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Presidential Documents

Title 3—

The President

Memorandum of June 21, 2021

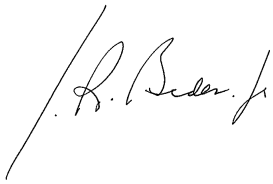
Delegation of Certain Authorities and Functions Under Section 353 of the United States-Northern Triangle Enhanced Engagement Act

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State all authorities and functions vested in the President by section 353 of the United States-Northern Triangle Enhanced Engagement Act (Subtitle F of Title III of Division FF of Public Law 116–260) (the ''Act'').

Any reference herein to the Act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provisions of law that are the same or substantially the same as such provisions.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 21, 2021

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Presidential Documents

Executive Order 14035 of June 25, 2021

Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104, 3301, and 3302 of title 5, United States Code, and in order to strengthen the Federal workforce by promoting diversity, equity, inclusion, and accessibility, it is hereby ordered as follows:

Section 1. *Policy.* On my first day in office, I signed Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which established that affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. To further advance equity within the Federal Government, this order establishes that it is the policy of my Administration to cultivate a workforce that draws from the full diversity of the Nation.

As the Nation's largest employer, the Federal Government must be a model for diversity, equity, inclusion, and accessibility, where all employees are treated with dignity and respect. Accordingly, the Federal Government must strengthen its ability to recruit, hire, develop, promote, and retain our Nation's talent and remove barriers to equal opportunity. It must also provide resources and opportunities to strengthen and advance diversity, equity, inclusion, and accessibility across the Federal Government. The Federal Government should have a workforce that reflects the diversity of the American people. A growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations.

Federal merit system principles include that the Federal Government's recruitment policies should ''endeavor to achieve a work force from all segments of society'' and that ''[a]ll employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management'' (5 U.S.C. 2301(b)(1), (2)). As set forth in Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), the Presidential Memorandum of October 5, 2016 (Promoting Diversity and Inclusion in the National Security Workforce), Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), the National Security Memorandum of February 4, 2021 (Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships), and Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council), the Federal Government is at its best when drawing upon all parts of society, our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges, and all persons should receive equal treatment under the law. This order reaffirms support for, and builds upon, the procedures established by Executive Orders 13583, 13988, and 14020, the Presidential Memorandum on Promoting Diversity and Inclusion in the National Security Workforce, and the National Security Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships. This order establishes that diversity, equity, inclusion, and accessibility are priorities for my Administration and benefit the entire Federal Government and the Nation, and establishes

additional procedures to advance these priorities across the Federal workforce.

Sec. 2. *Definitions.* For purposes of this order, in the context of the Federal workforce:

(a) The term ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the context of the Federal workforce, this term includes individuals who belong to communities of color, such as Black and African American, Hispanic and Latino, Native American, Alaska Native and Indigenous, Asian American, Native Hawaiian and Pacific Islander, Middle Eastern, and North African persons. It also includes individuals who belong to communities that face discrimination based on sex, sexual orientation, and gender identity (including lesbian, gay, bisexual, transgender, queer, gender non-conforming, and non-binary (LGBTQ+) persons); persons who face discrimination based on pregnancy or pregnancy-related conditions; parents; and caregivers. It also includes individuals who belong to communities that face discrimination based on their religion or disability; first-generation professionals or first-generation college students; individuals with limited English proficiency; immigrants; individuals who belong to communities that may face employment barriers based on older age or former incarceration; persons who live in rural areas; veterans and military spouses; and persons otherwise adversely affected by persistent poverty, discrimination, or inequality. Individuals may belong to more than one underserved community and face intersecting barriers.

(b) The term ''diversity'' means the practice of including the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities.

(c) The term ''equity'' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.

(d) The term ''inclusion'' means the recognition, appreciation, and use of the talents and skills of employees of all backgrounds.

(e) The term ''accessibility'' means the design, construction, development, and maintenance of facilities, information and communication technology, programs, and services so that all people, including people with disabilities, can fully and independently use them. Accessibility includes the provision of accommodations and modifications to ensure equal access to employment and participation in activities for people with disabilities, the reduction or elimination of physical and attitudinal barriers to equitable opportunities, a commitment to ensuring that people with disabilities can independently access every outward-facing and internal activity or electronic space, and the pursuit of best practices such as universal design.

(f) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than one considered to be an independent regulatory agency, as defined in 44 U.S.C. 3502(5).

Sec. 3. *Government-Wide Diversity, Equity, Inclusion, and Accessibility Initiative and Strategic Plan.* The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget (OMB)—in coordination with the Chair of the Equal Employment Opportunity Commission (EEOC) and in consultation with the Secretary of Labor, the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs, the Assistant to the President for Domestic Policy (APDP), the Director of the National Economic Council, and the Co-Chairs of the Gender Policy Council—shall:

(a) reestablish a coordinated Government-wide initiative to promote diversity and inclusion in the Federal workforce, expand its scope to specifically include equity and accessibility, and coordinate its implementation with

the provisions of Executive Order 13985 and the National Security Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships;

(b) develop and issue a Government-wide Diversity, Equity, Inclusion, and Accessibility Strategic Plan (Government-wide DEIA Plan) within 150 days of the date of this order that updates the Government-wide plan required by section 2(b)(i) of Executive Order 13583. The Government-wide DEIA Plan shall be updated as appropriate and at a minimum every 4 years. The Government-wide DEIA Plan shall:

(i) define standards of success for diversity, equity, inclusion, and accessibility efforts based on leading policies and practices in the public and private sectors;

(ii) consistent with merit system principles, identify strategies to advance diversity, equity, inclusion, and accessibility, and eliminate, where applicable, barriers to equity, in Federal workforce functions, including: recruitment; hiring; background investigation; promotion; retention; performance evaluations and awards; professional development programs; mentoring programs or sponsorship initiatives; internship, fellowship, and apprenticeship programs; employee resource group and affinity group programs; temporary employee details and assignments; pay and compensation policies; benefits, including health benefits, retirement benefits, and employee services and work-life programs; disciplinary or adverse actions; reasonable accommodations for employees and applicants with disabilities; workplace policies to prevent gender-based violence (including domestic violence, stalking, and sexual violence); reasonable accommodations for employees who are members of religious minorities; and training, learning, and onboarding programs;

(iii) include a comprehensive framework to address workplace harassment, including sexual harassment, which clearly defines the term ''harassment''; outlines policies and practices to prevent, report, respond to, and investigate harassment; promotes mechanisms for employees to report misconduct; encourages bystander intervention; and addresses training, education, and monitoring to create a culture that does not tolerate harassment or other forms of discrimination or retaliation; and

(iv) promote a data-driven approach to increase transparency and accountability, which would build upon, as appropriate, the EEOC's Management Directive 715 reporting process;

(c) establish an updated system for agencies to report regularly on progress in implementing Agency DEIA Strategic Plans (as described in section 4(b) of this order) and in meeting the objectives of this order. New reporting requirements should be aligned with ongoing reporting established by Executive Order 13985 and the National Security Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships. Agency reports on actions taken to meet the objectives of this order shall include measurement of improvements, analysis of the effectiveness of agency programs, and descriptions of lessons learned. The Director of OPM and the Deputy Director for Management of OMB shall support agencies in developing workforce policies and practices designed to advance diversity, equity, inclusion, and accessibility throughout agencies by, for example, providing updated guidance and technical assistance to ensure that agencies consistently improve, evaluate, and learn from their workforce practices;

(d) pursue opportunities to consolidate implementation efforts and reporting requirements related to advancing diversity, equity, inclusion, and accessibility established through related or overlapping statutory mandates, Presidential directives, and regulatory requirements; and

(e) support, coordinate, and encourage agency efforts to conduct research, evaluation, and other evidence-building activities to identify leading practices, and other promising practices, for broadening participation and opportunities for advancement in Federal employment, and to assess and promote the benefits of diversity, equity, inclusion, and accessibility for Federal performance and operations and barriers to achieving these goals. Agencies should use the capabilities of their evaluation officers and chief statistical officers and requirements under the Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115–435, to advance this goal.

