugs.''

II. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will submit to OMB for revision.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) current expiration date; (4) type of request; (5) abstract of the information collection activity; (6) description of affected public; (7) estimate of total annual reporting and recordkeeping burden; and (8) frequency of collection.

PHMSA will request a 3-year term of approval for this information collection activity. PHMSA requests comments on the following information:

1. *Title:* Annual and Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Current Expiration Date: 1/31/2023.

Type of Request: Revision.

Abstract: This mandatory information collection covers the collection of data from operators of natural gas pipelines, underground natural gas storage facilities, and liquefied natural gas (LNG) facilities for annual reports. 49 CFR 191.17 requires operators of underground natural gas storage facilities, gas transmission systems, and gas gathering systems to submit an annual report by March 15, for the preceding calendar year. The revision to this information collection includes changes to the form and instructions for PHMSA F7100.4–1, ''Underground Natural Gas Storage Facility Annual Report,'' and revisions to the form and instructions for PHMSA F7100.2–1, ''Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems.'' The revisions to the ''Underground Natural Gas Storage Facility Annual Report'' Form provide clarity on submitting data and include no new data elements. The revisions to the ''Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems'' Form include collecting the number of miles in high consequence areas in accordance with 49 CFR 192.903 and the type of risk model used; and to reorganize some data fields to streamline the reporting of certain data elements.

Affected Public: Operators of Natural Gas Pipelines, Underground Natural Gas Storage Facilities, and LNG Facilities.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 10,547.

Annual Burden Hours: 80,101.

Frequency of collection: Annually and on occasion.

2. *Title:* Incident Reporting for Natural Gas Pipeline Operators and LNG Facilities.

OMB Control Number: 2137–0635.

Current Expiration Date: 1/31/2023.

Type of Request: Revision.

Abstract: Operators of natural gas pipelines and LNG facilities are required to report incidents, on occasion, to PHMSA per the requirements in 49 CFR part 191. PHMSA proposes to revise the form and instructions for the Incident Report—Natural and Other Gas Transmission and Gathering Pipeline System (PHMSA F7100.2) to include details on when operators are to answer questions E6 through E8 of the incident report.

Affected Public: Natural Gas Pipeline Operators and Operators of LNG Facilities.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 301.

Estimated annual burden hours: 3,612.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the renewal and revision of these collections of

information for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on May 11, 2021, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2021–10234 Filed 5–13–21; 8:45 am]

BILLING CODE 4910–60–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 Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been removed from the Specially Designated Nationals and Blocked Person List (SDN List) and list of Foreign Sanctions Evaders (FSE List). Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing updates to the identifying information of one person currently included in the SDN List. All property and interests in property subject to U.S. jurisdiction of this person remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evader List, and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On May 11, 2021, OFAC determined that circumstances no longer warrant the inclusion of the following person on the SDN List and that their property and interests in property are no longer blocked under the relevant sanctions authority listed below.

Individual

1. JAMI JAMI (a.k.a. JAMA' JAMA'; a.k.a. JAMEA, Jamea Kamil; a.k.a. JAM'I JAM'I); DOB 16 Jun 1954; POB Jablah, Zama, Syria; Brigadier General (individual) [SYRIA].

Designated on August 15, 2006 pursuant to one or more of the criteria set forth in Executive Order 13338, ''Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria.''

B. On May 11, 2021, OFAC determined that circumstances no longer warrant the inclusion of the following persons on the SDN List and the FSE List and that their property and interests in property are no longer blocked under the relevant sanctions authorities listed below.

Individuals

1. HOLLEBRAND, Alexander (a.k.a. HOLLEBRAND, Sander); DOB 20 Dec 1954; POB Netherlands (individual) [SYRIA] [FSE–SY].

Designated on December 17, 2014 pursuant to one or more of the criteria set forth in Executive Order 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria,'' and Executive Order 13608, ''Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria.''

2. VAN MAZIJK, Paul; DOB 24 Jan 1958; Passport NSK7K05F4 (Netherlands) (individual) [SYRIA] [FSE–SY].

Designated on December 17, 2014 pursuant to one or more of the criteria set forth in Executive Order 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria,'' and Executive Order 13608, ''Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria.''

Entity

1. STAROIL B.V. (a.k.a. STAROIL S.A.), Wilhelminastraat 43 A, Haarlem 2011 VK, Netherlands; 30 A Rte de Chene, Geneva 1208, Switzerland; Registration ID 819860578 (Netherlands); V.A.T. Number NL 819860578B01 (Netherlands); Commercial Registry Number 34311024 (Netherlands) [SYRIA] [FSE–SY].

Designated on December 17, 2014 pursuant to one or more of the criteria set forth in Executive Order 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria,'' and Executive Order 13608, ''Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria.''

C. On May 11, 2021, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

Individual

1. PAVLENKO, Vladimir Nikolaevich (a.k.a. PAVLENKO, Volodymyr Mykolaiovych), Ukraine; Gender Male; Minister of State Security of the so-called Donetsk People's Republic (individual) [UKRAINE–EO13660] (Linked To: DONETSK PEOPLE'S REPUBLIC).

-to-

PAVLENKO, Vladimir Nikolaevich (Cyrillic: ПАВЛЕНКО, Владимир Николаевич) (a.k.a. PAVLENKO, Vladimir Viktorovich (Cyrillic: ПАВЛЕНКО, Владимир Викторович); a.k.a. PAVLENKO, Volodymyr Mykolaiovych; a.k.a. PAVLENKO, Volodymyr Viktorovich (Cyrillic: ПАВЛЕНКО, Володимир Вікторович)), Donetsk, Donetsk Oblast, Ukraine; DOB 14 Apr 1962; Gender Male; Minister of State Security of the so-called Donetsk People's Republic (individual) [UKRAINE–EO13660] (Linked To: DONETSK PEOPLE'S REPUBLIC).

Designated pursuant to section 1(a)(v) of Executive Order 13660 of March 6, 2014, ''Blocking Property of Certain Persons Contributing to the Situation in Ukraine'' (E.O. 13660) for having acted or purported to act for or on behalf of, directly or indirectly, the so-called ''DONETSK PEOPLE'S REPUBLIC,'' a person whose property and interests in property are blocked pursuant to to E.O. 13660.

Dated: May 11, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–10252 Filed 5–13–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before July 13, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545–1776.

Form Number: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N which is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit Organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: 40 mins.

Estimated Total Annual Burden Hours: 793.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2021.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2021–10168 Filed 5–13–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Information Reporting for Certain Life Insurance Contract Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to the information reporting for certain life insurance contract transactions.

DATES: Written comments should be received on or before July 13, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Certain Life Insurance Contract Transactions.

OMB Number: 1545–2281.

Regulation Project/Form Number: Forms 1099–LS and 1099–SB.

Abstract: The collection covers the information reporting requirements for certain life insurance contracts under IRC 6050Y, which was added by the Tax Cuts and Jobs Act (TCJA). Form 1099–LS is used by the acquirer of any interest in a life insurance contract (also known as a life insurance policy) in a reportable policy sale to report the acquisition. Form 1099–SB is used by the issuer of a life insurance contract (also known as a life insurance policy) to report the seller's investment in the contract and surrender amount with respect to an interest in a life insurance contract transferred in a ''reportable policy sale'' or transferred to a foreign person.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Responses: 6,000.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 720.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are

confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 10, 2021.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2021–10156 Filed 5–13–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Form 1099–SA, Distributions From an HSA, Archer MSA, or Medicare Advantage MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to completing form 1099–SA, *Distributions From an HSA, Archer MSA, or Medicare Advantage MSA.*

DATES: Written comments should be received on or before July 13, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Distributions From an HSA, Archer MSA, or Medicare Advantage MSA.

OMB Number: 1545–1517.

Regulation Project/Form Number: Form 1099–SA.

Abstract: Form 1099–SA is used to report distributions made from a health savings account (HSA), Archer medical savings account (Archer MSA), or Medicare Advantage MSA (MA MSA). The distribution may have been paid directly to a medical service provider or to the account holder. A separate return must be filed for each plan type.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Responses: 25,839.

Estimated Time per Respondent: 11 min.

Estimated Total Annual Burden Hours: 3,618.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 10, 2021.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2021–10155 Filed 5–13–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0469]

Agency Information Collection Activity: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This form is used by the Department of Veterans Affairs (VA) to establish entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required. The information on the form is

required by law, Title 38, U.S.C. Sections 1817 and 1950.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 13, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0469'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

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. 2900–0469'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Certificate Showing Residence and Heirs of Deceased Veterans of Beneficiary VA Form 29–541.

OMB Control Number: 2900–0469.

Type of Review: Revision of a currently approved collection.

Abstract: The form is used by the Department of Veterans Affairs (VA) to establish entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required. The information on the form is required by law, Title 38, U.S.C. Sections 1817 and 1950. This form expired due to high volume of work and staffing changes.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,078.

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. 2021–10222 Filed 5–13–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting, Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a virtual meeting of the Advisory Committee on Disability Compensation (the Committee) will begin and end as follows:

Dates	Times
Tuesday, June 22, 2021	9:00 a.m.–12:00 p.m. Eastern Standard Time (EST).
Wednesday, June 23, 2021	9:00 a.m.–12:00 p.m. (EST).

The virtual meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities.

The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include, but is not limited to, briefings on the VA Schedule for Rating Disabilities and on relevant earnings and losses studies.

Time will not be allocated at this virtual meeting for receiving oral presentations from the public. However, interested individuals may submit a one (1) to two (2) page summary of their written statements for the Committee's review. Public statements may be received no later than June 15, 2021; for inclusion in the official meeting record. Please send these to Sian Roussel of the Veterans Benefits Administration, Compensation Service at *Sian.Roussel@va.gov.*

Members of the public who wish to obtain a copy of the agenda should contact Sian Roussel at *Sian.Roussel@va.gov* and provide his/her name, professional affiliation, email address and phone number.

The call-in number for those who would like to attend the meeting is 1–404–397–1596; access code: 199 374 5143.

Dated: May 11, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–10193 Filed 5–13–21; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Education

34 CFR Parts 668 and 677

Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 677

[Docket ID ED–2020–OPE–0078]

RIN 1840–AD62

Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department of Education regulations so that an institution of higher education (IHE) may appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the Higher Education Emergency Relief programs, as originally enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020).

DATES: This rule is effective on May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B133, Washington, DC 20202. Telephone: (202) 377–3711. Email: *HEERF@ed.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help the nation cope with the economic and health crises created by the novel coronavirus disease (COVID–19) outbreak. Section 18004 of the CARES Act establishes the Higher Education Emergency Relief Fund (HEERF) and instructs the Secretary to allocate funding to eligible IHEs in connection with the COVID–19 outbreak. Section 18004(c) states that institutions must use at least 50 percent of their allocations ''to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care).''

Neither section 18004(c) nor any other part of the CARES Act defines the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.''

On June 17, 2020, the Department published an interim final rule (IFR) in the **Federal Register** (85 FR 36494), in which, for purposes of the phrases ''grants to students'' and ''emergency grants to students'' in section 18004(a)(2), (a)(3), and (c) of the CARES Act, ''student'' was defined as an individual who is, or could be, eligible under section 484 of the Higher Education Act of 1965, as amended (HEA), to participate in programs under title IV of the HEA.

Upon further consideration and in response to public comments, the Department is removing the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarifying in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be eligible for title IV student aid (referred to herein as ''title IV eligible'') to receive a HEERF student grant, the Department removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Summary of the Major Provisions of This Regulatory Action

The final regulations define ''student,'' for purposes of the phrases ''grants to students,'' ''emergency financial aid grants to students,'' and ''financial aid grants to students'' as used in the HEERF programs, as any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease. This definition enables an IHE to appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the HEERF programs, as originally enacted under the CARES Act and continued through the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116–260) and American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2).

Costs and Benefits

The emergency funds available under CARES, CRRSAA, and ARP are provided to allow students and institutions to cope with expenses related to the COVID–19 pandemic. The broader definition of ''student'' adopted in these final regulations ensures those affected by COVID–19 expenses may access funding and continue their education and simplifies the administrative burden on institutions. The Department estimates that applying for the funds will cost students $22.4 million and administering the funds will cost institutions approximately $1.2 million. Transfers from the Federal Government total $76.2 billion, of which $31.5 billion must be used for emergency grants to students.

Background: On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help the nation cope with the economic and health crises created by the COVID–19 outbreak. Section 18004 of the CARES Act establishes the HEERF and instructs the Secretary to allocate funding to eligible IHEs in connection with the COVID–19 outbreak. Section 18004(c) states that institutions must use at least 50 percent of their allocations ''to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care),'' implicitly allowing institutions to use more than 50 percent of their funds for this purpose. Finally, section 18004(e) requires institutions to submit reports to the Secretary describing how the funds were used under the section and authorizes the Secretary to specify the time and manner of such reporting.

Neither section 18004(c) nor any other part of the CARES Act defines the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.'' In the IFR, the Department concluded that Congress intended the category of those students eligible for ''emergency financial aid grants to students'' in section 18004 of the CARES Act to be limited to those individuals eligible for title IV aid.

The Department considered a number of factors in reaching this conclusion. For one, the Department was concerned at the time it issued its IFR that an interpretation of ''student'' in ''emergency financial aid grants to students'' that was broad enough to cover anyone engaged in learning, or anyone enrolled in any way at an institution, or anyone enrolled full-time

at an institution in a program leading to a recognized postsecondary credential, would not be consistent with existing law independent of title IV status. Certain individuals without qualifying immigration statuses are already prohibited, under 8 U.S.C. 1611(a), from receiving any ''Federal public benefit,'' and this prohibition applies ''[n]otwithstanding any other provision of law[,]'' unless certain other exceptions are met under 8 U.S.C. 1611(b). Section 1611(c) defines ''Federal public benefit'' to include (a) ''any grant . . . provided by an agency of the United States or by appropriated funds of the United States,'' and (b) ''any . . . postsecondary education . . . benefit . . . for which payments or assistance are provided to an individual . . . by an agency of the United States or by appropriated funds of the United States.'' The Department originally stated in the IFR that this prohibition applies to the HEERF funds.

On the other hand, the Department concluded that a narrower interpretation of the term ''student'' in the phrase ''emergency financial aid grants to students''—for example, to cover only the group that received Federal Pell Grants as referenced in section 18004(a)(1)(A)—would be overly restrictive and less supportable under the language of the CARES Act. As such, the Department originally advanced within the IFR its belief that Congress intended that HEERF grants to students under the CARES Act be limited to those students who are eligible to participate in the title IV programs.