Sec. 4. *Responsibilities of Executive Departments and Agencies.* The head of each agency shall make advancing diversity, equity, inclusion, and accessibility a priority component of the agency's management agenda and agency strategic planning. The head of each agency shall implement the Government-wide DEIA Plan prepared pursuant to section 3 of this order and such other related guidance as issued from time to time by the Director of OPM or the Deputy Director for Management of OMB. In addition, the head of each agency shall:

(a) within 100 days of the date of this order, submit to the APDP, the Director of OPM, and the Deputy Director for Management of OMB a preliminary assessment of the current state of diversity, equity, inclusion, and accessibility in the agency's human resources practices and workforce composition. In conducting such assessment, the head of each agency should:

(i) assess whether agency recruitment, hiring, promotion, retention, professional development, performance evaluations, pay and compensation policies, reasonable accommodations access, and training policies and practices are equitable;

(ii) take an evidence-based and data-driven approach to determine whether and to what extent agency practices result in inequitable employment outcomes, and whether agency actions may help to overcome systemic societal and organizational barriers;

(iii) assess the status and effects of existing diversity, equity, inclusion, and accessibility initiatives or programs, and review the amount of institutional resources available to support human resources activities that advance the objectives outlined in section 1 of this order; and

(iv) identify areas where evidence is lacking and propose opportunities to build evidence to advance diversity, equity, inclusion, and accessibility and address those gaps identified;

(b) within 120 days of the issuance of the Government-wide DEIA Plan, and annually thereafter, develop and submit to the APDP, the Director of OPM, and the Deputy Director for Management of OMB an Agency Diversity, Equity, Inclusion, and Accessibility Strategic Plan (Agency DEIA Strategic Plan), as described by section 3(b) of Executive Order 13583 and as modified by this order. Agency DEIA Strategic Plans should identify actions to advance diversity, equity, inclusion, and accessibility in the workforce and remove any potential barriers to diversity, equity, inclusion, and accessibility in the workforce identified in the assessments described in subsection (a) of this section. Agency DEIA Strategic Plans should also include quarterly goals and actions to advance diversity, equity, inclusion, and accessibility initiatives in the agency workforce and in the agency's workplace culture;

(c) on an annual basis, report to the President on the status of the agency's efforts to advance diversity, equity, inclusion, and accessibility within the agency, and the agency's success in implementing the Agency DEIA Strategic Plan. Consistent with guidance issued as part of the Government-wide DEIA Plan, the agency head shall also make available to the general public information on efforts to advance diversity, equity, inclusion, and accessibility in the agency's workforce;

(d) oversee, and provide resources and staffing to support, the implementation of the Agency DEIA Strategic Plan;

(e) enhance diversity, equity, inclusion, and accessibility within the agency, in collaboration with the agency's senior officials and consistent with applicable law and merit system principles;

(f) seek opportunities to establish a position of chief diversity officer or diversity and inclusion officer (as distinct from an equal employment opportunity officer), with sufficient seniority to coordinate efforts to promote diversity, equity, inclusion, and accessibility within the agency;

(g) strongly consider for employment, to the extent permitted by applicable law, qualified applicants of any background who have advanced diversity, equity, inclusion, and accessibility in the workplace; and

(h) in coordination with OMB, seek opportunities to ensure alignment across various organizational performance planning requirements and efforts by integrating the Agency DEIA Strategic Plan and diversity, equity, inclusion, and accessibility goals into broader agency strategic planning efforts described in 5 U.S.C. 306 and the agency performance planning described in 31 U.S.C. 1115.

Sec. 5. *Data Collection.* (a) The head of each agency shall take a data-driven approach to advancing policies that promote diversity, equity, inclusion, and accessibility within the agency's workforce, while protecting the privacy of employees and safeguarding all personally identifiable information and protected health information.

(b) Using Federal standards governing the collection, use, and analysis of demographic data (such as OMB Directive No. 15 (Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity) and OMB Memorandum M–14–06 (Guidance for Providing and Using Administrative Data for Statistical Purposes)), the head of each agency shall measure demographic representation and trends related to diversity in the agency's overall workforce composition, senior workforce composition, employment applications, hiring decisions, promotions, pay and compensation, professional development programs, and attrition rates.

(c) The Director of OPM, the Chair of the EEOC, and the Deputy Director for Management of OMB shall review existing guidance, regulations, policies, and practices (for purposes of this section, ''guidance'') that govern agency collection of demographic data about Federal employees, and consider issuing, modifying, or revoking such guidance in order to expand the collection of such voluntarily self-reported data and more effectively measure the representation of underserved communities in the Federal workforce. In revisiting or issuing any such guidance, the Director of OPM, the Chair of the EEOC, and the Deputy Director for Management of OMB shall take steps to promote the protection of privacy and to safeguard personally identifiable information; facilitate intersectional analysis; and reduce duplicative reporting requirements. In considering whether to revisit or issue such guidance, the Director of OPM, the Chair of the EEOC, and the Deputy Director for Management of OMB shall consult with the Chief Statistician of the United States, the Chair of the Chief Data Officers Council, and the Co-Chairs of the Interagency Working Group on Equitable Data established in section 9 of Executive Order 13985.

(d) The head of each agency shall implement any such revised guidance issued pursuant to subsection (c) of this section to expand the collection of voluntarily self-reported demographic data. The head of each agency shall also take steps to ensure that data collection and analysis practices allow for the capture or presence of multiple attributes and identities to ensure an intersectional analysis.

(e) The head of each agency shall collect and analyze voluntarily self-reported demographic data regarding the membership of advisory committees, commissions, and boards in a manner consistent with applicable law, including privacy and confidentiality protections, and with statistical standards where applicable. For agencies that have external advisory committees, commissions, or boards to which agencies appoint members, agency heads shall

pursue opportunities to increase diversity, equity, inclusion, and accessibility on such committees, commissions, and boards.

Sec. 6. *Promoting Paid Internships.* (a) The Director of OPM and the Deputy Director for Management of OMB shall issue guidance to agencies and the Executive Office of the President with respect to internships and similar programs within the Federal Government, including guidance on how to:

(i) increase the availability of paid internships, fellowships, and apprenticeships, and reduce the practice of hiring interns, fellows, and apprentices who are unpaid;

(ii) ensure that internships, fellowships, and apprenticeships serve as a supplement to, and not a substitute for, the competitive hiring process;

(iii) ensure that internships, fellowships, and apprenticeships serve to develop individuals' talent, knowledge, and skills for careers in government service;

(iv) improve outreach to and recruitment of individuals from underserved communities for internship, fellowship, and apprenticeship programs; and

(v) ensure all interns, fellows, and apprentices with disabilities, including applicants and candidates, have a process for requesting and obtaining reasonable accommodations to support their work in the Federal Government, without regard to whether such individuals are covered by the Rehabilitation Act of 1973, Public Law 93–112.

(b) The head of each agency shall, as part of the annual reporting process described in section 4(c) of this order, measure and report on the agency's progress with respect to the matters described in subsection (a) of this section.

Sec. 7. *Partnerships and Recruitment.* (a) The Director of the Office of Science and Technology Policy (OSTP), the Director of OPM, and the Deputy Director for Management of OMB, in consultation with the Chair of the EEOC, shall coordinate a Government-wide initiative to strengthen partnerships (Partnerships Initiative) to facilitate recruitment for Federal employment opportunities of individuals who are members of underserved communities. To carry out the Partnerships Initiative, the Director of OSTP, the Director of OPM, and the Deputy Director for Management of OMB shall take steps to increase diversity in the Federal employment pipeline by supporting and guiding agencies in building or strengthening partnerships with Historically Black Colleges and Universities, including Historically Black Graduate Institutions; Hispanic-Serving Institutions; Tribal Colleges and Universities; Native American-serving, nontribal institutions; Asian American and Pacific Islander-serving institutions; Tribally controlled colleges and universities; Alaska Native-serving and Native Hawaiian-serving institutions; Predominantly Black Institutions; women's colleges and universities; State vocational rehabilitation agencies that serve individuals with disabilities; disability services offices at institutions of higher education; organizations dedicated to serving veterans; public and non-profit private universities serving a high percentage of economically disadvantaged students or first-generation college or graduate students; community colleges and technical schools; and community-based organizations that are dedicated to serving and working with underserved communities, including return-to-work programs, programs that provide training and support for older adults seeking employment, programs serving formerly incarcerated individuals, centers for independent living, disability rights organizations, and organizations dedicated to serving LGBTQ+ individuals.

(b) The head of each agency shall work with the Director of OSTP, the Director of OPM, and the Deputy Director for Management of OMB to make employment, internship, fellowship, and apprenticeship opportunities available through the Partnerships Initiative, and shall take steps to enhance recruitment efforts through the Partnerships Initiative, as part of the agency's overall recruitment efforts. The head of each agency shall, as part of the reporting processes described in sections 3(c) and 4(c) of this order, measure and report on the agency's progress on carrying out this subsection.