The Department's IFR was challenged in a series of lawsuits, where plaintiffs argued that the Department's position improperly excluded otherwise eligible students from crucial emergency aid amid the global pandemic. In each of these suits, plaintiffs prevailed on the title IV issue. In *Oakley* v. *DeVos,* No. 4:20–cv–03215–YGR, ECF No. 44, the U.S. District Court for the Northern District of California enjoined the Department from enforcing any eligibility requirement for students to receive HEERF emergency financial aid grant, including title IV's eligibility criteria and applicable restrictions under 8 U.S.C. 1611(a) ''with respect to any community college in California.'' Similarly, the U.S. District Court for the Eastern District of Washington enjoined the Department's title IV restrictions (though not the application of 8 U.S.C. 1611(a)) as to IHEs in the State of Washington. *Washington* v. *DeVos,* No. 2:20–cv–00182–TOR, ECF No. 31, 63. Decisions in *Noerand* v. *Devos,* Civil No. 20–11271–LTS (D. Mass. Jul. 24, 2020) and *Massachusetts* v. *DeVos,* No. 1:20–cv–11600–LTS, ECF No. 3, similarly found that limiting HEERF grant to ''students eligible under Title IV would lead to absurd results[,]'' and additionally concluded that the CARES Act ''constitutes a statutory exception to Section 1611's general denial of federal public benefits.'' These findings are consistent with the public comments received.

Along with taking stock of these legal decisions, the Department began the process of reviewing the substantial number of public comments it received on the IFR that requested the Department to amend its definition of ''student'' for the purposes of HEERF grants to students. Of the 4,149 public comments the Department received, less than 10 were written in support of the Department's restrictions on HEERF student grant eligibility, and even those limited public comments were more focused on support for the concept of ''emergency financial aid grants'' for students with costs associated with the coronavirus rather than the restrictions articulated in the IFR itself.

Subsequently, on December 27, 2020, former President Trump signed into law the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116–260). This law made available an additional approximately $22.7 billion for IHEs under HEERF programs (referred to herein as HEERF II or CRRSAA funding), with funding appropriated for the existing (a)(1), (a)(2) and (a)(3) programs previously authorized under Section 18004 of the CARES Act, as well as funding for a new (a)(4) program authorized under the CRRSAA. As with the CARES Act, the CRRSAA authorized, and in some cases required, institutions to use their HEERF award for ''financial aid grants to students,'' without defining the terms ''students'' or ''financial aid grants.'' *See* CRRSAA section 314(c)(3). However, unlike the CARES Act, CRRSAA directed that in ''making financial aid grants to students, an institution of higher education shall prioritize grants to students with exceptional need[.]'' *See id.* As a result of this new requirement of how institutions must distribute HEERF II financial aid grants to students, the Department announced in question 16 of the HEERF II Public and Private Nonprofit Institution (a)(1) Programs (CFDA 84.425E and 84.425F) Frequently Asked Questions published January 14, 2021, and updated March 19, 2021, (*https://www2.ed.gov/about/offices/list/ope/updatedfaqsfora1crrssaheerfii.pdf*) that the definition of student in the IFR would not apply to funds under the CRRSAA.

Finally, on March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2). This bill provided an additional approximately $39.6 billion for the HEERF programs (HEERF III or ARP funding) and retained the same prioritization requirement for ''students with exceptional need'' as was contained in CRRSAA. Again, ARP did not define the term ''student'' or ''financial aid grants.''

In this final rule, we are revising the definition of ''student'' to make clear that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF program requirements. Because an individual is no longer required to be title IV eligible in order to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

The Department adopts this change for several reasons. Upon further review and in consideration of the comments received in response to the IFR, first we believe that adopting a definition of ''student'' that is not limited to title IV eligibility better reflects Congress's intent when it created the portion of the Higher Education Emergency Relief Fund that goes to students in the CARES Act. Congress created a program that was designed to award emergency financial aid grants in the most expedient way possible without the establishment of unnecessary roadblocks that would slow down the ability of institutions to help students address added expenses stemming from the COVID–19 national emergency. Defining ''student'' to mean anyone who is or was enrolled at an eligible institution gives institutions of higher education maximal flexibility to focus on identifying the students they think are most in need of help instead of getting tied down in checking eligibility criteria.

By contrast, a definition of ''student'' tied to eligibility for title IV financial aid would result in significant additional roadblocks and delays. It would require institutions to encourage students to complete the Free Application for Federal Student Aid (FAFSA) and then process those applications before being able to award aid. If an institution decided to create its own form, it would have to find ways to verify various eligibility requirements for title IV aid, which would also be

time consuming if not impossible to do without using the FAFSA. For instance, institutions would need to find ways to verify that students had valid Social Security numbers or were otherwise eligible noncitizens, which could mean checking with the Social Security Administration or the Department of Homeland Security. Institutions would also need to ensure male students had registered with the Selective Service. Students filling out the FAFSA, meanwhile, could face additional burdens, such as the verification process. These concerns could particularly be an added burden for veterans because they are less likely to complete the FAFSA because they receive benefits from other Federal agencies. Students may also be confused and think they need to qualify for need-based title IV aid to receive emergency grants and not apply when they do need the funds. Finally, because colleges are not required to award emergency grants to all students, there are some individuals who could end up taking on the burden of completing the FAFSA and ultimately not receive any further assistance.

Second, a simpler definition of ''student'' ensures that colleges can assist any student harmed by the COVID–19 national emergency. Data show that the past year has wrought disproportionate negative effects on low-income individuals, individuals of color, and the communities in which they reside.[1]

These funds are available to respond to the effects of an unexpected and once-in-a-century pandemic. No student could have reasonably foreseen or planned for the substantial added expenses he or she is facing because of the COVID–19 national emergency. For some, that may mean lost jobs or reduced wages. For others it could mean sudden and unexpected needs to travel home, while others may face added expenses by not being able to go home at all. Students who were once in stable financial situations could now find themselves in need of significant support. Those who were economically hurting before may be even worse off. The definition of ''student'' in this final rule allows an institution of higher education that knows its individual students better than the Department ever could to make the proper decisions about who needs the support. As institutions make these decisions, we note that the distribution of HEERF emergency financial aid grants must prioritize grants to students with exceptional need, such as students who receive Pell Grants, and must not be distributed in a manner that excludes individuals on the basis of race, color, national origin, disability, or sex. *See, e.g.,* 42 U.S.C. 2000(c)–(d) (Title IV and Title VI), 29 U.S.C. 701 *et seq.,* 20 U.S.C. 1681 (Title IX).

Third, the Department now recognizes it would be inappropriate to apply the definition of ''student'' originally articulated in the IFR because the Department no longer considers that a student would need to be eligible for Federal financial aid under title IV of the Higher Education Act. The Department is changing its position on this issue after being persuaded by commenters that the requirement in the CARES Act that the Department award funds using the same mechanisms used to distribute title IV aid as well as saying that funds could go to any portions of a student's cost of attendance do not provide compelling evidence that emergency grants should therefore only be limited to students eligible for title IV financial aid. When Congress created these funds, it indicated they should be awarded to institutions through the same mechanisms used to distribute title IV financial aid. We believe this decision indicated a Congressional preference for using a process that institutions are already familiar with, rather than an entirely new mechanism, in order to expedite the distribution of funds. We do not believe this procedural decision reflects an indication that fund distribution must be restricted only to those eligible for title IV financial aid. Congress created a special distribution formula for the funds instead of relying on existing ones used for campus-based aid. It gave institutions discretion over how to award funds instead of spelling out eligibility criteria. While Congress did ask that these funds be awarded through the same mechanisms used to distribute title IV financial aid, that language signaled intent that these funds should not go through a complicated new award process. Similarly, while the CARES Act does state that emergency financial aid grants can go to any part of a student's cost of attendance as defined under the Higher Education Act, this is a concept that is not limited to recipients of title IV aid. The cost of attendance is a commonly used way of disclosing the price of education to students and the public on institutional websites and is a broadly used term of art that Congress adopted to make the funds available for a wide array of purposes while also ensuring that they would cover expenses related to attending postsecondary education. Finally, the agreement that institutions of higher education must sign to receive their student portion of funding states that ''[t]he Secretary does not consider these individual emergency financial aid grants to constitute Federal financial aid under Title IV of the HEA.'' The Department thus no longer believes that these aspects of the statute support its prior narrow definition of ''student.''

Fourth, the time-limited and exceptional nature of these funds also justifies a more flexible approach to defining eligibility. Barring further Congressional action, funds for emergency financial aid will not be a recurring source of support. No student in the future could reasonably expect to be able to enroll in postsecondary education solely to receive this help, just as they could not have expected that such funds would have been available in the first place. This is a once-in-a-century pandemic, and the effects are clearly felt worse by low-income individuals as well as individuals of color and the communities in which they reside. The emergency financial aid grants are not a recurring source of support—they are a crucial response to an unprecedented time and are time limited in their use and not expected to recur.

Fifth, Congress was explicit in other parts of the CARES Act where it did want greater limitations placed on the availability of other forms of assistance, such as when it noted that nonresident aliens were ineligible for individual recovery rebates. The fact that it chose to specifically delineate eligibility in other parts of the CARES Act but did not do so for the emergency financial aid grants implies a desire for broad and unconditional eligibility.

Sixth, adopting a broad definition of student aligns the eligibility terms with the formula used to calculate allocations for institutions of higher education. Congress created an allocation formula that, while varying between the CARES Act, CRRSAA, and ARP, has always taken into consideration an institution's enrollment of full-time equivalent ''students'' without regard to their immigration status—including if they were undocumented or international students. *See* CARES Act section 18004(a)(1); CRRSAA section 314(a)(1); ARP section 2003. Adopting a more restrictive definition of ''student'' for eligibility that excludes those same students who Congress sought to include in the allocation formula would lead to establishing two different definitions of the term ''student'' and add to confusion. Moreover, the definition of student in this final rule

[1] *https://www.nber.org/system/files/working_papers/w27392/w27392.pdf.*

avoids the situation in which a student's attendance at a college would have affected the amount of money available to it through HEERF but they were then not eligible to receive any of those funds.

Seventh, while it is important the Department of Education (Department) be concerned with waste, fraud, and abuse, we no longer believe a definition of student tied to eligibility for title IV financial aid would be an effective way to address those issues. There are already requirements in place to prevent institutions of higher education from offering incentive-based compensation to recruiters as a way of dissuading overly aggressive attempts to bring in students. Private for-profit institutions are subject to a requirement in which they demonstrate that they obtain a certain share of their revenue from sources other than the Department's title IV programs. *See* 34 CFR 668.14(b)(16), 668.28. Institutions themselves, meanwhile, must administer a Satisfactory Academic Progress (SAP) policy to ensure students are moving toward completion of their programs. 34 CFR 668.34. This is in addition to the fact that the HEERF programs explicitly prohibit institutions of higher education from using the funds they receive for providing pre-enrollment recruitment activities. *See* CARES Act section 18004(c), CRRSAA section 314(d)(3).

In sum, Congress established a flexible, time-limited fund to respond to an unexpected and once-in-a-century national emergency. It passed emergency legislation to create a program for assisting students in a rapid manner by delegating significant discretion to colleges so they can get the funds to affected individuals right away. The novel coronavirus does not choose to limit its effects based upon whether a student qualifies for title IV aid. Instead, it has disproportionately brought devastation to individuals who were already in the most precarious places in American society, particularly low-income students and families, students and families of color across the country.[2] Adopting a broad and simple definition of a ''student'' allows the emergency grant funds for students to maximize their purpose and fully live up to Congressional intent.

Public Comment: In response to our invitation in the interim final rule (IFR), 4,149 parties submitted comments on the IFR. In this preamble, we respond to those comments, which we have grouped by subject. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the public comments and of changes since publication of the IFR follows.

General Support

Comments: Some commenters supported the definition of ''student'' in the IFR that restricted individuals who qualify for HEERF grants to those that are eligible for title IV financial assistance. One commenter believed that the restrictive definition was appropriate and clearly explained, while another commenter stated that even with the restrictions placed in the definition, HEERF grants would still be able to help students.

Discussion: As discussed more thoroughly in this preamble, in view of the comments objecting to the definition of ''student'' in the IFR, and District Court rulings regarding the IFR, we have removed the prerequisite that a student must be eligible for title IV aid to receive funds under the HEERF programs.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

General Opposition

Comments: Several commenters believed that limiting HEERF grants to title IV eligible students is contrary to the purposes of the CARES Act to provide emergency relief to institutions and students who need support during the pandemic. The commenters noted that students across the country need relief to overcome the financial devastation brought on by the coronavirus pandemic, and that Congress passed the CARES Act to provide wide-scale relief directly to students as quickly as possible. The commenters argued that requiring students to demonstrate eligibility for Federal financial aid will (1) disproportionately harm minority and immigrant communities, (2) impose additional burdens and hurdles on students to show they are title IV eligible, and (3) create unnecessary delays in providing needed assistance to desperate students. For these reasons, the commenters urged the Department to immediately withdraw the IFR.

Echoing these concerns, other commenters admonished the Department for using immigration status, instead of need, as a basis for establishing eligibility for HEERF grants. Some of those commenters noted that all individuals, including undocumented students with or without Deferred Action for Childhood Arrivals (DACA) status, have the right to basic levels of safety, health, and security, but argued the IFR ensures that those already shut out from these basic rights will fall further behind. In addition, commenters believed that the IFR (1) will exclude non-degree seeking students and students enrolled in short-term certificate programs, and (2) is a cruel, confusing, and counterproductive policy that will exclude large numbers of low-income, Black, and Latino students, as well as veterans and noncitizens. The commenters urged the Department to immediately withdraw the IFR.

Some commenters believed that Latino and immigrant students would be disproportionately affected by the IFR, citing *Oakley* v. *DeVos,* No. 20–cv–03215–YGR (N.D. Cal. June 17, 2020). The commenters argued that many immigrant students (Dreamers with or without DACA status, other students with undocumented status, and those with Temporary Protected Status, U-visas, or pending asylum applications) would not receive assistance to continue their education or cover necessities, such as food, housing, and healthcare. The commenters stated that these students: (1) Are experiencing the same economic hardship due to the pandemic as their peers, if not more; (2) come from communities that are among the most harmed by the COVID–19 pandemic; (3) may be much more susceptible to contracting and dying from COVID; and (4) are also excluded from many existing State and Federal assistance programs that could provide COVID–19 relief. The commenters urged the Department to immediately withdraw the IFR.

Some commenters believed that the IFR's restrictions will deprive many students, who otherwise demonstrate significant need during the COVID–19 crisis, from receiving assistance, thereby jeopardizing not only their health, safety, and education, but also the continuity of higher education

[2] *https://news.harvard.edu/gazette/story/2020/10/covid-carries-triple-risks-for-college-students-of-color/; https://www.insidehighered.com/news/2020/09/30/undocumented-college-students-report-heightened-anxieties-about-legal-status-and*

communities. The commenters noted that the definition of ''student'' should include students in default on a loan issued by the Department, students who are not making satisfactory progress, and certain noncitizens and students without Social Security numbers, including undocumented students.

Other commenters believed that the Department understated the number of individuals who would be excluded from receiving HEERF grants under the IFR. Whereas the Department estimated that the IFR would exclude more than 1.12 million noncitizens, the commenters stated there are many other students who are ineligible for title IV aid on different grounds, and that many of those students are experiencing urgent economic challenges stemming from the pandemic and need assistance. In addition, one commenter stated that the IFR would exclude as many as 800,000 students in one State's community college system, including veterans, citizens who have not completed a Federal financial aid application, and noncitizens, including undocumented students. According to the commenters, those 800,000 students would represent over half of the approximate 1.5 million students enrolled in the State community college system during the Spring 2020 semester.

Several commenters noted that institutions still have HEERF funds available and would distribute some of those funds to students who are otherwise ineligible under the IFR.

Another commenter believed that a more inclusive approach to eligibility would serve the educational policy goal of more diverse college educational learning environments, which was recognized by the Supreme Court as a compelling government interest in *Grutter* v. *Bollinger.* Similarly, other commenters argued that the IFR would undermine efforts to foster racial equity, diversity, and inclusion on college campuses, and make the playing field more uneven for undocumented students and more difficult for colleges and universities to meet their educational and moral obligations to students of color, students with low incomes, undocumented students, and otherwise marginalized students.

Discussion: We agree with the general sentiment of the commenters that, without financial assistance from HEERF grants, some students may be adversely affected or may not be able to continue their education. Part of the Department's core mission is to ensure equal access. In that regard, as a policy and ethical matter, and in light of other comments addressed below and the policy further explained earlier in this preamble, we are compelled to reverse a decision that denies financial assistance to our most needy and vulnerable students.

An institution that has HEERF funds available from the CARES, CRRSAA, or ARP, may, as of the effective date of this final rule, use those funds to provide financial assistance to any student who is enrolled at the institution or was enrolled at the institution during the COVID–19 emergency.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Comments: Several commenters objected to the IFR on moral grounds, arguing that, at this time of crisis, the Department should not be denying assistance to vulnerable individuals.

Some commenters noted that, prior to the IFR, the Department encouraged institutions to award emergency grant funds to students with the greatest need, but by subsequently changing course and narrowing the eligibility requirements for those funds in the IFR, the commenters opined the Department promulgated a cruel and ideologically motivated rule that will hurt some of our Nation's most vulnerable college students.

Other commenters asserted that for many students, receiving a few hundred dollars to purchase a laptop or help pay rent can make the difference between completing their coursework or dropping out. The commenters argued that by excluding students who are ineligible for title IV aid, the Department has denied assistance to many students who have the greatest financial need and are among the least likely to find help elsewhere.

Several commenters asserted that many students who are not eligible for title IV aid and their families are struggling financially from employment issues stemming from the COVID–19 emergency. One commenter stated that many undocumented students enrolled at a community college have lost jobs in industries affected the most by COVID–19—healthcare, food service, and hospitality—and without income from these positions, students are struggling to pay for basic needs. Similarly, other commenters noted that due to the COVID–19 pandemic, many undocumented students or their spouses and children who had lost jobs were ineligible for a Recovery Rebate check under the CARES Act. Other commenters stated that minority communities have disproportionately record levels of unemployment, noting that among Hispanic and Latino individuals, the unemployment rate jumped to 18.9 percent in April 2020, dropping only slightly to 17.6 percent in May 2020, and 14.5 percent in June 2020. In addition, the commenters stated that some of those students are the sole provider in their homes because of the COVID–19 pandemic, as family members have lost jobs.

Some commenters noted that many immigrant and other students who are not eligible for title IV aid face unique challenges, such as a lack of health insurance, and those students are also suffering disproportionate health effects from the pandemic. The commenters stated that as of 2017, 94 percent of DACA recipients were Hispanic and minority communities in the United States have been afflicted by COVID–19 at disproportionate rates. According to the commenters, these health concerns are especially pronounced because many students who are not eligible for title IV aid are on the front lines of the COVID–19. The commenters asserted that these students are more likely to fall through the cracks of our medical system and lack basic safety net protections, making it more untenable to withhold aid. Similarly, other commenters argued that many students who are not eligible for title IV aid and their families are uninsured, noting that, as of 2018, more than four in ten undocumented immigrants (45 percent) were uninsured.

Other commenters believed that undocumented students may help to mitigate shortages in the healthcare industry. The commenters stated that many undocumented graduate students hold degrees in STEM fields, with many having degrees in healthcare-related fields, which is critical to combat the nation's severe shortages resulting from the COVID–19 crisis.

One commenter believed that title IV ineligible students, such as undocumented students, facing dire economic circumstances stemming from the pandemic may have to postpone or forego their higher education, absent funding from the CARES Act.

Other commenters believed that undocumented students at community colleges are particularly disadvantaged. The commenters noted that over 80 percent of undocumented students attend two- and four-year public colleges and universities, but undocumented students at community colleges are more likely than undocumented students at four-year colleges to face extremely high levels of financial stress. The commenters stated that many of these students come from families in poverty and thus are unable to rely on their parents for financial assistance and those students may have to support their families financially. According to the commenters, community colleges receive disproportionately smaller shares of emergency grant funding compared to other institutions and are thus unable to meet the needs of undocumented students.

Discussion: Upon further review, we agree with the commenters that HEERF grants should be awarded based on need and should not consider title IV eligibility of students. As mentioned by the commenters, institutions may have awarded HEERF grants to students without qualification on a priority-need basis before the IFR was published. In the preamble to these final regulations, we fully explain our reasoning for taking a position aligned with the one taken in the Department's initial guidance by allowing institutions to award HEERF funds to any student who is enrolled or was enrolled at the institution during the COVID–19 emergency. In addition, as noted above, HEERF emergency financial aid grants must not be distributed in a manner that excludes individuals on the basis of race, color, national origin, disability, or sex. *See, e.g.,* 42 U.S.C. 2000(c)–(d) (Title IV and Title VI), 29 U.S.C. 701 *et seq.,* 20 U.S.C. 1681 (Title IX).

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF program. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Financial Burden on Students Ineligible for Title IV

Comments: Several commenters asserted that in issuing the IFR the Department failed to consider the economic effect of excluding 1.12 million undocumented students from eligibility for grants from HEERF funds. These commenters variously pointed to the lack of alternative funding available to such students resulting from the loss of campus jobs and internships, the collective ineligibility of undocumented immigrants to receive stimulus payments under the CARES Act's Recovery Rebate provision, the high levels of poverty among families headed by undocumented immigrants, and the disproportionate effect that the COVID–19 pandemic has had on these families as reasons for why the IFR is unfair in its effects.

Other commenters argued that denying undocumented students access to funding under the HEERF programs would have a negative impact on society and the economy. These commenters suggested that students lacking title IV aid who, by extension, would be ineligible for grants from HEERF funds, may be forced to curtail studies, decreasing their chances of ever obtaining a postsecondary credential. Reduced earnings, underemployment, greater demand on public assistance, potential defaults on student loan debt, and lack of civic engagement were cited as examples of the increased societal burden the commenters viewed as likely to result from students being unable to complete degree programs.

Finally, one commenter stressed the genuine desire of many institutions to do something for students who are not eligible to receive title IV funding and that it is unsound policy to prevent these students from accessing critical funding during a pandemic.

Discussion: Upon further consideration, we agree with the commenters that the better policy involves greater consideration of the significant negative effects on students of restricting eligibility for grants from HEERF funds to those students who are title IV eligible. Moreover, we are convinced of the overall benefit to society, as well as the economic health of the country, accruing from enabling as many students as possible (including undocumented students) to continue with their studies during this difficult period. Inasmuch as funding under the HEERF programs is intended to assist students who are attending eligible institutions of higher education and who have incurred expenses related to the COVID–19 pandemic, the Department believes that providing institutions with the latitude to offer such assistance to all students is an imperative. Accordingly, we have revised the interim final rule to state that a student is defined as any individual who is enrolled in an eligible institution of higher education.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Confirming Title IV Eligibility

Comments: Several commenters offered that many students who are eligible for title IV aid will be unable to confirm that eligibility, and that the IFR failed to consider the effects of this on such students. The commenters cited the lack of necessary information, unfamiliarity with the financial aid process, and FAFSA complexity as reasons for which a student who is eligible for title IV HEA assistance may not be able to establish that status.

Other commenters asserted that the Department's proposed solutions for those who have not completed a FAFSA are flawed because the complexity of the FAFSA and lack of available information preclude such students from simply filing the form to establish eligibility. The commenters expressed particular concern that the burden of having to complete a FAFSA for the purpose of obtaining a grant under the HEERF programs will fall disproportionately on low-income, minority, and first-generation college students who are most in need of the funding.

Regarding the costs associated with establishing title IV eligibility, some commenters objected to the methodology used by the Department to estimate those costs. One of those commenters asserted that the Department did not consider the costs to students who are eligible but have yet to complete the FAFSA, which the commenter characterized as extensive based on data suggesting that requiring these students to demonstrate eligibility

by completing the FAFSA would result in an additional 1,057,500 to 1,305,000 hours of student labor and $18,918,675 to $23,346,350 in additional costs to those students. The same commenter expressed the belief that the costs associated with students completing an institution-provided certification form would be even higher because of the uncertainty and confusion they would experience in having to attest to their own eligibility upon penalty of law.

Another commenter opined that the added time for title IV eligible students to provide documentation confirming their eligibility (particularly during the pandemic) will lead to increased costs in the form of late or unpaid bills, missed meals, and even eviction. The same commenter's assessment was that the Department failed to consider how a lack of access to emergency financial aid might affect students facing unprecedented financial challenges and who are struggling with existing institutional hurdles.

Discussion: The Department acknowledges the difficulties many students face in completing the FAFSA. This difficulty is especially true for under-resourced students. We are persuaded that serious economic hardships being experienced by these students, which timely application of HEERF funding might ameliorate, would go unaddressed or even worsen during the time needed for them to confirm eligibility using the FAFSA. Furthermore, we appreciate the comment raising concerns about the cost of student labor associated with requiring students who are eligible for title IV aid but did not apply, to complete the FAFSA, or some other institutionally designated form, in order to establish eligibility for HEERF funding. We also note that it would be difficult if not impossible for institutions to create their own form to verify title IV financial aid eligibility. Institutions would need to find ways to verify items that the FAFSA already handles, such as whether students have valid Social Security numbers or are otherwise eligible noncitizens, which could mean checking with the Social Security Administration or the Department of Homeland Security. Institutions would also need to ensure male students had registered with the Selective Service. However, since these regulations remove the requirement that, in order to receive HEERF funding, a student who has not already done so must establish title IV eligibility, associating a cost with that burden is no longer necessary. The Department notes, however, that students who are potentially title IV eligible must continue to file a FAFSA to establish such eligibility, and that HEERF funding should supplement, rather than replace, title IV aid for those who qualify.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Harm to Historically Marginalized Students

Comments: Many commenters opposed the IFR's restriction of eligibility for grants under HEERF to title IV eligible students on the grounds that it would exclude large numbers of students, including historically marginalized and vulnerable students, such as those who are undocumented, have loans in default and are currently enrolled in school, and students who have not met institutional standards for satisfactory academic progress. The commenters stressed that these are students who are trying to improve their futures and who arguably need more help, not less, to complete their college education.

One commenter suggested that the use of the title IV eligibility standard would mean that students enrolled in noncredit, short term or dual enrollment programs, along with other students who do not have a high school diploma or equivalent, will not have access to much-needed grants from HEERF funds as they work to increase their skills and prepare for employment. The commenter noted that students enrolled in noncredit, short term, and adult education programs are more likely to be nontraditional students, such as adult learners, low-income students, and those for whom English is not their first language.

Discussion: We are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students is unnecessarily injurious to undocumented students as well as others who are not eligible for title IV aid, many of whom face economic and institutional obstacles that have only been compounded by the pandemic.

The Department believes the interests of postsecondary education, as well as the country as a whole, are best served by using every available resource to ensure all students, regardless of citizenship or immigration status, are able to continue their studies through the present crisis. Accordingly, we are revising the rule established in the IFR to clarify that a student is defined as any individual who is enrolled in an eligible IHE.

Regarding students enrolled in non-term, short-term, and dual enrollment programs, as well as students who do not have a high school diploma, we note that both short-term and dual enrollment programs frequently are title IV eligible programs. However, we acknowledge that many students enrolled in these types of programs and many students who do not have a high school diploma would not be eligible for grants from HEERF funds under the restrictions in the IFR.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Effect of the IFR on Veterans

Comments: One commenter expressed the belief that the eligibility restriction in the IFR will negatively affect veterans who have risked their lives for the country and implies that the Department does not believe their sacrifice merits access to educational opportunities.

Another commenter identified several problems with linking student eligibility for CARES Act emergency grants to FAFSA filing, especially for those students at schools not already using applications to distribute the aid; these were:

- Requiring a FAFSA to demonstrate title IV eligibility would exclude all non-FAFSA filing student veterans, service members, and their families and

survivors from receiving CARES Act grants unless they submit the FAFSA;

- Undergraduate student veterans are less likely than nonveterans to file a FAFSA and requiring them to do so is an impractical and unnecessary added step that would further complicate and/or seriously delay the receipt of grants from HEERF funds;
- Non-FAFSA-filing student veterans are more likely to mistakenly conclude they are ineligible for the grants when they are excluded from a school's wider automatic distribution of the aid;
- The amount of time these students may have to wait to receive their grants because institutions must first create and then make available a specific application form would be increased; and
- Additional, undue burden on military-connected students will result from requiring them to research their institution's application process, obtain, complete, and submit the application.