Sec. 8. *Professional Development and Advancement.* (a) The Director of OPM, in consultation with the Deputy Director for Management of OMB, shall issue detailed guidance to agencies for tracking demographic data relating to participation in leadership and professional development programs and development opportunities offered or sponsored by agencies and the rate of the placement of participating employees into senior positions in agencies, in a manner consistent with privacy and confidentiality protections and statistical limitations.

(b) The head of each agency shall implement the guidance issued pursuant to subsection (a) of this section, and shall use demographic data relating to participation in professional development programs to identify ways to improve outreach and recruitment for professional development programs offered or sponsored by the agency, consistent with merit system principles. The head of each agency shall also address any barriers to access to or participation in such programs faced by members of underserved communities.

Sec. 9. *Training and Learning.* (a) The head of each agency shall take steps to implement or increase the availability and use of diversity, equity, inclusion, and accessibility training programs for employees, managers, and leadership. Such training programs should enable Federal employees, managers, and leaders to have knowledge of systemic and institutional racism and bias against underserved communities, be supported in building skillsets to promote respectful and inclusive workplaces and eliminate workplace harassment, have knowledge of agency accessibility practices, and have increased understanding of implicit and unconscious bias.

(b) The Director of OPM and the Chair of the EEOC shall issue guidance and serve as a resource and repository for best practices for agencies to develop or enhance existing diversity, equity, inclusion, and accessibility training programs.

Sec. 10. *Advancing Equity for Employees with Disabilities.* (a) As established in Executive Order 13548 of July 26, 2010 (Increasing Federal Employment of Individuals with Disabilities), the Federal Government must become a model for the employment of individuals with disabilities. Because a workforce that includes people with disabilities is a stronger and more effective workforce, agencies must provide an equitable, accessible, and inclusive environment for employees with disabilities. In order for Federal employees and applicants with disabilities to be assessed on their merits, accessible information technologies must be provided and, where needed, reasonable accommodations must be available that will allow qualified individuals with disabilities to perform the essential functions of their positions and access advancement opportunities. To that end, the relevant agencies shall take the actions set forth in this section.

(b) The Secretary of Labor, the Director of OPM, the Chair of the EEOC, the Deputy Director for Management of OMB, and the Executive Director of the Architectural and Transportation Barriers Compliance Board (Access Board), in consultation with the Administrator of General Services, as appropriate, shall coordinate with agencies to:

(i) support the Federal Government's effort to provide people with disabilities equal employment opportunities and take affirmative actions within the Federal Government to ensure that agencies fully comply with applicable laws, including sections 501, 504, and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 794, 794d);

(ii) assess current practices in using Schedule A hiring authority to employ people with disabilities in the Federal Government, and evaluate opportunities to enhance equity in employment opportunities and financial security for employees with disabilities through different practices or guidance on the use of Schedule A hiring authority; and

(iii) ensure that:

(A) applicants and employees with disabilities have access to information about and understand their rights regarding disability self-identification;

(B) applicants and employees with disabilities have access to information about Schedule A hiring authority for individuals with disabilities;

(C) applicants and employees with disabilities have access to information about, understand their rights to, and may easily request reasonable accommodations, workplace personal assistance services, and accessible information and communication technology;

(D) the process of responding to reasonable accommodation requests is timely and efficient;

(E) the processes and procedures for appealing the denial of a reasonable accommodation request are timely and efficient; and

(F) all information and communication technology and products developed, procured, maintained, or used by Federal agencies are accessible and usable by employees with disabilities consistent with all standards and technical requirements of the Rehabilitation Act of 1973.

(c) To ensure that all Federal office buildings and workplaces are accessible to employees with disabilities, the Administrator of General Services, the Director of OPM, the Deputy Director for Management of OMB, and the Executive Director of the Access Board shall work with Federal agencies to ensure that Federal buildings and leased facilities comply with the accessibility standards of the Architectural Barriers Act of 1968, Public Law 90–480, and related standards.

(d) Beyond existing duties to comply with the Architectural Barriers Act of 1968 and related standards, the head of each agency shall maximize the accessibility of the physical environment of the agency's workplaces, consistent with applicable law and the availability of appropriations, so as to reduce the need for reasonable accommodations, and provide periodic notice to all employees that complaints concerning accessibility barriers in Federal buildings can be filed with the Access Board.

(e) The Secretary of Defense and the Secretary of Labor shall review the use of the Workforce Recruitment Program (WRP) for college students and recent graduates with disabilities and take steps, as appropriate and consistent with applicable law, to expand the WRP. The Secretaries shall submit a report to the APDP describing any steps taken pursuant to this subsection and providing recommendations for any Presidential, administrative, or congressional actions to further expand and strengthen the program and expand job opportunities.

Sec. 11. *Advancing Equity for LGBTQ+ Employees.* (a) As established in Executive Order 13988, it is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation. Each Federal employee should be able to openly express their sexual orientation, gender identity, and gender expression, and have these identities affirmed and respected, without fear of discrimination, retribution, or disadvantage. To that end, the relevant agencies shall take the actions set forth in this section.

(b) The head of each agency shall, in coordination with the Director of OPM, ensure that existing employee support services equitably serve LGBTQ+ employees, including, as appropriate, through the provision of supportive services for transgender and gender non-conforming and non-binary employees who wish to legally, medically, or socially transition.

(c) To ensure that LGBTQ+ employees (including their beneficiaries and their eligible dependents), as well as LGBTQ+ beneficiaries and LGBTQ+ eligible dependents of all Federal employees, have equitable access to healthcare and health insurance coverage:

(i) the Director of OPM shall take actions to promote equitable healthcare coverage and services for enrolled LGBTQ+ employees (including their beneficiaries and their eligible dependents), LGBTQ+ beneficiaries, and LGBTQ+ eligible dependents, including coverage of comprehensive gender-affirming care, through the Federal Employees Health Benefits Program; and

(ii) the Secretary of Defense shall take actions to promote equitable healthcare coverage and services for LGBTQ+ members of the uniformed services (including their beneficiaries and their eligible dependents), LGBTQ+ beneficiaries, and LGBTQ+ eligible dependents, including coverage of comprehensive gender-affirming care, through the Military Health System.

(d) To ensure that LGBTQ+ employees (including their beneficiaries and their eligible dependents), LGBTQ+ beneficiaries, and LGBTQ+ eligible dependents have equitable access to all other insurance coverage and employee benefits, the head of each agency shall, in coordination with the Director of OPM, ensure that the Federal Government equitably provides insurance coverage options and employee benefits for LGBTQ+ employees (including their beneficiaries and their eligible dependents), LGBTQ+ beneficiaries, and LGBTQ+ eligible dependents, including long-term care insurance, sick leave, and life insurance. This includes ensuring that Federal benefits, programs, and services recognize the diversity of family structures.

(e) To ensure that all Federal employees have their respective gender identities accurately reflected and identified in the workplace:

(i) the head of each agency shall, in coordination with the Director of OPM, take steps to foster an inclusive environment where all employees' gender identities are respected, such as by including, where applicable, non-binary gender marker and pronoun options in Federal hiring, employment, and benefits enrollment forms;

(ii) the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology, shall update, as appropriate and in consultation with any other relevant agencies, any relevant Federal employee identification standards to ensure that Federal systems for issuing employee identity credentials account for the needs of transgender and gender non-conforming and non-binary employees. The Secretary, in coordination with any other relevant agencies, shall take steps to reduce any unnecessary administrative burden for transgender and gender non-conforming and non-binary employees to update their names, photographs, gender markers, and pronouns on federally issued employee identity credentials, where applicable; and

(iii) the head of each agency shall, in consultation with the Director of OPM, update Federal employee identification standards to include non-binary gender markers where gender markers are required in employee systems and profiles, and shall take steps to reduce any unnecessary administrative burden for transgender and gender non-conforming and non-binary employees to update their gender markers and pronouns in employee systems and profiles, where applicable.

(f) To support all Federal employees in accessing workplace facilities aligned with their gender identities, the head of each agency shall explore opportunities to expand the availability of gender non-binary facilities and restrooms in federally owned and leased workplaces.

(g) The Director of National Intelligence, in consultation with the Director of OPM and the heads of agencies, shall take steps to mitigate any barriers in security clearance and background investigation processes for LGBTQ+ employees and applicants, in particular transgender and gender non-conforming and non-binary employees and applicants.

(h) The Director of OPM shall review and update, if necessary, OPM's 2017 Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace.