The commenter recommended returning to the Department's original April 9, 2020, guidance or making servicemembers, veterans, and their dependents automatically eligible as two potential solutions.

Discussion: We are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students is, for reasons including those identified by the commenters, potentially harmful to the educational interests of veterans. With respect to the commenter's proposed solutions, the revised definition of ''student'' in these final regulations, extending eligibility for grants from HEERF funding to all enrolled students, obviates the need for any regulatory action specific to veterans. In this final rule, we are fully explaining our reasoning for revising our position on title IV eligibility as a prerequisite for HEERF funds, as recommended by the commenter.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Undocumented Students Entitled to HEERF Funds

Comments: Several commenters expressed the opinion that undocumented students are as entitled to grants from HEERF funds as any other students. The commenters variously cited the taxes paid by undocumented students and their families, their passion for education, their overall contributions as members of society, including as health care providers and essential workers, and the reality that their need for assistance during the pandemic is no less than that of other students in support of the premise that all students should have access to HEERF funds without reference to citizenship or immigration status.

Some commenters asserted that undocumented students and their families have, in fact, been disproportionately affected by the pandemic and, therefore, merit the greatest assistance, especially since these students do not qualify for title IV Federal student aid.

Other commenters stressed the possibility that, denied this assistance, many undocumented students will be unable to complete their education, an outcome that, in addition to limiting the prospects of students forced to drop out, has negative implications for the economy.

A few commenters advocated for the inclusion of undocumented students on ethical grounds, arguing that it is unethical to exclude students from eligibility due to immigration status.

Finally, some commenters addressed the effects on institutions of excluding undocumented students from eligibility for grants from HEERF funds. The commenters stressed that that the operating deficits and risk of closure faced by institutions as a result of the COVID–19 pandemic will be increased as undocumented students are forced to withdraw due to lack of funding. Reduced diversity on campuses is another negative outcome the commenters suggested may occur as undocumented students leave institutions that they do not have the financial resources to continue attending.

Discussion: We agree with the commenters that students who are ineligible for title IV aid are no less deserving of HEERF funding than title IV eligible students. In the absence of any statutory provision specifically restricting the eligibility of students for HEERF funds on the basis of citizenship, immigration status, or other factors, we do not believe that such a restriction should be applied. In their capacity as students, undocumented persons, like all postsecondary students, pursue degrees, obtain employment commensurate with their educational attainment and in doing so contribute to the greater good of the economy and society as a whole. The Department has been persuaded, therefore, by the public comments received that there is no good policy reason to treat them differently for the purposes of eligibility for HEERF funding and, in fact, every reason to treat them the same.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Congressional Intent

Comments: Several commenters asserted that the absence of any language in the CARES Act restricting eligibility for HEERF funding to title IV eligible students is evidence that Congress had no intention of imposing such restrictions and that the IFR is, therefore, in violation of the intent and sprit of the CARES Act.

Several commenters offered that where Congress did mean to restrict relief funds made available through the CARES Act based on immigration status, they did so explicitly, *i.e.,* recovery rebates, and that this is not the case for the CARES Act relief grants.

Yet another commenter expressed the belief that the Department's interpretation is an arbitrary and capricious administrative action that fails to consider the real-world implications of denying critical relief funds to thousands of students during a global pandemic.

Discussion: We agree that a plain text reading of the CARES Act language indicates no intent on the part of Congress to restrict eligibility for grants from HEERF funds to title IV eligible students. Moreover, we find the argument that, where Congress intended to restrict funds authorized by the CARES Act it did so explicitly, supports that conclusion that the lack of such

restrictive language with respect to HEERF funding reflects that Congress intended all students to be eligible for HEERF funds. Finally, while disagreeing with the commenter who characterized the Department's actions as arbitrary and capricious, we are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students does not give proper consideration to the effect on undocumented students of denying them a source of funding during the pandemic, nor did it reflect Congress's decision not to place eligibility limits on HEERF funds that it placed on other funds.

Changes: We are removing the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Waste, Fraud, and Abuse

Comments: Several commenters were critical of what they characterized as the Department's assertion that the IFR was promulgated chiefly to prevent fraud, waste, and abuse. One commenter referenced the Department's citation of a *New York Times* article in support of its actions, observing that the Department quoted the article out of context and that, as the article concerned an overseas fraud ring using U.S. citizens' personally identifiable information to file unemployment claims, it was, in any case, not germane.

Another commenter averred there is no evidence that, without this rule, institutions will engage in rampant wasteful, fraudulent, or abusive distribution procedures, as the Department alleges.

Noting that none of the Department's prior communications related to the pandemic expressed concerns over fraud, one commenter expressed bemusement over the IFR's singular focus on that possibility. The commenter further offered that since, according to a National Association of Student Financial Aid Administrators survey as of June 12, 2020, 94 percent of institutions reported having made CARES Act emergency grants and more than three-fourths of those institutions had spent more than half of their allocations by that point, the impact of the Department's effort to limit fraud by restricting eligibility for HEERF funds would be negligible. Lastly, this commenter argued that institutional reporting requirements are intended to hold institutions accountable for how they spend these funds and to prevent fraud and abuse and make the imposition of new eligibility requirements unnecessary.

A few commenters took issue with the Department's assertion that institutions could use HEERF funds to:

- Incentivize the reenrollment of students who did not meet SAP requirements, for the purpose of enhancing revenue;
- Use HEERF funds for students who are enrolled at the institution but do not intend to receive a degree or certificate, thereby diverting funds from students who are pursuing a degree or certificate in an eligible program; and
- Create cheap classes and programming offering little or no educational value with the intention of using HEERF grant funding to incentivize the enrollment of students who are not eligible for title IV financial assistance.

The commenters noted that, for students failing to meet SAP, an institution could always restore those students' eligibility by granting a SAP appeal based on extenuating circumstances or determining their failure to make SAP to be the result of COVID–19 related circumstances. They also noted that, while it is true institutions could award HEERF funds to non-degree seeking students, the Department failed to show how (in the absence of any requirement in the CARES Act for a student to be degree seeking) that constitutes fraud, waste, or abuse. As concerns cheap classes of little educational value offered with the sole intent of enrolling students who are not eligible for title IV, the commenters suggested that such students would be less likely to enroll in these types of classes than would title IV recipients due to the need for them to fund a greater share of the cost from their own resources.

Discussion: Upon further review, we agree with the commenters that any potential for fraud, waste, and abuse would not be affected by restricting eligibility for grants from HEERF funds to title IV eligible students. While the Department always has an obligation to distribute funds as appropriately as possible and continues to have an obligation to prevent waste, attention to which is monitored by the Department's Office of the Inspector General, a reconsideration of the entirety of the situation has led us to the conclusion that the title IV eligibility restriction on HEERF funds is not a necessary measure to prevent waste in this case, and that the importance of distributing these funds to eligible students who need them do not substantially affect any such concerns. In addition, earlier in this preamble, we note other requirements already in place to address such concerns. As has already been stated elsewhere in this document, the Department is persuaded that the sole eligibility consideration for grants made from HEERF funding is that a student be enrolled in an eligible institution. We believe this position is entirely consistent with the language of the CARES Act.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) 8 U.S.C. 1611 and HEERF Funding

Comments: Numerous commenters challenged the Department's assertion within the IFR that 8 U.S.C. 1611, which was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ''clearly'' applies to restrict the HEERF Emergency Financial Aid grants to students as both wrong and ''irrelevant to the legality'' of the IFR. Commenters asserted that HEERF funds are not Federal public benefits under PRWORA and cited the decision in *Oakley* v. *DeVos*, No. 4:20–cv–03215–YGR, ECF No. 44, which rejected the Department's arguments that 8 U.S.C. 1611(a) prevented undocumented students from receiving this aid. In its decision granting a preliminary injunction, the *Oakley* court stated that grants under HEERF do not fit the description of a ''Federal public benefit'' as defined at 8

U.S.C. 1611, and thus, the associated restrictions should not prevent undocumented students from receiving aid. The commenters thus assert that all students should have access to HEERF funds regardless of whether they are a citizen, noncitizen, or ''qualified alien.''

Many commenters opined that Congress did not intend for 8 U.S.C. 1611's eligibility restrictions on nonqualified aliens to apply for financial assistance under the HEERF programs. Noting legislators' statements about giving schools discretion and flexibility, commenters believed that the legislative record demonstrates Congress's intention to grant educational institutions wide latitude in determining how to use HEERF to assist all students whose education was disrupted by the crisis and who were in need. Commenters stated that Congress was explicit in other sections of the CARES Act when it wanted to exclude certain classes of immigrants from receiving benefits even with the provisions of 8 U.S.C. 1611; underscoring that it is significant that Congress did not explicitly identify immigrant classes to exclude from receiving HEERF grants where it did elsewhere in the CARES Act.

Commenters argued that the canon of statutory construction where specific instructions from Congress override more general ones dictates that the CARES Act overrides 8 U.S.C. 1611. *See, e.g., RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank,* 566 U.S. 639, 645 (2012) (''[I]t is a commonplace of statutory construction that the specific governs the general.'') (quoting *Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992)). Commenters stated that, in the CARES Act, Congress specifically provided for funding to IHEs based on a precise formula accounting for all non-distance learning students, including nonqualified alien students, which is evidence that Congress intended for nonqualified alien students to also be eligible to receive financial assistance under the HEERF programs. 134 Stat. at 567 (section 18004(a)). Commenters again cited the *Oakley* court ruling that it would defy common sense for certain students to be counted in the calculation of institutions' allocations under the HEERF and yet denied access to the emergency aid share of those allocations. Thus, since nothing in the CARES Act suggests that Congress intended section 1611's general provisions to apply to the ''narrow, precise, and specific subject'' of COVID–19 emergency relief, *Radzanower* v. *Touche Ross & Co.,* 426 U.S. 148, 153 (1976) (''Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.'' (quoting *Morton* v. *Mancari,* 417 U.S. 535, 550–51 (1974))), the CARES Act overrides 8 U.S.C. 1611.

Commenters also argued that the purpose of the CARES Act is highly specific, responding to a once-in-a-century pandemic with a one-time infusion of cash. By contrast, section 1611 is part of PRWORA, which is a general statute written in general terms and the purpose of restricting immigrants' access to Federal public benefits under PRWORA was to ensure that ''aliens within the Nation's borders [would] not depend on public resources to meet their needs,'' prevent public benefits from constituting ''an incentive for immigration to the United States,'' and lessen the burden on the public benefits system. *See* Public Law 104–193, 110 Stat. 2260 (1996); *see also* H.R. Rep. No. 104–651, at 3 (1996) (PRWORA intended to ''limit lifetime welfare benefits''). Restricting nonqualified alien students' access to student grants provided under the HEERF programs does not achieve any of these goals because the HEERF programs are not welfare or continuous benefit programs. Rather, the HEERF programs are a one-time funding allocation that can be used to provide current college students with short-term relief for expenses already incurred due to a national emergency. Thus, allowing all full-time immigrant students not previously enrolled in distance education courses to be eligible for these funds does not increase these individuals' dependence on public benefits, encourage immigration to the United States, or burden the public benefits system.

Regarding 8 U.S.C. 1611(a)'s ''notwithstanding'' clause, commenters opined that notwithstanding clauses can be overridden by other statutory indicators and courts have long noted that when there is evidence that two statutes potentially conflict, a later-enacted, more specific provision governs, even if Congress did not explicitly identify it as an exception to the earlier statute. Commenters stated that the CARES Act's specific, comprehensive statutory scheme controls over a general ''notwithstanding'' of an earlier enacted law and that the CARES Act ''must govern because it is the most recent indication of Congress's intent,'' even though ''the earlier statute contained a 'notwithstanding' clause and the more recently enacted statute did not.'' *See GP–UHAB Hous. Dev. Fund Corp.* v. *Jackson,* No. 05 Civ. 4830, 2006 WL 297704, at *9 (E.D.N.Y. Feb. 7, 2006) (citing *In re Ionosphere Clubs, Inc.,* 922 F.2d 984, 991 (2d Cir. 1990) (''[W]hen two statutes are in irreconcilable conflict, we must give effect to the most recently enacted statute since it is the most recent indication of congressional intent.'')). Commenters also noted that the *Oakley* court rejected the Department's ''notwithstanding'' argument, finding that the specific, one-time disbursement of HEERF is not subject to the general prohibition in PRWORA.

Additional commenters stated that the nature of HEERF funds as a ''community benefit'' put them entirely outside the realm of Federal public benefits that Congress sought to control under PRWORA. These commenters note that section 18004 of the CARES Act did not restrict eligibility for any particular set of individuals, but rather gives discretion to colleges to decide which students are prioritized in receiving HEERF funds. Thus, although some benefits, specifically emergency financial aid grants, are redirected to students, the HEERF funds themselves are entirely provided directly to colleges to deal with the effects of the COVID–19 pandemic. The commenters contended that, therefore, the HEERF programs can be viewed as community funds under a Department of Health and Human Services (HHS) Interpretation of ''Federal Public Benefit,'' 63 FR 41658 (Aug. 4, 1998). In this interpretation, HHS stated that under 8 U.S.C. 1611(c)(1)(B), a Federal public benefit is a benefit provided to individuals under an ''authorizing statute [that] . . . mandate[s] ineligibility for individuals . . . that do not meet certain criteria.'' Thus, even if some benefits flow directly to individuals under the program, the benefits should not necessarily be considered ''Federal public benefits'' when the program as a whole is more readily categorized instead as community funds. A commenter made a related point that Congress created HEERF funding to serve as a community benefit rather than a Federal public benefit, as it recognized that colleges and universities would be best situated to understand and respond to the complex and localized needs of their educational communities.

Other commenters stated that, although certain classes of immigrants are excluded from receiving ''Federal public benefits,'' which generally include ''postsecondary education'' benefits, there are statutory exceptions and subsequent agency interpretations which indicate that short-term emergency aid of the sort that HEERF provides should not be treated as a

''Federal public benefit.'' *See* 8 U.S.C. 1611(b)(1)(B) (providing an exception for Federal Public Benefits considered to be ''[s]hort-term, non-cash, in-kind emergency disaster relief''). Thus, commenters believed that, since the HEERF programs were enacted in response to an emergency to deliver short-term assistance, as acknowledged by the *Oakley* court, HEERF aid should not be treated as a ''Federal public benefit.'' Another commenter stated that the Office of the Attorney General has previously clarified that ''programs, services, or assistance necessary for the protection of life or safety'' are not Federal public benefits for purposes of 8 U.S.C. 1611(a).