Sec. 12. *Pay Equity.* Many workers continue to face racial and gender pay gaps, and pay inequity disproportionately affects women of color. Accordingly:

(a) The Director of OPM shall review Government-wide regulations and guidance and, as appropriate and consistent with applicable law, in order

to address any pay inequities and advance equal pay, consider whether to:

(i) work with agencies to review, and revise if necessary, job classification and compensation practices; and

(ii) prohibit agencies from seeking or relying on an applicant's salary history during the hiring process to set pay or when setting pay for a current employee, unless salary history is raised without prompting by the applicant or employee.

(b) The head of each agency that administers a pay system other than one established under title 5 of the United States Code shall review the agency's regulations and guidance and, as appropriate and consistent with applicable law, revise compensation practices in order to address any pay inequities and advance equal pay. Agencies should report to OPM any revisions to compensation practices made to implement this direction.

(c) The Director of OPM shall submit a report to the President describing any changes to Government-wide and agency-specific compensation practices recommended and adopted pursuant to this order.

Sec. 13. *Expanding Employment Opportunities for Formerly Incarcerated Individuals.* To support equal opportunity for formerly incarcerated individuals who have served their terms of incarceration and to support their ability to fully reintegrate into society and make meaningful contributions to our Nation, the Director of OPM shall evaluate the existence of any barriers that formerly incarcerated individuals face in accessing Federal employment opportunities and any effect of those barriers on the civil service. As appropriate, the Director of OPM shall also evaluate possible actions to expand Federal employment opportunities for formerly incarcerated individuals, including the establishment of a new hiring authority, and shall submit a report to the President containing the results of OPM's evaluation within 120 days of the date of this order.

Sec. 14. *Delegation of Authority.* The Director of OPM is hereby delegated the authority of the President under sections 3301 and 3302 of title 5, United States Code, for purposes of carrying out the Director's responsibilities under this order.

Sec. 15. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

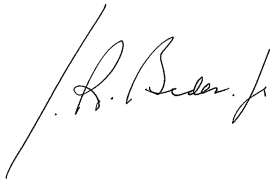
(i) authority granted by law to an executive department or agency, or the head thereof; or

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

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

(c) Independent agencies are strongly encouraged to comply with the provisions of this order.

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



THE WHITE HOUSE,
June 25, 2021.

[FR Doc. 2021–14127
Filed 6–29–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

Federal Register
Vol. 86, No. 123
Wednesday, June 30, 2021

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2021–0012]

RIN 0584–AE87

Supplemental Nutrition Assistance Program: Rescission of Requirements for Able-Bodied Adults Without Dependents: Notice of Vacatur

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations the final rule published on December 5, 2019, titled ''Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents.'' This action responds to a decision of the U.S. District Court for the District of Columbia that vacated the rule.

DATES: The action is effective June 30, 2021. However, the court order had legal effect immediately upon its filing on October 18, 2020.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Arpan Dasgupta, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 703–305–1623, *SNAPCPBrules@usda.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2019, the Food and Nutrition Service (FNS) published a final rule titled ''Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents'' (84 FR 66782) (hereinafter ''2019 Final Rule''). The 2019 Final Rule revised conditions under which USDA would waive, when requested by States, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the 2019 Final Rule limited carryover of ABAWD discretionary exemptions.

In the October 18, 2020, decision in *District of Columbia, et al.,* v. *United States Department of Agriculture, et al.,* No. 20–cv–00119–BAH (D.D.C. 2020), the U.S. District Court for the District of Columbia vacated the 2019 Final Rule.

This rule is being promulgated to revert the language of the regulations amended by the 2019 Final Rule to that which existed prior to the 2019 Final Rule. This rule is not subject to the requirement to provide notice and an opportunity for public comments because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is ''impracticable, unnecessary, or contrary to the public interest.'' Id. The 2019 Final Rule has already been vacated by a court of law. This rule is simply an administrative step that reverts the language of the relevant regulations to reflect the court's order vacating the 2019 Final Rule. Additionally, because this rule implements a court order already in effect, FNS has good cause to waive the 30-day effective date under 5 U.S.C. 553(d).

List of Subjects in 7 CFR Part 273

Able-bodied adults without dependents, Administrative practice and procedures, Employment, Indian Reservations, Time limit, U.S. Territories, Waivers, Work Requirements.

Accordingly 7 CFR part 273 is amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.24, revise paragraphs (f) and (h) to read as follows:

§ 273.24 Time limit for able-bodied adults.

* * * * *

(f) *Waivers*—(1) *General.* On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data.* The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A non-exhaustive list of the kinds of data a State agency may submit follows:

(i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or

(ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: Is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is described in an academic study or other publications as an area where there are lack of jobs; has a 24-month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

(3) *Waivers that are readily approvable.* FNS will approve State agency waivers where FNS confirms:

(i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;

(ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or

(iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20

percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) *Effective date of certain waivers.* In areas for which the State certifies that data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) *Duration of waiver.* In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

(6) *Areas covered by waivers.* States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

* * * * *

(h) *Adjustments.* FNS will make adjustments as follows:

(1) *Caseload adjustments.* FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(2) of this section during a fiscal year if the number of SNAP recipients in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During each fiscal year, FNS will adjust the number of exemptions allocated to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year.

(i) If the State agency does not use all of its exemptions by the end of the fiscal year, FNS will increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance.

(ii) If the State agency exceeds its exemptions by the end of the fiscal year, FNS will reduce the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the corresponding number.

* * * * *

Cynthia Long,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–14045 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 407 and 457

[Docket ID FCIC–21–0005]

RIN 0563–AC74

Area Risk Protection Insurance Regulations and Common Crop Insurance Policy Basic Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Area Risk Protection Insurance (ARPI) Regulations and Common Crop Insurance Policy (CCIP), Basic Provisions. The intended effect of this action is to improve unit provisions and organic farming practice provisions, revise the definition of veteran farmer or rancher, and clarify provisions. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after June 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years.

DATES:

Effective date: This final rule is effective June 30, 2021.

Comment date: We will consider comments that we receive by the close of business August 30, 2021. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–21–0005. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency (RMA), US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. In your comment, specify docket ID FCIC–21–0005.

Comments will be available for viewing online at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. The Risk Management Agency (RMA) administers the FCIC regulations. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the ARPI Basic Provisions (7 CFR 407) and the CCIP Basic Provisions (7 CFR 457.8). The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after June 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years. These changes resulted from public comments received on two final rules with request for comment.

Comments Related to 85 FR 38749–38760 Published June 29, 2020

The first final rule with request for comment was published in the **Federal Register** on June 29, 2020, (85 FR 38749–38760) amending the ARPI Regulations; CCIP Basic Provisions; and the Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions (Coarse Grains Crop Provisions). Comments were received from five commenters. Three comments were from individuals, whose comments were unrelated to the rule. One comment was from an insurance company. The last comment was from a trade association. FCIC addressed editorial comments in the final rule with request for comment published in the **Federal Register** on November 30, 2020, (85 FR 76420–76428). The public comments and FCIC responses regarding the Coarse Grains Crop Provisions will be addressed in a future final rule. The non-editorial public comments received regarding the June 29, 2020, final rule with request for comment related to the ARPI Basic Provisions and CCIP Basic Provisions and FCIC's responses to the comments are as follows:

Comment: In the definition of ''second crop'' a commenter questioned whether the 60 percent actual production history (APH) penalty to the first insured crop described in section 3(i) would be applicable when a cover crop or volunteer crop is hayed, grazed, silaged, etc.

Response: No changes were made to the APH penalty within the June 29, 2020 rule; therefore, no additional changes will be made.

Comment: A commenter asked for the term ''otherwise harvested'' to be defined as it is a key term used in first and second crop provisions and determinations in prevented planting situations. Currently, the term is defined in the Prevented Planting Standards Handbook (PPSH), but this definition has changed in the past and is subject to change again unless codified in the Rule.

Response: FCIC does not agree and will not add the definition to the CCIP Basic Provisions. The PPSH defines ''otherwise harvested'' as ''harvested for reasons other than for haying, grazing, or cutting for silage, haylage, or baleage. This could be for grain, seed, etc.'' No change will be made.

Comment: A commenter suggested clarifying the double cropping provisions and the example in section 15(h)(7) as it is unclear as to whether there is a precedence based on which of the two crops under different plans of insurance is the first insured crop.

Response: FCIC understands the confusion when considering two crops under different plans of insurance and needing to determine which crop is the first insured crop. As explained in the June 29, 2020, final rule, the change to section 15(h)(7) was intended to address the provisions that each insured crop is required to follow to determine if the double cropping requirements have been met. Given the nature of the issues that can come up if the two crops are under different plans, FCIC is working with stakeholders to determine what change is appropriate. Any related change to the regulation will be in a future rulemaking.

Comment: A commenter had concerns regarding the phrase ''than determined in 15(i)'' in section 15(i)(3). As item 15(i)(3) is situated within 15(i), it would be clearer if the specific item(s) of this subsection was referenced.

Response: FCIC agrees and has clarified this section is referencing the introductory paragraph of section 15(i).

Comment: Two commenters recommended removing the requirement of a notice of loss to be filed in the quality loss provisions contained in section 36(a)(3).

Response: FCIC does not agree with the recommended change to remove the notice of loss provisions. The Quality Loss Option allows insureds to replace post-quality adjustment production amounts with pre-quality adjustment production amounts in their APH database for a given crop year. Pre-quality adjustment and post-quality adjustment production amounts are entry items on the production worksheet that is completed by the AIP during the loss adjustment process. To maintain program integrity and actuarial soundness, it is pertinent to capture consistent production amounts across various crops and diverse farming operations. If there is not a notice of loss filed when there is a quality loss, the AIP will not be able to capture the appropriate production amounts on the production worksheet that are required to elect the quality loss option. Without a notice of loss provision in place, AIPs will be inconsistent when determining acceptable production records that may qualify for the quality loss option, resulting in varying AIP determinations and disparate treatment amongst insureds.

When there is a payable loss, AIPs will submit the production report entries to FCIC using the Policy Acceptance Storage System (PASS). In a situation where there is a quality loss, but not a payable loss, AIPs will have the completed production worksheet in their internal loss files to get the proper production amounts required to elect the quality loss option. No change will be made.

Comment: A commenter stated the requirement to give the AIP notice of loss to allow replacement of post-quality actual yields for the previous crop year is currently only stated within section 36. Section 14 contains the requirements regarding notices a producer must provide to their AIP in the event of a loss. As this is implied to be a function of the loss process, the provisions should be in section 14 as well, so the producer is provided proper communication of this requirement.

Response: FCIC agrees and is adding a new section 14(b)(6) to state the producer must give the AIP a notice of loss due to an insurable cause in the year of the crop loss to replace post-quality actual yields with actual yields prior to quality loss adjustment.

Comments Related to 85 FR 76420–76428 Published November 30, 2020

The second final rule with request for comment was published in the **Federal Register** on November 30, 2020, (85 FR 76420–76428) amending the Area Risk Protection Insurance (ARPI) Regulations; Common Crop Insurance Policy (CCIP), Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions (Sunflower Seed Crop Provisions); and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions (Dry Pea Crop Provisions). Comments were received from three commenters. One from an individual who simply stated they agreed with the rule, one from a trade association, and one from an individual. The public comments received regarding the November 30, 2020, final rule with request for comment and FCIC's responses to the comments are as follows:

Comment: A commenter noted section 15(h)(7) deals with situations where a ''planted'' second crop follows a first insured crop. As such, it would not be applicable to the provisions of section 17(f)(4) in situations where both the 1st insured and 2nd crops were prevented from planting nor where a 1st insured crop was planted and a 2nd crop was prevented. It would therefore appear appropriate to add the text of section 15(h)(7) to section 17(f)(4).

Response: As stated above, FCIC is working with stakeholders to determine what change is appropriate in section 15(h)(7) and plans to make corresponding changes in section 17(f)(4). Any related change to the

regulation will be in a future rulemaking.

Comment: A commenter noted in section 17(e)(2) that an ''uninsured second crop'' would include: (1) A second crop planted after the Late Planting Period (LPP) or the Final Plant Date (if a LPP was not applicable); and (2) A second crop which an insured elected not to insure under the first and second crop provisions in order to preserve a 100% indemnity for the 1st insured crop. The commenter had program vulnerability concerns and suggested a clarification or that the provision be removed. The situation is rare, and the proposed remedy is unnecessary and has added significant complexity to the provision, along with increasing the likelihood the provisions will apply to situations other than those intended. This is due to the provision applying to every ''uninsured 2nd crop'' following a failed first insured crop.

Response: This change was made to address the concern that in this situation the same physical acres are subtracted twice from the overall prevented planting eligible acres. This occurrence is extremely rare, but in years where widespread prevented planting is prevalent, such as in 2019, the provision provides important coverage for producers. No change will be made.

Comment: A commenter recommended adding the phrase ''practice'' in section 17(f)(1)(iv) like section 17(f)(1)(i).

Response: FCIC will revise section 17(f)(1)(iv) for consistency.

Comment: A commenter suggested clarifying in section 17(f)(1) if proof of the rotation alone is sufficient or whether both proof of the rotation and inputs are required regarding the phrase ''or that acreage was part of a crop rotation.''

Response: FCIC believes the wording is clear regarding the phrase ''or that acreage was part of a crop rotation.'' The word ''or'' being used at the beginning of this phrase means that proof of rotation alone is sufficient. No change will be made.

Comment: Regarding section 17(f)(8), a commenter requested a system be in place to support the increase in seeking and verifying this information for policies that have transferred between agents and AIPs.

Response: FCIC encourages producers to work with their agent in providing documentation. AIPs have access to data that can assist with verifying insurance history. There are other methods such as satellite imagery that may be beneficial when proving if a crop was planted and harvested.

Comment: A commenter disagreed with the change in section 17(f)(8) and stated it negatively impacted farmers in California by eliminating prevented planting payments to farmers who leased land that is fallowed, unless the fallowed land is farmed the next two years, regardless of water availability and other challenges inherent in production agriculture. The land will be eligible only if the entire leased acreage is in production in at least one year out of four. A commenter suggested to phase in the new ''1 in 4'' requirement over 4 years to allow farmers who use prevented planting coverage sufficient time to modify existing farming practices as needed (*e.g.,* install irrigation systems, acquire water, and secure related financing).

Response: The ''1 in 4'' requirement applies specifically to physical acreage (land); not the producer, the lease, or the farming operation. No change will be made.

In addition to the changes described above, FCIC has made the following changes:

ARPI Basic Provisions and CCIP Basic Provisions

For both ARPI Basic Provisions (7 CFR 407) and CCIP Basic Provisions (7 CFR 457.8), FCIC is revising the definition of ''veteran farmer or rancher'' in section 1 to allow the spouse's veteran status not to impact whether a person is considered a veteran farmer or rancher. The provisions define ''person'' as an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. The word ''person'' does not include the United States Government or any agency thereof. The provisions state all entity substantial beneficial interest holders must qualify individually as a veteran. The change to the definition of ''veteran farmer or rancher'' will clarify the exception that allows a legal entity, comprised only of the veteran and their spouse, to qualify as a veteran farmer or rancher when a qualifying veteran has a non-veteran spouse. For example, a veteran starts farming and forms a corporation with their non-veteran spouse. The veteran meets the veteran farmer or rancher requirements, but the spouse is a non-veteran. With this change, their corporation would qualify as a veteran farmer or rancher.

ARPI Basic Provisions

Other changes applicable only to the ARPI Basic Provisions (7 CFR 407) are:

Section 1—FCIC is revising the definition of ''acreage reporting date'' to replace the term ''actuarial documents'' with ''Special Provisions.'' This change is being made to be consistent with the CCIP Basic Provisions.

FCIC is removing the definition of ''NASS'' (National Agricultural Statistics Service) for greater transparency regarding the data used to determine area yield guarantees and indemnities, because FCIC no longer uses NASS data but instead RMA data. In addition to removing the definition, FCIC is removing any references to NASS data throughout the provisions. Therefore, FCIC is removing paragraph 15(e) and redesignating paragraphs (f) and (g) as (e) and (f).

CCIP Basic Provisions

Other changes applicable only to the CCIP Basic Provisions (7 CFR 457.8) are:

Section 34—FCIC is adding a new section 34(a)(4)(ix) to allow Crop Provisions to have enterprise units (EU) by practice, type, or other insurance features. In 2018, FCIC developed the multi-county enterprise unit (MCEU) endorsement. For the 2020 crop year, EUs by cropping practice for following another crop and not following another crop (FAC/NFAC) were made available in select grain sorghum and soybean counties. For the 2021 crop year, when a producer elects and fails to qualify for EUs on both irrigation or cropping practices they have an additional option to keep EU on practice that meets EU qualifications and have basic or optional units on the other practice that does not meet EU qualifications. For example, a producer elects EU for both FAC and NFAC cropping practices, but does not qualify for EU for both practices. If discovery for not qualifying is on or before the acreage reporting date, the producer has an additional option to elect an EU on one cropping practice and basic or optional units on the other cropping practice. FCIC continues to receive requests from stakeholders to add the EU structure for a crop or allow the EU structure on a different basis than currently allowed. FCIC continues to review these requests individually to determine the feasibility of implementing the EU request. With this change, FCIC will have the flexibility to make these subsequent EU changes in individual Crop Provisions.