Some commenters argued that, although the Department asserted that the CARES Act funds constitute a ''postsecondary education . . . benefit,'' Congress did not intend that the CARES Act student grants be considered ''postsecondary education . . . benefit[s]'' under 8 U.S.C. 1611. Rather, by its own terms, the Act requires higher education institutions to provide ''emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care).'' Commenters further argued that section 18004's use of ''cost of attendance,'' which has a technical meaning in the HEA, does not signal a legislative intent to limit aid to students eligible to receive Federal student aid and that the listing of non-education-related expenses, including food, housing, and child care suggests that lawmakers intended that the CARES Act provide aid to students to help them survive—a goal applicable to citizen and noncitizen students alike that goes beyond ''postsecondary education . . . benefit[s].''

Commenters further contended that the Department's argument that 8 U.S.C. 1611's applicability to HEERF funds justifies the further application of title IV eligibility restrictions to the HEERF funds conflicts with section 1611's purpose. Commenters said that even if HEERF funds are Federal public benefits that Congress intended to fall within 8 U.S.C. 1611(a)'s eligibility restrictions, section 1611's scope only reaches nonqualified aliens' access to Federal public benefits. Commenters stated that the rule goes much further than section 1611 and limits certain categories of U.S. citizen students from also receiving HEERF grants, including those with certain criminal convictions, unsatisfactory academic standing, or without a high school diploma. The commenters further believed that, although PRWORA provides no support for barring U.S. citizen students from receiving financial assistance the HEERF programs, the IFR also has the effect of barring citizens who did not fill out the FAFSA, including veterans who use the Montgomery GI bill, from receiving financial assistance under the HEERF programs.

Discussion: We now agree with the commenters' reasoning that Congress did not intend for PRWORA to apply to HEERF funds to students.

In issuing the IFR, the Department stated its assumption that 8 U.S.C. 1611 applied to the HEERF funds provided to students. Several courts disagreed with the Department's assumption that PRWORA applied to the CARES Act funds and, as noted within the comments section above, the Department received many public comments challenging this assumption as to the applicability of PRWORA. With the benefit of those decisions and the public comments, and upon further review, the Department now concludes that the term ''student'' in section 18004 of the CARES Act include undocumented immigrants. Congress used the term ''student'' in section 18004 to refer to all enrolled students at an institution when it set out the formula for allocating HEERF funds among schools. *See* Section 18004(a)(1)(B) (basing calculation of each institution's funding on ''full-time equivalent students''). And the Department has consistently recognized that nonqualified aliens are counted for purposes of allocating HEERF funds under the formula Congress established, because the plain meaning of the formula provided by Congress would be read to include all students, and there are no indicators that Congress intended the Department to exclude nonqualified aliens when arriving at these formula allocations. *See also* ''Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act'' (*https://www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf*). Further, Congress used the term ''student'' in section 18002, section 18003, and section 18005 to refer to beneficiaries of ESEA programs, which may unquestionably benefit undocumented immigrants and other students without a qualifying immigration status for purposes of section 1611. See H.R. Conference Report No. 104–725 at 380 (1996) (PRWORA conference report, stating that it was ''[t]he intent of the conferees'' that ESEA programs ''not be affected by'' section 1611). As courts have noted, and as explained in greater detail below, there is a strong presumption that the statutory term ''student'' has the same meaning throughout the HEERF provision and the CARES Act, which means nonqualified aliens are included as students in the eligibility provision as well. Additionally, other aspects of the CARES Act reinforce the conclusion: Section 2201 expressly excluded non-qualified aliens (albeit in a different context), whereas there is no such exclusion in the HEERF provision. And interpreting ''students'' in the HEERF provision as including aliens furthers the purpose of the HEERF grants without impairing the objective of 1611, which is to avoid having Federal public benefits induce unlawful immigration.

Subsequent to the comment closing period for the IFR on July 17, 2020, the Department received two decisions regarding the applicability of 8 U.S.C. 1611 to HEERF program funds. In *Noerand* v. *Devos,* Civil No. 20–11271–LTS (D. Mass. Jul. 24, 2020), plaintiff-student Noerand challenged the Department's exclusion of certain non-citizens such as Noerand from receiving any benefits under the CARES Act. The *Noerand* court found that the HEERF programs, as originally enacted through the CARES Act, ''constitutes a statutory exception to Section 1611's general denial of federal public benefits.'' As such, that court granted the preliminary injunction sought by *Noerand,* which enjoined the Department from excluding *Noerand* from receiving benefits under the CARES Act. This decision was expanded upon through *Massachusetts* v. *Dept of Education,* Civ Action # 1:20–1600 (D. Mass., Sept. 3, 2020), which adopted the reasoning of the *Noerand* court and enjoined the Department's IFR as to ''any institution of higher education in the Commonwealth of Massachusetts and as to any student attending a school that is located within the Commonwealth of Massachusetts.'' While the *Noerand* and *Massachusetts* decisions were not able to contribute to the comments the Department received in the IFR as a result of the time at which these decisions were issued, we are persuaded by the joint reasoning of the courts in *Oakley, Noerand,* and *Massachusetts* that the CARES Act's relationship to 8 U.S.C. 1611 represents an instance where specific instructions from Congress override more general ones. *See, e.g., United States* v. *Estate of Romani,* 523 U.S. 517, 532 (1998) (holding that more specific statute governs). As noted in *Noerand,* as the Supreme Court has explained, ''it is a commonplace of statutory construction

that the specific governs the general.'' *Noerand* v. *Devos,* 474 F. Supp. 3d 394, 403 (D. Mass. 2020) (quoting *Morales* v. *TWA,* 504 U.S. 374, 384 (1992)). In this case, Congress's provision of financial aid grants to all students in response to the coronavirus pandemic represents a specific policy goal. Upon further consideration, we believe that the comprehensive, specific object of the CARES Act represents a clear intent to override other, more general statutes, such as 8 U.S.C. 1611's more general goal of providing for a long-term limit on Federal public benefits. This specific intent is made clearer by the fact that Congress was clear in other parts of the CARES Act where it did not intend for noncitizens to share in this emergency funding. *Compare* CARES Act section 2201 (''Recovery Rebates for Individuals'') (explicitly noting nonresident aliens ineligible for recovery rebates for individuals) *with* section 18003(d)(8) (explicitly specifying subset of elementary and secondary school emergency relief funds could be used to ''provide meals to *eligible students*'' or ''technology for online learning to *all students*'') (*emphasis* added).

We are also persuaded that the ''notwithstanding'' clause in 8 U.S.C. 1611 is overridden by the clear and manifest intent in the CARES Act. We note that the *Oakley* court highlighted the long-standing Supreme Court and Ninth Circuit precedent holding that a later, more specific statement may take priority over an earlier, broader statutory provision, even if it is prefaced by a ''notwithstanding any other laws'' clause. See *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank,* 566 U.S. 639, 645 (2012) (relying on long-standing canon of construction that a more specific provision is construed as an exception to a general one); *Oregon Nat. Res. Council* v. *Thomas,* 92 F.3d 792, 796 (9th Cir. 1996) (limiting ''notwithstanding any other law'' clause to relevant categories of other law, stating ''[w]e have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally.'') The Department now agrees that the specific, one-time emergency disbursement of HEERF assistance in the CARES Act is not subject to the more general prohibition in the earlier statute and is properly governed by this precedent. Section 18004 of the CARES Act is a specific statutory enactment in which Congress unambiguously directed certain aid to a plainly described group of people, ''students,'' without qualification. Thus, in these circumstances, it would constitute a statutory exception to section 1611's general denial of Federal public benefits.

In addition, as noted elsewhere, the Department is particularly compelled by the fact that Congress was explicit in other provisions of the CARES Act as to which categories of individuals should be ineligible to participate in various relief programs. *See, e.g.,* CARES Act section 2102(a)(3)(B) (specifically excluding two categories of workers from Pandemic Unemployment Assistance); section 2107(a)(2) (establishing eligibility criteria for the 13 additional weeks of Unemployment Insurance); and section 2201(a) (specifically excluding) nonresident aliens from Recovery Rebates for Individuals). ''[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Gozlon-Peretz* v. *United States,* 498 U.S. 395, 404 (1991) (citation omitted). As mentioned *supra,* we note that the CARES Act section 2201(a), authorizing $1,200 payments to individuals, specifically excluded ''nonresident alien individuals'' from eligibility. That Congress specifically included language to exclude noncitizens from eligibility for individual rebate funds, but did not include specific language to exclude noncitizens from eligibility for student grants provided under the HEERF programs, indicates that the omission was intentional. *Gozlon-Peretz,* 498 U.S. at 404.

We also heed the *Oakley, Noerand,* and *Massachusetts* courts' individual findings that under the Department's initial interpretation of the CARES Act, subsections (a) and (c) of section 18004 would give two different meanings to the term ''students,'' where subsection (a) would include all students for purposes of funding allocation and subsection (c) would exclude non-title IV eligible students for purposes of student distributions. The Department now agrees that such an interpretation is not the best reading of the statute in light of fundamental tenants of statutory interpretation. See *Los Angeles* v. *Barr,* 941 F.3d 931, 941 (9th Cir. 2019) (''Under the normal rule of statutory construction, we presume that identical words used in different parts of the same act are intended to have the same meaning.'') (internal quotation marks omitted). Based on these principles, we agree that the term ''students'' in section 18004(c) governing HEERF Student Assistance must have the same meaning as the term ''students'' in section 18004(a)(1)(B) governing the HEERF funding formula. This view is buttressed by the decision in *Noerand,* which noted that ''Congress's use of the word 'students' in section 18004 unambiguously evinces an intent to encompass all students without regard to their immigration status or eligibility for Title IV funding.'' Additionally, we note that Congress directed IHEs within CRRSAA and ARP to prioritize making ''grants to students with exceptional need[.]'' *See* CRRSAA section 314(c)(3); ARP section 2003. As noted elsewhere within this final rule, students who are ineligible for title IV aid, are among those with exceptional needs. This later in time directive that institutions use CRRSAA and ARP funds to prioritize students with exceptional needs is further evidence that Congress sought to carve out an exception to 8 U.S.C. 1611 for the purposes of the HEERF programs.

While the Department believes that the CARES Act student grants are ''postsecondary education . . . benefit[s]'' under 8 U.S.C. 1611 within the basic sense of those words, as noted elsewhere, we now believe the better reading of the statute is that Congress's direction to higher education institutions to provide ''emergency financial aid grants to *students* for expenses related to the disruption of campus operations due to coronavirus'' within the CARES Act represents a later in time exception to the general rule that nonqualified aliens may not receive Federal postsecondary benefits under PRWORA (*emphasis* added). In reaching this conclusion, the Department distinguishes the court's decision in *Washington* as being the only decision to find that PRWORA applied to HEERF grants to students and having not provided a detailed analysis of the other places within the CARES Act where noncitizens were specifically excluded from eligibility for emergency relief, as noted elsewhere within this discussion. Upon further consideration, we agree with the commenters' argument that the PRWORA's purpose does not conflict with that of the CARES Act student grants, as the purpose of restricting immigrants' access to Federal public benefits under PRWORA was to ensure that ''aliens within the Nation's borders [would] not depend on public resources to meet their needs,'' prevent public benefits from constituting ''an incentive for immigration to the United States,'' and lessen the burden on the public benefits system. We further agree that interpreting section 1611 as an implied bar to who can access relief designed to help communities and individuals

prevent, prepare for, respond to, and recover from an unprecedented public health crisis that has affected every sector of society would undermine the very purpose of the CARES Act and the HEERF programs.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

The Imposition of Title IV Eligibility Restrictions on Grants to Students Is Contrary to Congressional Intent

Comments: Many commenters asserted that Congress intended all students to have access to pandemic aid relief, irrespective of title IV or immigration status. These commenters note that no provision within section 18004 of the CARES Act either *explicitly* or *implicitly* incorporates title IV eligibility restrictions. They stated that the only explicit reference to title IV occurs in section 18004(b), which requires the Secretary to use the ''same systems'' to distribute funding under the HEERF programs as are used to distribute title IV funds. However, these commenters suggested that Congress included section 18004(b) only for purposes of efficiency and expediency in administering funds to colleges.

Some commenters acknowledged that certain provisions of the CARES Act reference title IV eligibility, but argued that the lack of incorporation of those requirements into CARES Act section 18004(c) compels the inference that Congress did not intend CARES Act emergency relief grants to be limited in the same way. One commenter challenged the Department's assertion in the IFR that emergency grants should be tied to the definition of the cost of attendance in section 472 of the HEA, noting that this definition applies to all students, not just title IV recipients. Another commenter stated that the consumer information requirements in section 485 of the HEA require campuses to disclose ''the cost of attending the institution,'' again without distinguishing between title IV-aided students and non-recipients.

Several commenters challenged the IFR's assertion that section 18004(c) of the CARES Act contains a ''critical ambiguity'' by not adequately defining the word ''students.'' These commenters argued that no dictionary has defined the word ''students'' to mean only those with a title IV eligibility requirement; neither is the common usage of the word ''students'' restricted to those eligible for title IV aid. Other commenters noted that the second component of the section 18004(a)(1) allocation formula encompasses all students, including the millions of students who do not qualify for Pell Grant support. As such, those commenters argued that the Department's inclusion of just one part of the institutional allocation formula as justification for its interpretation of student eligibility for emergency grants makes no sense.

One commenter argued that another internal inconsistency is that the IFR applies title IV's eligibility restrictions while recognizing that the CARES Act emergency assistance grants ''by definition, do not constitute Federal financial student aid under the HEA, *including title IV of the HEA.*'' An additional commenter stated that the IFR as drafted would effectively create a new title IV program. Other commenters noted that the IFR would effectively create multiple definitions of ''student'' within the CARES Act by first defining it broadly when calculating funding amounts for each IHE, *see* 134 Stat. at 567 (section 18004(a)), and then defining it narrowly for which ''students'' are ultimately eligible to receive HEERF grants, *see id.* at 568 (section 18004(c)). Still other commenters noted an internal inconsistency in the IFR disavowing title IV's requirements with respect to certain procedural requirements under sections 482 and 492 of HEA because ''the rule does not relate to the delivery of student aid under title IV.'' As such, several commenters argued that the Department was not entitled to *Chevron* deference in its interpretation.