Section 37—FCIC is revising sections 37(c) and (e) to allow a producer to report acreage as certified organic, or as acreage in transition to organic, when the producer certifies that they have requested, in writing, a written certification or other written documentation from a certifying agent

on or before the acreage reporting date (ARD). The producer may notify their insurance agent by phone, email, text, or other electronic communication method. Following the notification, the organic plan or certificate must be in place prior to coverage ending in accordance with the policy. The producer's acreage will remain insured under the practice reported on the acreage reporting date unless they have a loss. If the producer has a loss and does not have a certificate or plan in place at the time the claim is finalized, then the acreage will be insured under the practice for which it qualifies.

Currently, policy requires producers with certified organic or acreage in transition to organic to have written certification or written documentation from a certifying agent by the ARD which shows an organic plan is in effect for the acreage. Procedures allow that a certificate and plan must be in place each year to qualify for organic or organic transitional practices. A previous certificate or plan may be used to qualify for insurance until a plan can be updated by a certifying agent.

The organic industry presented concerns to FCIC, Farm Service Agency, and Agricultural Marketing Service regarding producers' inability to have organic plans and certificates ''in effect'' by their crop insurance policy ARD due to COVID restrictions limiting travel and face to face interaction. To mitigate these concerns and provide flexibility, FCIC provided relief through Manager's Bulletins: MGR–20–0013 and MGR–20–0026 and is incorporating the Manager's Bulletins in this rule. With this change, FCIC recognizes the on-going challenges that the organic producers face and provides flexibility, while also ensuring the Federal crop insurance program continues to serve as a vital risk management tool and organic regulations remain in effect.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay to the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective June 30, 2021. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to

ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, 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 or 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 (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). 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 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 mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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List of Subjects

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR parts 407 and 457, effective for the 2022 and succeeding crop years for crops with a contract change date on or after June 30, 2021, and for the 2023 and succeeding crop years for all other crops, as follows:

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 407.9 by:
■ a. In section 1:
■ i. Revise the definition of ''acreage reporting date'';
■ ii. Remove the definition of ''NASS''; and
■ iii. Revise the definition of ''veteran farmer or rancher;''
■ b. In section 15:
■ i. Remove paragraph (e);
■ ii. Redesignate paragraphs (f) and (g) as paragraphs (e) and (f); and
■ iii. Revise redesignated paragraph (f).

The revisions read as follows:

§ 407.9 Area risk protection insurance policy.

* * * * *

1. Definitions

* * * * *

Acreage reporting date. The date contained in the Special Provisions by which you are required to submit your acreage report.

* * * * *

Veteran farmer or rancher.

(1) An individual who has served active duty in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the reserve components; was discharged or released under conditions other than dishonorable; and:

(i) Has not operated a farm or ranch;

(ii) Has operated a farm or ranch for not more than 5 years; or

(iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition; except in cases in which there is only a married couple, then a veteran and non-veteran spouse are considered a veteran farmer or rancher.

* * * * *

15. Yields

* * * * *

(f) Yields used under this insurance program for a crop may be based on crop insurance data, other USDA data, or other data sources, if elected by FCIC.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 3. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 4. Amend § 457.8 as follows:
■ a. In section 1 of the ''Common Crop Insurance Policy,'' revise the definition of ''veteran farmer or rancher'';
■ b. In section 14 of the ''Common Crop Insurance Policy,'' add paragraph (b)(6);
■ c. In section 15 of the ''Common Crop Insurance Policy,'' in paragraph (i)(3), add the phrase ''the introductory paragraph of section'' after the phrase ''than determined in'';

■ d. In section 17 of the ''Common Crop Insurance Policy,'' revise paragraph (f)(1)(iv);
■ e. In section 34 of the ''Common Crop Insurance Policy,'' add paragraph (a)(4)(ix); and
■ f. In section 37 of the ''Common Crop Insurance Policy,'' revise paragraphs (c) and (e).

The additions and revisions read as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions

* * * * *

Veteran farmer or rancher. (1) An individual who has served active duty in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the reserve components; was discharged or released under conditions other than dishonorable; and:

(i) Has not operated a farm or ranch;

(ii) Has operated a farm or ranch for not more than 5 years; or

(iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition; except in cases in which there is only a married couple, then a veteran and non-veteran spouse are considered a veteran farmer or rancher.

* * * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage

* * * * *

(b) * * *

(6) You must give us notice in accordance with section 36(a)(3) to replace post-quality actual yields for previous crop years.

* * * * *

17. Prevented Planting

* * * * *

(f) * * *

(1) * * *

(iv) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you provide proof that you intended to plant another crop, crop type, or follow both practices on the acreage (including, but not limited to inputs purchased, applied or available to apply, or that acreage was part of a crop rotation).

* * * * *

34. Units

(a) * * *

(4) * * *

(ix) You may elect enterprise units as allowed by the Crop Provisions if provided in the actuarial documents.

* * * * *

37. Organic Farming Practices

* * * * *

(c) You must provide the following organic records, as applicable:

(1) By the acreage reporting date, except as allowed by section 37(c)(2), you must have:

(i) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement).

(ii) For transitional acreage, a certificate as described in section 37(c)(1)(i), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage.

(iii) For certified organic and transitional acreage, records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

(2) If you do not meet the requirements in section 37(c)(1)(i) or (ii), you must provide documentation that you have requested, in writing, your written certification or organic plan by the acreage reporting date.

(i) Your certificate or plan must be in effect prior to the earlier of the end of the insurance period or when coverage ends as provided in section 11(b).

(ii) Your acreage will remain insured under the practice you reported on the acreage reporting date unless you have a loss. If you have a loss and do not have a certificate or plan in place at the time the claim is finalized in accordance with the applicable policy provisions, then your acreage will be insured under the practice for which it qualifies.

* * * * *

(e) If any acreage qualifies as certified organic or transitional acreage on the date you report such acreage, and such certification is subsequently revoked or suspended by the certifying agent, or the certifying agent does not consider the acreage as transitional acreage for the remainder of the crop year, that acreage will remain insured under the reported practice for which it qualified at the time the acreage was reported. Any loss due to failure to comply with organic standards will be considered an uninsured cause of loss.

* * * * *

Richard H. Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–13939 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–08–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

[NCUA 2020–0114]

RIN 3133–AF30

Capitalization of Interest in Connection With Loan Workouts and Modifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications. The final rule also establishes documentation requirements to help ensure that the addition of unpaid interest to the principal balance of a mortgage loan does not hinder the borrower's ability to become current on the loan. The Board has also taken the opportunity afforded by the rulemaking to make several technical changes to the regulations to improve their clarity and update certain references. The final rule follows publication of the December 4, 2020, proposed rule and takes into consideration the public comments on the proposed rule. After careful consideration, the Board has decided to adopt the proposed rule without change.

DATES: Effective July 30, 2021.

FOR FURTHER INFORMATION CONTACT: *Policy:* Alison L. Clark, Chief Accountant, and Timothy C. Segerson, Deputy Director, Office of Examinations and Insurance, at (703) 518–6360; *Legal:* Ariel Pereira and Gira Bose, Senior Staff Attorneys, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background: The Board's December 4, 2020, Proposed Rule
II. Legal Authority
III. Discussion of Public Comments Received on the December 4, 2020, Proposed Rule
IV. This Final Rule

V. Regulatory Procedures

I. Background: The Board's December 4, 2020, Proposed Rule

At its November 19, 2020, meeting, the Board proposed amending the NCUA's regulations to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications. The proposed rule was subsequently published in the **Federal Register** on December 4, 2020.[1] The prohibition is codified in Appendix B to Part 741 (hereinafter referred to as ''Appendix B'') of the NCUA's regulations.

As explained in the preamble to the December 4, 2020, proposed rule, the NCUA established the prohibition on authorizing additional advances to finance unpaid interest in a May 3, 2012, final rule.[2] The May 2012 final rule established loan workout and monitoring requirements applicable to all federally insured credit unions (FICUs). Among other amendments, the final rule required that FICUs have written policies addressing loan workouts and nonaccrual practices. Under that final rule, such policies were required to prohibit a FICU from authorizing additional advances to a borrower to finance unpaid interest (capitalization of interest) and credit union fees and commissions. However, the final rule permitted FICUs to make such advances to cover third-party fees, such as force-placed insurance and property taxes.

The Board was prompted to reconsider these prohibitions because of the challenges and economic disruption caused by the COVID–19 pandemic. For borrowers experiencing financial hardship, a prudently underwritten and appropriately managed loan modification, consistent with safe and sound lending practices, is generally in the long-term best interest of both the borrower and the FICU. Such modifications may allow a borrower to remain in their home or a commercial borrower to maintain operations and can help FICUs minimize the costs of default and foreclosures. Thus, the prohibition in the May 2012 final rule on the capitalization of interest might be overly burdensome and, in some cases, possibly hamper a FICU's good-faith efforts to engage in loan workouts with borrowers facing financial difficulty.

Other considerations, such as parity with the treatment of interest capitalization by banks, also factored in the Board's determination. Banks are not subject to the same prohibition on capitalizing interest (the banking agencies have not adopted an absolute standard equivalent to the rule that the Board codified in 2012). The banking agencies have addressed capitalization of interest through guidance, letters, and Call Report instructions, none of which strictly prohibit the capitalization of interest when modifying loans. Further, the government-sponsored enterprises (GSEs)—Fannie Mae and Freddie Mac—have had a long-standing policy supporting the ability of servicers to capitalize interest and fees as part of a prudent modification program.

Accordingly, the Board issued the December 4, 2020, proposed rule to make capitalization of interest a permissible option indefinitely. The proposed rule applies to workouts of all types of member loans, including commercial and business loans. In proposing the change, the Board underscored that Appendix B currently requires several safety and soundness and consumer protection-oriented measures that would also apply to capitalizing interest. The Board also proposed to add several consumer protection and safety and soundness requirements to Appendix B for FICUs when they modify loans with an interest capitalization component.

The proposed rule also makes several technical changes to Appendix B to improve its clarity and update certain references. Interested readers should refer to the preamble of the December 4, 2020, proposed rule for additional background and information on the proposed regulatory changes.

II. Legal Authority

The Board issues this final rule pursuant to its authority under the Federal Credit Union (FCU) Act.[3] Under the FCU Act, the NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the Federal supervisory authority for FICUs.[4] The FCU Act grants the NCUA a broad mandate to issue regulations that govern both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[5] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[6] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the National Credit Union Share Insurance Fund remain safe and sound.

III. Discussion of Public Comments Received on the December 4, 2020, Proposed Rule

A. The Comments, Generally

The proposed rule provided for a 60-day public comment period, which closed on February 2, 2021. The NCUA received 26 comments in response to the proposed rule. These came from FICUs, individuals, and credit union leagues and trade associations. In general, the commenters expressed support for lifting the prohibition on interest capitalization as a helpful tool to assist financially distressed borrowers. The main reasons given by commenters for supporting the proposed rule were parity with banks, which are not prohibited from capitalizing interest; parity for FICU members whose loans are held in portfolio by the originating FICU and who, unlike members whose loans are sold on the secondary market, cannot currently take advantage of interest capitalization; and flexibility for distressed borrowers for whom interest capitalization may be the only realistic solution for avoiding foreclosure.

While noting the Board's interest in receiving public comment on all aspects of the interest capitalization issue, the preamble to the proposed rule also provided six questions requesting input on specific issues related to the proposed rule. This section of the preamble summarizes the issues raised by the public commenters and provides the Board's responses to these issues. This comment summary is organized in two sections. The first addresses the comments received in response to the questions posed in the preamble. The second section summarizes the other issues raised by the commenters. As previously noted, and discussed more fully in the responses below, after careful review of the comments, the Board has elected to adopt the proposed regulatory amendments without change. However, the Board is clarifying below its supervisory position with regard to FICUs that may already have begun offering interest capitalization prior to the finalization of this rule.

B. Comments on Specific Provisions

Responses to NCUA Questions 1 to 4. The NCUA asked FICUs to lay out their

[1] 85 FR 78269 (Dec. 4, 2020) (*https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-25988.pdf*).

[2] 77 FR 31993 (May 31, 2012) (*https://www.govinfo.gov/content/pkg/FR-2012-05-31/pdf/2012-13214.pdf*).

[3] 12 U.S.C. 1751 *et al.*

[4] 12 U.S.C. 1752–1775.

[5] 12 U.S.C. 1766(a).

[6] 12 U.S.C. 1789(a)(11).

experience or level of use with interest capitalization before the agency prohibited the practice in 2012. Of those that answered the question, one FICU stated that it did not allow the use of this mortgage modification tool. Others stated that it was beneficial, including one who said it was frequently used, particularly during the last financial crisis. One FICU stated that its program enjoyed an 85 percent success rate from 2010 to 2012 and included approximately 170 workouts representing about $22 million in mortgage loans that were saved from foreclosure.

The NCUA also asked how likely FICUs would be to use interest capitalization if the prohibition is lifted. All FICUs that answered the question stated that they would use the tool to varying degrees largely dependent on its suitability for individual borrowers.

The NCUA asked what risks might arise either to the FICU or the borrower in a mortgage modification that includes capitalization of interest. Of those that answered the question, one commenter stated that the risks would include a lack of understanding on the member's part of what interest capitalization means for their loan and there could be risk to the FICU if interest is capitalized on loans that already have high loan-to-value ratios. This commenter noted, however, that such risks could be effectively mitigated by the FICU providing clear communication to its members and reviewing its member's ability to repay the modified loan. Some stated that the consumer protection guardrails in the proposed rule would help mitigate any consumer protection risks. Others noted that the risk of not permitting interest capitalization needed to be weighed against any potential risk in permitting the practice. Some commenters noted that they evaluate each member's situation individually and did not anticipate any risks to the FICU or the member.

The NCUA asked how the limitations imposed by the GSEs on the use of interest capitalization would impact a credit union's use of this mortgage modification tool. Those that answered this question stated that the impact would be minimal. One FICU stated that they already underwrite to Fannie Mae guidelines and are aware of the limitations. One commenter stated that loans that feature interest capitalization would not be loans that it would sell on the secondary market. Another stated that its recent sales to the GSEs were all newly originated and that a loan requesting forbearance between origination date and sale date is expected to occur so infrequently that it would be of no concern.

NCUA Response. The NCUA appreciates the thoughtful comments submitted in response to the first four questions posed in the preamble to the December 4, 2020, proposed rule. The comments indicate that interest capitalization was used prior to the 2012 change in policy, and that it will likely again be used following the issuance of this final rule. Accordingly, the Board continues to believe that the capitalization of interest, when used prudently, can be a helpful loan modification tool in the best interests of members and FICUs. In response to the commenters concerned the change may raise risks for consumers, the Board reiterates that the consumer protection measures that currently apply to FICU loan workout policies also apply to loan workouts involving the capitalization of interest. In addition, as provided in the proposed rule, the Board is adding several consumer protection requirements that will apply to loan workouts involving the capitalization of interest.

Comment: Consumer Protection Guardrails. NCUA question 5 asked commenters to provide their feedback on the consumer protection guardrails and documentation requirements in the proposed rule. The proposed rule states that capitalization of interest is not an appropriate solution in all cases and, as Appendix B currently provides, a FICU should consider and balance the best interests of the FICU and the borrower. The Board proposed adding several consumer protection and safety and soundness requirements to the Appendix for FICUs that capitalize interest in connection with loan workouts. At a minimum, if a FICU's loan modification policy permits capitalization of unpaid interest, under the proposed rule, the policy would have to require documentation that reflects a borrower's ability to repay, a borrower's source(s) of repayment, and when appropriate, compliance with the FICU's valuation policies at the time the modification is approved.

Of the commenters that referenced the documentation requirements, 17 stated that they support them. Some of these commenters, however, asked for clarification or suggested changes to certain aspects of the requirements. For example, one of the commenters suggested additional consumer guardrails to prohibit changes in loan terms such as interest rates or punitive fees established in the existing loan contract. Another commenter asked for clarification as to whether the proposed consumer protections would apply to all loan types, including business and commercial, or just consumer loans. Another commented that NCUA should strive for balance so that administrative burdens do not outweigh member benefits and noted that temporary income impairment may prevent a member from providing the documentary proof that examiners traditionally expect. Finally, one of these commenters added that NCUA examiners should refrain from adding documentation requirements beyond those in the proposed rule and, absent a safety and soundness issue, should also defer to the judgment of the FICU and its understanding of a borrower's ability to repay the loan.