Some commenters stated that the Department's conclusion that it would not be logical for Congress to require students to be eligible under section 484 of title IV of the HEA for grants under section 18004(a)(3) of the CARES Act, where part B of title VII of the HEA is expressly referenced, but not for grants under sections 18004(a)(1) and (2) of the CARES Act. Commenters believed this confuses means and ends given that Congress in section 18004(d) directs the Secretary to prioritize funds under section 18004(a)(3) for institutions that did not receive sufficient funding under section 18004(a)(1) and (2). In section 18004(a)(3) of the CARES Act, lawmakers directed the Secretary to make awards to institutions of higher education that the Secretary determines have the greatest unmet needs related to coronavirus, which could be used for ''grants to students,'' among other uses. In section 18004(c), commenters noted that lawmakers went a different route, allowing for provision of funds to students by institutions in the form of ''emergency financial aid grants'' independent of a Federal financial aid program. Commenters concluded that it is far more logical to read these as programs complementing each other and intended to support students both eligible to participate in title IV aid programs and those not.

Discussion: Upon further review, we believe the aforementioned principles of statutory construction counsel against reading any title IV restrictions into ''student.'' The definition of ''student'' we adopt in this final rule will avoid the potentially inconsistent interpretations of that term within the same statute pointed out by commenters. The Department is especially persuaded that, given that the allocation for institutions under CARES Act section 18004(a)(1) takes into account all students, it would be incongruous to read section 18004(c) to bar emergency financial aid grants to a subset of those very same students. This position is supported by the legislative history of the CARES Act. *See, e.g.,* 166 Cong. Rec. H1856 (daily ed. Mar. 27, 2020) (statement of Rep. Underwood) (remarking that the grants would ''support college *students* whose semesters were disrupted due to COVID–19''); *id.* at H1823 (daily ed. Mar. 27, 2020) (statement of Rep. Scott) (stating that the CARES Act would ''support grants to displaced *students*'') (*emphasis* added).

After careful reconsideration, the Department is also persuaded that Congress did not intend to incorporate title IV's eligibility restrictions by implication. The Department acknowledges that, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Gozlon-Peretz* v. *United States,* 498 U.S. 395, 404 (1991) (citation omitted). While the term ''cost of attendance'' does appear within the CARES Act and has continued into CRRSAA and the American Rescue Plan (ARP), the

Department agrees that this term is not limited to the title IV context. Similarly, the phrase ''emergency financial aid grants to students,'' while appearing in both the Federal Supplemental Educational Opportunity Grant (FSEOG) title IV program and HEERF section 18004(c), speaks to different activities under distinct programs. We acknowledge those commenters who noted that *Powerex Corp* speaks to ''identical words and phrases *within the same statute,*'' and does not apply when two related statutes play different roles in a common goal. *Powerex Corp.* v. *Reliant Energy Servs., Inc.,* 551 U.S. 224, 232 (2007). In this instance, the Department has concluded that Congress did not intend for FSEOG and HEERF programs to play the same role.

Additionally, the Department believes that this final rule is in keeping with the changes to the HEERF program made under CRRSAA and ARP, which direct institutions to ''prioritize grants to students with exceptional need.'' See CRRSAA section 314(c)(3); ARP section 2003. The Department agrees with the numerous commenters who provided evidence to support that students who are ineligible for title IV aid are among those with exceptional needs. For example, undocumented students and their families are more likely to have lower median incomes, limited access to health insurance and care, and jobs that do not allow them to work from home, increasing their risk of infection.[3] While the term ''exceptional need'' does appear within certain parts of the HEA (as in the case of FSEOG, *see* HEA section 413C(c)(2), and in school Program Participation Agreement requirements, *see* HEA section 463(a)(8)), the Department agrees that Congress did not explicitly cross reference either of those sources, and neither have a unique definition that could be readily imported into the HEERF context. Rather, the language in CRRSAA and ARP directing schools to prioritize students with exceptional need re-emphasizes that Congress intended that schools have discretion to determine who should receive funds, including whether such grants should go to title IV eligible students or not.

We also concur with the commenters that the distribution of awards under section 18004(a)(3) of the CARES Act through ''part B of title VII of the Higher Education Act'' that may be used ''for grants to students for any component of the student's cost of attendance (as defined under section 472 of the Higher Education Act)'' was intended to complement the distribution of ''emergency financial aid grants'' under section 18004(c). As such, we find that the overarching intent of these two provisions was to support students, whether or not they are eligible to participate in title IV aid programs, and that a more plain text reading of the CARES Act leads to the conclusion that the term ''students,'' means all students.

While as described below the Department maintains that rulemaking is warranted in this context, it now agrees that imposing title IV eligibility onto the HEERF grants to students would contravene the statute's purpose. The Department recognizes that the CARES Act was enacted to provide rapid relief to students in order for them to respond to their educational needs in the wake of an unprecedented global pandemic. The Department now agrees that required verification of title IV eligibility could impose unnecessary delays in distributing funds to students, which would run directly counter to the overriding legislative purpose of this funding.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Constitutional Challenges to the Application of Student Eligibility Requirements

Comments: Some commenters challenged the imposition of eligibility requirements on the distribution of CARES Act emergency relief grants as being in violation of separation of powers principles and the Spending Clause. These commenters noted that Federal funding to States may only carry conditions that Congress has explicitly imposed. *Pennhurst State Sch. & Hosp.* v. *Halderman,* 451 U.S. 1, 17–18 (1981). As such, these commenters advanced the argument that ''legislation enacted pursuant to the spending power is much in the nature of a contract'' and that ''[t]he legitimacy of Congress's power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *Id.* In this respect, the commenters noted that IHEs were required to sign a certification and agreement in order to receive HEERF money, but they were not given the ''clear notice'' required for exercises of the spending power. *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy,* 548 U.S. 291, 296 (2006).

Discussion: The Department maintains that the definition of ''student'' as revised in this final rule does not exceed the Department's regulatory authority or otherwise violate the Spending Clause or separations of powers principles. While acknowledging the restrictions inherent in the Spending Clause, ''Congress is not required to list every factual instance in which a state will fail to comply with a condition. Such specificity would prove too onerous, and perhaps, impossible.'' *Mayweathers* v. *Newland,* 314 F.3d 1062, 1067 (9th Cir. 2002). Here, the Department's rulemaking is ''reasonably related to the purpose'' of the HEERF programs in providing much needed direction to institutions regarding which individuals may receive financial aid grants under the HEERF programs. *New York* v. *United States,* 505 U.S. 144, 172 (1992). We note that, while the definition of the term ''student'' set forth in this final rule is less restrictive than the one set forth in the IFR, the Secretary has broad authority to ''make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.'' 20 U.S.C. 1221e–3; *see id.* section 3474 (''The Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.''). The way in which this final rule aligns with this rulemaking authority also is discussed in further detail below.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions

[3] *https://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/.*

regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

No Delegation of Authority to the Department

Comments: Several commenters challenged the Department's IFR as being in excess of the rulemaking authority delegated to the Department. These commenters argued that section 18004 contains no evidence that Congress intended to delegate rulemaking authority to the Department. Thus, these commenters stated that, while Congress could have chosen to delegate authority to the Department to set eligibility criteria for the receipt of grant funds, it did not. Other commenters acknowledged that the Department does hold general authority to promulgate regulations governing the programs it administers, 20 U.S.C. 1221e–3, but that the Department lacks express authority in the context of the CARES Act and that, ''[s]uch a broad interpretation would be antithetical to the concept of a formula grant.'' *City of Los Angeles* v. *Barr,* 941 F.3d 931, 942 (9th Cir. 2019). Another commenter stated that the Supreme Court has also noted that a ''clear basis'' for delegation is particularly important when the rule directly concerns matters of ''vast economic . . . significance.'' The CARES Act ostensibly includes no ''clear basis'' for the delegation of the authority that the Department assumes through the promulgation of this rule. As a result, these comments also argued that the IFR would fail at ''Chevron step zero'' for lacking a delegation of authority to act in this manner.

Discussion: The Department maintains its position that it has the necessary authority to engage in rulemaking with respect to the programs that it administers, including the HEERF programs. Specifically, as acknowledged by some commenters, 20 U.S.C. 1221e–3 confers on the Secretary the authority to ''make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.'' The HEERF programs were clearly given to the Department to administer, as originally enacted in the CARES Act, and continued through the additional monies appropriated for these programs within CRRSAA and ARP. For example, the CARES Act appropriated funding ''to *carry out* the Education Stabilization Fund'' (*emphasis* added), of which the HEERF funds are a part. The primary funding stream under section 18004(a)(1) of the HEERF program more broadly provides that ''the Secretary [of Education] shall allocate funding,'' thus indicating that all funds in HEERF are within the purview of the Department.

The final rule clarifies ambiguity as to the administrative scope of coverage of HEERF programs (*i.e.,* timing of student enrollment), so that institutions may manage HEERF program funds effectively and efficiently. In specifying the administrative scope of that coverage, the Department is guided by the purpose of the HEERF grants to students, which are to cover ''expenses related to the disruption of campus operations due to coronavirus'' under the CARES Act and ''for any component of the student's cost of attendance or for emergency costs that arise due to coronavirus'' under CRRSAA and ARP. This text provides the necessary framework for the expenses for which HEERF grants to students may be used while leaving ambiguity as to what point in time students must have been enrolled in order to receive HEERF funding. The Department is mindful that many students who were enrolled during the pandemic have been forced to pause their education by withdrawing, and that institutional debt is one of the primary barriers to students re-enrolling and finishing their education.[4] By adopting a definition of ''student'' that allows students who were enrolled since the declaration of the national emergency to receive HEERF grants, the Department seeks to provide clarity as to which students may receive HEERF funding consistent with Congressional intent.

The Department has authority to interpret ambiguity in the statute. The Supreme Court has emphasized that ''[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority. . . . Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit.'' See *Chevron,* 467 U.S. at 843–44, 104 S. Ct. at 2781–82. In this instance, the Department's use of notice-and-comment rulemaking procedures required by the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.,* has allowed the Department to receive important public input on the burden that results from an overly restrictive definition of ''student'' and has informed the Department's changes within this final rule. The Department received several comments as part of its notice and comment process indicating that commenters desired additional clarity on the eligibility of students for HEERF grants based on their enrollment status, while some commenters advocated for an expansive interpretation of which students could be considered ''enrolled.'' These comments informed and underpinned our regulating on the relationship between eligibility and student timing of enrollment.

Additionally, the revised definition of ''student'' in this final rule reflects our current position that the text of the statute (which uses ''students'' without any qualification), viewed in context, clearly speaks to all students, regardless of immigration status. And although the Department now believes Congress's intent is clear on this issue, it has explained its position in this final rule in light of the Department's previous assumption about the application of section 1611 to HEERF funds, as well as to address comments on the applicability of section 1611. This final rule thus clarifies that the unqualified statutory term ''students'' means just what it says—it encompasses all students, regardless of immigration status. And, because the statutory term ''students'' is clear on that issue, the use of that term—as explained more fully above—indicates that section 1611 does not apply.

Therefore, the Department believes that this final rule is consistent with the APA and its rulemaking authority granted by Congress.

Changes: None.

Notice and Comment; Delay of Effective Date

Comments: Some commenters argued that the Department's grounds for waiving notice and comment rulemaking in the IFR were insufficient, and therefore that the Department did not fulfill its obligations under the APA.

Commenters disputed that the waiver served the public interest. One commenter claimed that the Department did not explain how issuance of the IFR, which made previous guidance enforceable, would lead to quicker distribution of HEERF funds, or how the waiver was in the public interest. They also pointed out that the Department's desire to make previous guidance on the use of HEERF funds legally binding cannot establish good cause, specifically citing *United States* v. *Reynolds,* 710 F.3d 498 (3d Cir. 2013), for this purpose. Commenters also noted that the IFR was issued during pending litigation, which one commenter pointed out called into question the level of certainty it would provide.

Commenters stated that the importance of institutions properly distributing the HEERF allocations and

[4] *https://www.newamerica.org/education-policy/reports/comeback-story/recommendations/.*

prevention of waste, fraud, and abuse were insufficient causes for waiving notice and comment rulemaking. They said that grounds for the waiver were undermined by the three-month period between enactment of the CARES Act and issuance of the IFR, and that the Department could make such an argument with respect to any funding it administers. Commenters also pointed to case law stating that a desire to provide immediate guidance does not constitute good cause. One commenter said the Department failed to provide evidence that the one-time emergency HEERF funds would be subject to fraud or waste.

Several commenters stated that the current national emergency was also an insufficient basis for the waiver. They said that the length of time between the CARES Act's enactment and issuance of the IFR, and the fact that guidance on this topic was issued in April 2020, also undermined this argument. They said that any emergency was now of the Department's own making, which case law holds is not justification for a waiver of notice and comment rulemaking. In fact, one commenter pointed out that the need for public comment was great, given the expansiveness of the IFR and its effect of denying emergency relief to students during a pandemic and economic recession.

In addition, commenters argued that, for the same reasons they asserted the Department did not have good cause to waive notice and comment rulemaking, it also did not have good cause to waive the 30-day delayed effective date required by the APA and Congressional Review Act.

Finally, one commenter contrasted the process for the associated information collection with the process for this IFR. They noted that, despite the Department's claims that it was acting for reasons of urgency, it issued an information collection request in relation to its distribution of the HEERF funds that was subject to a longer notice and comment period (60 days) than the IFR (30 days), which they claimed suggested it treated the same set of facts with different levels of urgency.

Discussion: We appreciate the concerns raised by commenters on these topics, including good cause to waive notice and comment rulemaking and delays of effective dates. However, whether or not the IFR met the standard for good cause to waive notice and comment rulemaking, the Department has now considered the comments received in response to the IFR, and is issuing this final rule which responds to them. We greatly value those comments and appreciate the value that public comment provides, especially with respect to a rule of this nature. As explained elsewhere throughout this preamble, the Department is now, with the benefit of comments received, revising the rule set forth in the IFR to better effectuate the purposes of the CARES Act, as well as CRRSAA and ARP. *See Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2385 (2020).

With respect to the Department's information collection request, notice and comment rulemaking under the APA (5 U.S.C. 553) and information collection approval process under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) are separate processes. The Department requested an emergency clearance under the Paperwork Reduction Act to allow for the immediate collection of this information. Following that, the public was then provided the ability to comment on the proposed burden assessment through the standard information collection process with notice requesting comment being published in the **Federal Register**. However, in both instances, the Department pursued the accelerated procedures provided for in applicable law, due to the exigency of the situation.

Changes: None.

Change in Policy; Arbitrary and Capricious

Comments: Commenters argued that the IFR was arbitrary and capricious because it changed the Department's policy position without acknowledgment or explanation, and did not examine relevant data, consider effects on students, or provide a satisfactory explanation for the choices it made. Commenters pointed out what they viewed as various inconsistencies between the IFR and previous Department statements, including an April 9, 2020, letter sent by Secretary DeVos to college and university presidents. They also referenced a television appearance by Secretary DeVos. More specifically, commenters stated that the April 9, 2020, letter indicated that each institution may develop its own system and process for determining how to allocate CARES Act funds. Commenters pointed to the Funding Certification and Agreement issued by the Department, which they said initially characterized individual emergency financial aid grants as not constituting Federal financial aid under title IV of the HEA. According to one commenter, this position was more logical and consistent with the CARES Act and other funding, but it was reversed by the IFR without displaying awareness of the change or explaining it. Another commenter pointed to what they said were other inconsistencies in the way the Department interpreted or applied different statutory sections, including interpretations of section 18004(c), the application of 8 U.S.C. 1611, and the way funds were allocated when compared with the eligibility criteria.

Discussion: In these final regulations, we are fully explaining our revision of the position taken in the IFR. To the extent this is a departure from our prior policy, all changes are fully explained as required by applicable case law, including cases cited by commenters, such as *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009), and *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117 (2016). In addition, we believe that the revisions and explanations throughout this document address the points raised by commenters. As discussed above, the revised definition of ''student'' also resolves the disparity the commenter referenced with respect to funding allocation.

Changes: Changes are discussed in applicable sections throughout this preamble.

Comments: None.

Discussion: With respect to student program eligibility, the current definition of ''student'' in section 668.2 solely refers to the CARES Act. Given the passage of CRRSAA and ARP, which also allocate funds for the HEERF programs, the Department believes that this revised definition of ''student'' should encompass student eligibility for these programs as well. Thus, the new definition of ''student'' refers to student eligibility for the CARES Act, CRRSAA, and ARP under the umbrella of the HEERF programs. We also have added the phrase ''financial aid grants to students'' as one of the specific purposes for which ''student'' is defined because that language was introduced in section 314(c) of CRRSAA.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student

assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date Under the Administrative Procedure Act

This final rule defines ''student'' for purposes of the HEERF programs, which include funding from the CARES Act, CRRSAA and ARP. Congress enacted the CARES Act, as well as CRRSAA and ARP, to help the nation cope with the urgent economic and health crises created by the COVID–19 pandemic and created the HEERF programs to provide emergency financial aid grants to students. CRRSAA and ARP build on the framework for HEERF programs originally created by the CARES Act by allocating money into the same programs, and it is logical to apply the same definition of ''student'' for provisions in those two statutes as for the CARES Act. We believe that the public would reasonably have anticipated that this final rule would apply to all HEERF funding. In addition, the purpose of notice and comment has been fulfilled in this case. Here, the IFR ''adequately frame[d] the subjects for discussion.'' *Nat'l Rest. Ass'n* v. *Solis,* 870 F. Supp. 2d 42, 51 (D.D.C. 2012) (quoting *Conn. Light & Power Co.* v. *Nuclear Reg. Comm'n,* 673 F.2d 525, 533 (D.C. Cir. 1982)). Application of these rules to CRRSAA and ARP funding was a reasonable development of the original proposal. *See id.* Further, the Department has responded to the public comments received in response to the IFR in this final rule, and the position taken in this final rule with respect to CRRSAA and ARP funding is consistent with the position many commenters advocated with respect to the CARES Act.

Nevertheless, out of an abundance of caution and because CRRSAA and ARP were enacted after the closing of the public comment period for the IFR, we are including this waiver of rulemaking in this final rule. We believe that, in the event the inclusion of CRRSAA and ARP is not a logical outgrowth, such waiver is both justified and necessary, based on the circumstances.

In light of the urgent economic challenges facing many students as a result of the crisis, the Department has determined that there is good cause for promulgating this final rule without additional notice and comment and that it would be contrary to the public interest to engage in notice and comment rulemaking. The public comments summarized throughout this preamble underscore the importance of this aid to students. For example, as noted earlier in this preamble, the Department now agrees with the numerous commenters who provided evidence to support the conclusion that students who are ineligible for title IV aid are among those with the most exceptional needs. This final rule will enable institutions to distribute these emergency funds to all eligible students in an expedient manner. Delay of these critical funds to engage in notice and comment rulemaking would be directly contrary to the public interest at issue, addressing exigent need due to the national pandemic.

Under the APA (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed rules. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). While we are responding to public comments received in response to the IFR in this final rule, we also believe that, if needed, a waiver of notice and comment rulemaking with respect to this final rule is warranted by the circumstances and is appropriate to encompass the full scope of the final rule. In light of the current national emergency and the importance of institutions distributing as quickly as possible the HEERF allocations, including those from CRRSAA and ARP, via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19, the normal rulemaking process would be impracticable and contrary to the public interest. Therefore, we believe that good cause exists for waiving the notice and comment requirements of the APA.

The Department is not required to conduct negotiated rulemaking for this rule. The requirement in HEA section 492 that requires the Department to obtain public involvement in the development of proposed regulations for title IV of the HEA does not apply to this final rule, because it implements the CARES Act, not title IV. Moreover, even if it did apply, section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the **Federal Register** at the same time as the regulations in question are first published. Even if section 492 applied to this rule, good cause would exist to waive the negotiated rulemaking requirement, since, as explained above, notice and comment rulemaking is not practicable or in the public interest in this case.

The master calendar requirement in section 482 of the HEA likewise does not apply to this rule, because the rule does not relate to the delivery of student aid funds under title IV.

Additionally, the APA generally requires that regulations be published at least 30 days before their effective date, except as otherwise provided by the agency for good cause found and published with the rule (5 U.S.C. 553(d)(3)). As described above, good cause exists for this rule to be effective upon publication in light of the current national emergency and the importance of institutions properly distributing the HEERF allocations via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19. Under the CRA, a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the **Federal Register**, whichever is later. 5 U.S.C. 801(a)(3)(A). However, the CRA creates limited exceptions to this requirement. See 5 U.S.C. 801 (c), 808. An agency may invoke the ''good cause'' exception under section 808(2) in the case of rules for which the agency has found ''good cause'' under the APA standard in section 553(b)(B), to issue the rule without providing the public with an advance opportunity to comment. As stated above, the Department has found good cause to issue this rule without additional notice and comment rulemaking, and thus we are not including the 60-day delayed effective date in this rule.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or

communities in a material way (also referred to as an ''economically significant'' rule);

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

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

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

This final regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

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

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

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

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

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

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

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

Need for Regulatory Action

The Department is issuing this final rule to remove the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarify in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. The final rule also applies the revised definition of ''student'' to funds to be distributed under CRRSAA and ARP, as well as the CARES Act. This final rule is meant to provide flexibility and clarify administrative processes for institutions so the funds can be provided to eligible students as efficiently as possible, with an emphasis on providing funds to students with exceptional need as directed by the changes to the HEERF programs made under the CRRSAA and the ARP. The final rule also describes the expansion of access to all students enrolled at institutions, not just title IV eligible students. The financial aid grants under the HEERF programs are meant to assist students with expenses related to the pandemic to reduce disruption to their education, so this final rule revises the Department's interpretation of an eligible ''student'' so the funds can be disbursed in a timely manner and to those students with exceptional need. Adopting a broad and simple definition of a ''student'' allows the emergency grant funds for students to maximize their purpose and fully live up to Congressional intent in time to assist with the COVID–19 related expenses the funds are intended to alleviate.

Costs and Benefits

The emergency financial aid grants under section 18004 of the CARES Act are intended to assist eligible students with expenses related to the COVID–19 pandemic to limit disruption of their educational activities. In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), we are evaluating the costs and benefits of the final rule compared to a pre-statutory baseline. The Department acknowledges that many of the emergency financial aid grants under section 18004 of the CARES Act have already been awarded to students under the previous definition of ''student.'' However, there are still significant funds available for students under section 314 of CRRSAA and section 2003 of ARP, so students affected by the revised definition of student can benefit from those funds. Therefore, where applicable in this section, the Department discusses not only the costs and benefits of the final rule compared to a pre-statutory baseline, but also the costs and benefits relative to institutions having already made many emergency financial aid grant awards using the previous definition of ''student.'' This final rule revises which students are eligible for the grants but does not change the amount available or the allocation formulas for providing the funds to institutions. The dollar amount of transfers available to eligible students is a minimum of $6.25 billion and up to $12.5 billion from the initial HEERF funding, depending on the amount institutions retain for institutional expenses. We have not discounted or annualized this amount because it is meant to be disbursed to students as efficiently as possible. Much of the initial HEERF funding for students from the CARES Act has been distributed, so the revised definition of student will not affect much of those funds. However, the additional funding provided by CRRSAA and ARP makes at least $6.46 billion and $18.37 billion, respectively, in transfers available to students and the benefits of those funds are available to all the students based on the revised definition.

As described in this preamble, the Department now agrees with the majority of commenters that aligning the eligibility requirements for the HEERF grants to title IV is not the best policy to effectuate the goal of helping students and institutions respond to circumstances created by the current pandemic. As commenters noted, students excluded from receiving grants because of the eligibility requirements in the IFR would include some of those most affected by the COVID–19 pandemic and the lack of emergency relief funds could significantly disrupt their educations and economic prospects. The emergency relief available under the CARES Act, CRRSAA, and ARP could help these students continue their educations. The Department now agrees that the funding should be distributed regardless of title IV eligibility, so the potential costs noted by the commenters are not applicable under this final rule. This final rule explains the expanded eligibility and allows students to know if they are eligible to receive such funds

from their institution. This change from the IFR will allow institutions to award grants to their students with the most need, including students with significant unmet need that may not otherwise be eligible for Federal funding.

Because institutions will determine how they will distribute funds to their students, the Department does not know the exact distribution of who will receive the grants. Table 1 shows the estimated pool of potential recipients as derived from data from the Integrated Postsecondary Education Data System (IPEDS) for institutions that received an allocation. It is not specific to Spring 2020 enrollment but does provide an indication of the number of students who could receive funds. The change from the IFR is reflected in the 1.2 million non-resident alien and 3.3 million students involved exclusively in distance education programs who are potentially eligible for grants under the final rule.

TABLE 1—ESTIMATED POTENTIAL GRANT RECIPIENTS BY CONTROL OF INSTITUTION [5] [6]

	Public	Private	Proprietary	Total
Total Enrollment [1]	19,335,244	5,271,445	2,078,903	26,685,592
Undergraduate	17,493,764	3,533,450	1,695,833	22,723,047
Graduate	1,841,480	1,737,995	383,070	3,962,545
Non-Resident Alien	729,367	420,550	34,221	1,184,138
% All-Distance [2]	12.40	28.40	62.50	.....
Distance Education eligible under final rule	1,806,382	837,479	614,126	3,257,987

Studentswill benefit from assistance in paying additional expenses associated with elements included in their cost of attendance, such as room and board, that changed with the disruption of campus activities. As confirmed by the Internal Revenue Service, the relief provided under section 18004 of the CARES Act will not be considered gross income, so students have no Federal tax consequences to deter them from accepting this assistance. Students will have to work with their institutions to access the funds according to the process the institution establishes for awarding the relief. As described in the Paperwork Reduction Act section of this preamble, the estimated number of students applying for relief is increased compared to the IFR published June 17, 2020, but the time per application is reduced because students would not have to submit paperwork to prove title-IV eligibility. Students are expected to take 1,280,908 hours for a total of $22.4 million at a wage rate of $17.50 [7] to apply for emergency relief.

Institutions are also affected by this final rule. They have some flexibility in determining how they will distribute the funds they were allocated for this emergency relief. They will incur some costs in setting criteria or establishing an application process for their students. We assume the distribution of the funds can largely rely on existing processes and information involved in the disbursement financial aid. Several commenters noted that there would be a significant burden on institutions in confirming students' eligibility for the emergency relief, including for students who do not have an existing valid SAR or ISIR for the 2019–20 or 2020–21 award years. One commenter estimated that it would take an institution approximately 148.5 hours to administer HEERF funds. However, with the change in the final rule, the burden on institutions should be reduced because they do not have to confirm students' title IV eligibility.

As described in the Paperwork Reduction Act section of this preamble, the burden on institutions may be reduced compared to the IFR that involved checking title IV eligibility, but we do not incorporate that possibility into the estimated25,680 hours and $1,203,622 at a wage rate of $46.87 for postsecondary education administrators.[8]

To the extent that students use emergency financial aid grants to pay for expenses related to their cost of attendance, institutions will benefit from the revenue stemming from payments that students would otherwise not be able to make. Table 2 summarizes the amounts to be allocated to institutions by sector. The full breakout of amounts allocated to individual institutions, including the maximum that can be allocated to institutional costs, is available in the Allocations for section 18004(a)(1) of the CARES Act document [9] on the Department's CARES Act website.[10] These allocations were made according to the formula described in the Methodology for Calculating Allocations document [11] on the Department's CARES Act website. The allocation formula emphasizes institutions' share of Pell Grant recipients with 75 percent of the allocation based on each IHE's share of full-time equivalent (FTE) enrollment of Pell Grant recipients who were not enrolled in exclusively distance education prior to the coronavirus emergency, relative to the share of such individuals in all institutions. The remaining 25 percent is based on the institution's share of FTE enrollment of students who were not Pell Grant recipients and who were not enrolled exclusively in distance education prior to the coronavirus emergency. This formula helps direct relief to institutions that serve lower income students as part of their on-campus operations. Table 2–A summarizes the

[5] Analysis of IPEDS 2018–19 12-month enrollment file, effy2019 available at *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx?goToReportId=7.*

[6] National Center for Education Statistics, Digest of Education Statistics 2019, Table 311.15. Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2017 and Fall 2018. Fall 2018 share of students taking exclusively distance education courses. Available at *https://nces.ed.gov/programs/digest/d19/tables/dt19lowbar;311.15.asp.*

[6] Students hourly rate estimated using national median hourly wage for all occupations. Bureau of Labor Statistics, May 2020 Occupational Employment Statistics Data. Available at *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.* Last accessed March 31, 2021.

[7] Students' hourly rate estimated using national median weekly wage for 16–24 year-olds. Bureau of Labor Statistics, Labor Force Statistics, Table 3: Median usual weekly earnings of full-time wage and salary workers by age, race, Hispanic or Latino ethnicity, and sex, not seasonally adjusted. Available at *https://www.bls.gov/webapps/legacy/cpswktab3.htm.* Last accessed April 13, 2021.

[8] Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020 National Occupational Employment and Wage Estimates Outlook Handbook—Management Occupations—Postsecondary Administrators, 201920 median hourly wage. Available at *https://https://www.bls.gov/oes/current/oes_nat.htm#11-0000.* Last accessed April 13, 2021.

[9] Available at *www2.ed.gov/about/offices/list/ope/allocationstableinstitutionalportion.pdf.*

[10] *www2.ed.gov/about/offices/list/ope/caresact.html.*

[11] Available at *www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf.*

initial section 18004(a)(1) allocations that were posted in April 2020 prior to the allocation of the $1.86 million that was originally held in reserve.

TABLE 2–A—SUMMARY OF CARES ACT HEERF (a)(1) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	8,904,536,829	4,452,268,877	4,452,267,952
Private, Non-Profit	2,484,027,454	1,242,014,126	1,242,013,328
Proprietary	1,118,690,220	559,345,530	559,344,690
Total	12,507,254,503	6,253,628,533	6,253,625,970

As indicated earlier in this preamble, under CRRSAA, approximately $22.7 billion in additional funding was made available for institutions of higher education under HEERF. Funding was appropriated for the existing (a)(1), (a)(2) and (a)(3) programs previously authorized under the CARES Act, as well as for a new (a)(4) program authorized under CRRSAA that provides funds for proprietary institutions for exclusive use as financial grants to students. Proprietary institutions are no longer eligible to receive awards under the (a)(1) program.

These funds were allocated according to a slightly revised formula, but institutions were required to use at least the same amount for student grants as they did under the original HEERF allocation. CRRSAA appropriates more funding (approximately $22.7 billion instead of $12.6 billion) for supplemental and new awards under CRRSAA section 314(a)(1), so, on average, a larger share of (a)(1) allocations will be available for institutional support than under the CARES Act. The allocation methodology is described in the Methodology for Calculating Allocations Under Section 314(a)(1) document posted January 14, 2021.[12] Students enrolled in exclusively distance education courses are included in the CRRSAA section 314(a)(1) allocation formula. Institutions will now receive allocations that factor in such students under the formula, and the formula also allows exclusively online institutions that were ineligible for funding under section 18004(a)(1) of the CARES Act to apply for grant funds. Amounts apportioned for students enrolled in exclusively distance education courses may be used only for financial aid grants to students. Table 2B summarizes the allocations to institutions of CRRSAA funds.

TABLE 2–B—SUMMARY OF CRRSAA (a)(1) AND (a)(4) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	16,440,482,886	4,475,143,071	11,965,339,815
Private, Non-Profit	4,077,819,283	1,308,911,589	2,768,907,694
Proprietary	680,914,080	680,914,0800	.....
Total	21,199,216,249	6,464,968,740	14,734,247,509

TABLE 2–C—SUMMARY OF ARP (a)(1) AND (a)(4) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	28,830,604,105	14,657,490,881	14,173,113,224
Private, Non-Profit	7,191,354,595	3,713,709,802	3,477,644,793
Proprietary	395,845,7000	395,845,7000	.....
Total	36,417,804,400	18,767,046,383	17,650,758,017

We estimate that the definition of student eligibility for the financial aid grants to students will not have an impact on the Federal budget. The CARES Act provided a maximum of $12.5 billion, with a minimum of $6.25 billion required to be spent on emergency financial aid grants to students and not spent on institutional expenses. The definition of student eligibility also applies to the $22.7 billion in additional funding appropriated under CRRSAA and $39.6 billion under ARP. These totals include amounts available under sections (a)(2) and (a)(3) of CARES, CRRSAA, and ARP that provide funds to minority-serving institutions and as supplemental assistance to private, non-profit, and public institutions to be awarded competitively. The final rule does not impact the Federal budget because it expands which students are eligible to receive emergency relief provided by the CARES Act, CRRSAA, and ARP but does not change the amount available for such grants. As described in the

[12] *https://www2.ed.gov/about/offices/list/ope/314a1methodologyheerfii.pdf.*

Costs, Benefits, and Transfers section related to institutions, allocations were determined in April 2020 for the CARES Act funds with $50 million held in reserve to account for data limitations in allocating the initial amounts to eligible institutions. When issuing the interim final rule, we anticipated that $12.5 billion would ultimately be disbursed in 2020, and therefore estimated $12.5 billion in transfers in 2020 relative to a pre-statutory baseline. Reserve allocations of $1.86 million went out but the full $50 million was not needed, and all unobligated CARES (a)(1) funding was transferred to CRRSAA (a)(1) funding. The definition of student also applies to $22.7 billion in CRRSAA funds allocated in January 2021 and $39.6 billion in ARP funds which will be allocated to institutions in April 2021.

Accounting Statement

As required by OMB Circular A–4, in the following table we have prepared an accounting statement showing the classification of the impacts associated with the provisions of these final regulations in 2020–2021, using 3 percent and 7 percent discount rates. This table provides our best estimate of the changes in monetized transfers in 2020–2021 as a result of this final rule. We note that transfers below flow from the Federal Government to eligible students and are processed through institutions.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED IMPACTS IN 2020–2021

[In millions]

Category	Benefits	
Assistance may support students continuing in their programs	Not quantified	
	Costs	
Paperwork burden on institutions to administer funds and on students to apply	7% $23.6	3% $23.6
Category	**Transfers**	
Minimum relief for eligible students to help with additional expenses due to covid–19 pandemic (HEERF from CARES Act, CRRSAA, and ARP)	7% $31,486	3% $31,486
Maximum assistance to institutions for COVID–19 pandemic related expenses from CARES Act, CRRSAA, and ARP	$38,639	$38,639
Funding available to HBCUs, TTCUs, MSIs, and SIPs under CARES, CRRSAA and ARP (a)(2)	$5,718	$5,718
Competitively awarded supplemental assistance to private, non-profit and public institutions under CARES, CRRSAA and ARP (a)(3)	$660.2	$660.2

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant negative economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

However, as noted in several of the Department's recent regulations, we believe that an enrollment-based standard for small entity status is more applicable to institutions of higher education. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table 4. We described this size classification in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 4—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Sector	Small	Total	Percent
2-year Public	342	1,240	28
2-year Private, Non-Profit	219	259	85
2-year Proprietary	2,147	2,463	87
4-year Public	64	759	8
4-year Private, Non-Profit	799	1,672	48
4-year Proprietary	425	558	76
Total	3,996	6,951	57

As described in the Regulatory Impact Analysis, institutions may benefit from applying no more than 50 percent of their allocation of CARES Act HEERF funds to institutional costs, so some small entities will benefit from those revenues. Public and private, non-profit institutions can use allocated funds from CRRSAA and ARP above the amount they received under the CARES Act for institutional expenses. They will also have to establish a process for

administering and disbursing the funds. We expect that the 2,586 estimated small entities allocated funds for this purpose under the CARES Act, CRRSAA, and ARP will spend a total of 5,172 hours totaling $242,412 at a wage rate of $46.87 [13] for postsecondary administrators to administer the distribution of the relief.

Table 5 shows the allocations of funds to small entities by sector, with any institution for which there was no small business indicator available considered a small entity. As for all institutions, the allocations of funds to specific small institutions are available on the Department's CARES website,[14] CRRSAA website,[15] and ARP website.

TABLE 5—SUMMARY OF ALLOCATIONS OF (a)(1) AND (a)(4) FUNDS TO SMALL ENTITIES BY SECTOR

Sector	Source	Sum of total allocation	Sum of minimum award to students	Sum of maximum award to institutions
Private	Non-Profit	1,696,561,228	248,701,847	675,401,095
	CARES Act	295,300,392	14,346,167	280,954,225
	CRRSAA	512,382,528	166,085,661	346,296,867
	ARP	888,878,308	68,270,019	48,150,003
Public		1,243,353,304	602,193,954	641,159,350
	CARES Act	266,608,121	133,304,213	133,303,908
	CRRSAA	204,286,897	68,130,854	136,156,043
	ARP	772,458,286	400,758,887	371,699,399
Proprietary		554,759,869	431,554,396	123,205,473
	CARES Act	57,474,850	28,737,500	28,737,350
	CRRSAA	307,916,595	307,916,595	0
	ARP	189,368,424	94,900,301	94,468,123
Total		3,494,674,401	1,282,450,197	1,439,765,918
	CARES Act	619,383,363	176,387,880	442,995,483
	CRRSAA	1,024,586,020	542,133,110	482,452,910
	ARP	1,850,705,018	563,929,207	514,317,525

Because institutions control the distribution of the funds to eligible students and have flexibility to establish a process suitable to their circumstances, no alternatives were considered specifically for small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In the IFR, the Department interpreted, for purposes of determining eligibility for the CARES Act funds, the term ''student,'' to mean a person who is eligible under section 484 of the HEA to receive title IV aid, as suggested by the references to title IV in the context of section 18004.

Based on comments received on the IFR and further review of the CARES Act, including in light of legal challenges, the Department has been persuaded that this definition was too prescriptive. In this final rule the Department has modified the definition of a student, for the purposes of receiving emergency financial aid grants under the Higher Education Emergency Relief Fund programs as originally enacted under the CARES Act, to be an individual who is or was enrolled at an eligible institution on or after the date of declaration of the national emergency concerning the novel coronavirus disease. The change in the definition of a student for these purposes is also supported in subsequent passage of the CRRSAA and ARP. Please refer to the supplementary information and Analysis of Comments and Changes earlier in this preamble for further information.

Some commenters challenged the estimates of hours and costs from the IFR, mostly on the basis that they were too low or did not account for necessary steps. Because the revised definition of ''student'' in this final rule no longer necessitates a more detailed review of student eligibility for funding, there has been no change to the estimated burden on institutions from the IFR. We continue to believe that many institutions expanded their current financial aid appeals process and utilize that framework to receive requests for COVID–19 assistance from eligible students. We maintain the estimate that each institution that received an allocation required five hours to set up any new form for students to complete and establish review and recordkeeping processes. The estimated burden for the 1,651 private institutions remains 8,255 hours (1,651 × 5 hours). The estimated burden for the 1,641 proprietary institutions remains 8,205 hours (1,641 × 5 hours). The estimated burden for the 1,844 public institutions remains 9,220 (1,844 × 5 hours). The total burden to all institutions receiving an allocation of funds remains 25,680 hours (5,136 institutions × 5 hours).

Because the definition of ''student'' has been broadened in this final rule, the universe of students eligible to receive funds has been recalculated. Using the unduplicated head count for 2018–2019 as reported by IPEDS, the number of enrolled students is calculated at 26,685,592. We estimate that 60 percent, or 16,011,355 of those eligible students may request additional aid from their institution based on

[13] Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020 National Occupational Employment and Wage Estimates Outlook Handbook—Management Occupations–Postsecondary Administrators, 201920 median hourly wage. Available at *https://https://www.bls.gov/oes/current/oes_nat.htm#11-0000.* Last accessed April 13, 2021.

[14] Available at *https://www2.ed.gov/about/offices/list/ope/allocationstableinstitutionalportion.pdf.*

[15] Available at *https://www2.ed.gov/about/offices/list/ope/crrsaa.html.*

changed circumstances due to the coronavirus. As students are no longer required to show title IV eligibility to receive this additional aid, we are adjusting the time for students to make a request for additional funds from their institution. We estimate that it would take approximately 5 minutes per student to complete a request for additional aid for a total student burden of 1,280,908 hours (.08 hours × 16,011,355 students).

An emergency collection, 1840–0844, was previously approved by OMB on June 17, 2020 for the burden assessed to both institutions and students as noted in the IFR and ICR supporting statement. The emergency collection had an expiration date of December 31, 2020. The comment period for the ICR closed August 18, 2020. Of the four comments received for the ICR two were substantive comments that echoed comments filed for the IFR. The emergency clearance lapsed without filing either a 30-day public comment period request for the ICR or a request to discontinue the ICR.

The Department received emergency approval under OMB control number 1840–0857 in order to allow institutions to utilize the revised student definition for purposes of disbursing funds to students as soon as possible. The Department will publish 60-day and 30-day **Federal Register** notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection.

1840–XXXX—ELIGIBILITY OF STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION FOR FUNDS UNDER THE HEERF PROGRAMS

Affected entity	Number of respondents	Number of responses	Hours per response	Total burden	Estimate costs student $17.50 institutions $46.87
Individual Student	16,011,355	16,011,355	.08	1,280,908	$22,415,890
Private Institution	1,651	1,651	5	8,255	386,912
Proprietary Institution	1,641	1,641	5	8,205	384,568
Public Institution	1,844	1,844	5	9,220	432,141
Total	16,016,491	16,016,491	.....	1,306,588	23,619,511

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the IFR, we solicited comments on whether the rule may have federalism implications and encouraged State and local elected officials to review and provide comments. In the Public Comment section of this preamble, we discuss any comments we received on this subject.

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List of Subjects

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 677

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends parts 668 and 677 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The general authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

* * * * *

§ 668.2 [Amended]

■ 2. In § 668.2, amend paragraph (b) by removing the definition of ''Student'' and the authority citation following the definition.

PART 677—HIGHER EDUCATION EMERGENCY RELIEF FUND PROGRAMS

■ 3. The authority citation for part 677 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3; section 314(a)(2), Pub. L. 116–260, Division M, 134 Stat. 1182, unless otherwise noted.

■ 4. Add subpart B to read as follows:

Subpart B—Student Eligibility

Sec.
677.3 Student eligibility.
677.4 [Reserved]

Authority: 20 U.S.C. 1221e–3, 3474; Section 18004, Pub. L. 116–136, 134 Stat. 281, as amended through Section 314, Pub. L. 116–260, Division M, 134 Stat. 1182, and Section 2003, Pub. L. 117–2, 135 Stat. 4.

§ 677.3 Student eligibility.

Student, for purposes of the phrases ''grants to students'', ''emergency

financial aid grants to students'' or ''financial aid grants to students'' as used in the Higher Education Emergency Relief (HEERF) programs, is defined as any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease.

§ 677.4 [Reserved]

[FR Doc. 2021–10190 Filed 5–12–21; 8:45 am]

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