Four commenters stated that existing consumer protection measures are sufficient to protect and inform members, including two whose specific comments are set forth below. One commenter stated that the requirement to document a borrower's ability to repay would be problematic with COVID-related loans due to the enormous volume of members requesting COVID-related assistance. For example, if the FICU is capitalizing interest it would be increasing the current loan amount to avoid delays and unnecessary paperwork. Furthermore, if the new loan amount does not exceed 110 percent of the original loan amount then the FICU does not need to verify income or request a new appraisal. In these situations, a certification from the borrower that his/her income has not decreased from the time the loan was originally approved should suffice. Therefore, the NCUA should waive the ''ability-to-repay'' documentation requirements in these instances.

The second commenter stated that the revisions required of a FICU's modification policy are so burdensome that they will deter many FICUs from offering interest capitalization because the requirements effectively require FICUs to complete a full underwriting of a modified loan multiple times. The commenter stated that the NCUA's existing rule already requires credit unions to make loan workout decisions based on a borrower's renewed willingness and ability to repay the loan and if a loan workout is granted then the credit union must document the determination that the borrower is willing and able to repay the loan. This existing requirement thus fulfils the ability to repay and documentation requirements while recognizing the need for flexibility.

The commenter stated that the existing rule also enables FICUs to respond to large-scale, short-term financial challenges arising, for

example, from natural disasters such as hurricanes, temporary gaps in employment, or the current pandemic which may make it difficult to access documentation, even though the FICU reasonably determines that the borrower's mid- to long-term income prospects remain intact.

Finally, the commenter stated that the way the proposed rule is drafted implies that these additional documentation requirements would apply to *all* modification types if the credit union merely permits interest capitalization.[7]

NCUA Response. The Board appreciates the support expressed by the large majority of commenters for the proposed consumer protection guardrails. The final rule adopts these consumer protection measures without change.

Appendix B applies to consumer and commercial loans. The rule requires that loan modification policies must provide for ''[c]ompliance with all applicable consumer protection laws and regulations.'' The term ''applicable'' indicates that FICUs must comply with the laws and regulations that apply to a particular transaction. While some of those, such as the Equal Credit Opportunity Act, might apply to a commercial loan, most will not.

As noted, one of the comments suggested additional consumer guardrails to prohibit changes to interest rates or fees. The Board designed the proposed rule to provide FICUs greater flexibility when restructuring an existing loan. However, the proposed rule requires that, when doing so, a FICU must consider whether the loan modification is well-designed and provides a favorable outcome for borrowers. While a fair consideration of a borrower's circumstances would generally not support an increase to interest rates or fees, the Board believes the language of the proposed rule provides the desired protections and declines to change it at this time.

In response to the commenters who raised concerns that compliance with the new requirements might be burdensome, the Board notes that the consumer protection guardrails added by this rule apply solely to loan modifications that involve the capitalization of interest. FICUs will therefore not be required to comply with the additional documentation requirements for other types of loan modifications. In addition, several of the guardrails reflect current best practices and requirements that should not impose any additional significant burden on credit unions. For example, credit unions are already required to comply with all applicable consumer protections laws and regulations. The guardrails reiterate the need for compliance to emphasize the importance of these legal consumer protections. Likewise, FICUs are already assumed to undertake the necessary due diligence to ensure a borrower's ability to repay. For example, Appendix B currently requires that a FICU's loan modification policy ''must also ensure credit unions make loan workout decisions based on the borrower's renewed willingness and ability to repay the loan.''[8] The Board also notes that the rule does not prescribe a specific method for making this determination, thereby providing credit unions with a large degree of flexibility in meeting the requirement. The rule requires only that FICUs maintain documentation reflecting how the determination was made.

Comment: Prohibition on Advancing Credit Union Fees and Commissions. Seventeen commenters responded to question 6 regarding whether NCUA should lift the current prohibition on the capitalization of credit union fees and commissions.

The commenters in support of maintaining the prohibition stated that they did not deem it necessary to charge such fees or feel that it was appropriate to charge internal fees to members who are struggling. They noted that continuing to prohibit the practice is an important consumer protection. One of the commenters stated that in the event the NCUA did decide to authorize the capitalization of credit union fees and commissions, appropriate limitations should be put in place, without which the potential for predatory behavior and risk to the member-borrower may be heightened.

Two commenters in support of removing the prohibition stated that FICUs should have the ability to charge reasonable modification fees so long as those fees are disclosed. One stated that FICUs have an incentive to not overburden the member with excessive workout-related fees to help the member repay the loan. Another commenter stated that if the NCUA chose not to allow all FICU fees to be capitalized, it should consider allowing the capitalization of fees up to a certain level. Another stated that for consumer protection purposes any fees charged for a modification involving interest capitalization should not be commissionable and that fees should be limited to actual costs incurred.

One FCU commenter stated that its mortgage modifications are handled by a third-party service provider which charges a fee for each modification. If the fee cannot be capitalized and the borrower cannot afford to pay it as a direct charge, the FCU's only alternatives are to deny the modification or absorb the cost. This commenter was the only one to provide some data regarding the actual cost of modification fees. Prior to 2012, when interest capitalization was permitted, the cost to this FCU for the modification of 170 mortgage loans would have been approximately $42,500. If the cost to the FCU of managing the program and operating its loan system were included, the cost more than doubled. The FCU further noted that the fees are the reimbursement of costs and not a revenue generation opportunity.

NCUA Response. Having reviewed the comments, the Board is not persuaded that FICUs should be permitted to capitalize credit union fees and commissions at this time. Most commenters advocating for the change did not include any discussion of how borrowers would be protected from excessive fees or supply any data on the actual cost to FICUs of providing loan workouts with interest capitalization. The final rule continues to permit FICUs to make advances covering third-party fees, such as force-placed insurance or property taxes. The Board, however, continues to believe that the current restrictions on fee reimbursement have provided a level of protection for borrowers in distress. The Board agrees with the comment that it would be contrary to the purposes of the credit union system to capitalize internally generated fees and commissions in a time of economic stress. Accordingly, credit union fees and commissions must be paid directly by the borrower at the time of the modification and not added to the loan balance.

C. Other Issues Raised by Commenters

Comment: Federal Preemption of State Consumer Protection Laws. Two commenters raised state preemption issues. Both commenters asked the NCUA to clarify that the proposed rule's requirement that all FICUs follow applicable state consumer protection laws does not override its regulation preempting state law on issues

[7] The proposed rule states in the regulatory text: ''Modifications of loans that result in capitalization of unpaid interest are appropriate only when the borrower has the ability to repay the debt in accordance with the modification. At a minimum, if a FICU's loan modification policy permits capitalization of unpaid interest, the policy must require each of the following . . .'' (*Supra* note 1, at 78272).

[8] *See* 12 CFR part 741, Appendix B, section captioned ''Written Loan Workout Policy and Monitoring Requirements.''

pertaining to ''terms of repayment'' (12 CFR 701.21(b)(1)(ii)(B)). Both commenters noted that some states prohibit the charging of interest on interest which if not preempted will dampen the effectiveness of NCUA's proposed rule.

NCUA Response: As an initial matter, the NCUA notes that the part 701 regulations, including § 701.21, generally apply solely to FCUs. Federally insured, state-chartered credit unions (FISCUs) must follow any requirements established by their State regarding the terms of repayment.[9] With respect to FCUs, this final rule does not in any way amend the regulation regarding the relationship between State law and the NCUA's regulations on loans made to members and lines of credit (12 CFR 701.21). The Board is not inclined to provide a blanket preemption of any or all State laws that may relate to capitalization of interest. FCUs may need to evaluate the application of relevant state laws on a case-by-case basis and may contact the NCUA for its opinion in the event a particular State law raises a preemption issue.

Comment: Retroactive Applicability. Two commenters asked that the NCUA apply the rule retroactively. One stated that NCUA should make January 1, 2020, the effective date to fully capture the economic disruption caused by the pandemic. The other commenter stated that in the interests of fairness if a credit union has already been capitalizing interest on loans without receiving an examination finding or Document of Resolution (DOR),[10] then examiners should not take corrective action for these practices once the rule is finalized.

NCUA Response. The Board has not revised the rule in response to these comments. The Board notes that, as a legal matter, agencies may not generally adopt retroactive rules without explicit congressional authorization.[11] Accordingly, this final rule will apply prospectively upon issuance. The Board, however, is cognizant of the extraordinary nature of the COVID–19 pandemic, and the resulting stresses that have been placed on FICUs and their members. In their June 2020 interagency examiner guidance, the NCUA and the other banking agencies noted that loan modifications are ''positive actions that can mitigate adverse effects on borrowers due to the pandemic.'' [12] The interagency guidance specifies that ''[e]xaminers will not criticize institutions for working with borrowers as part of a risk mitigation strategy intended to improve existing loans, even if the restructured loans have or develop weaknesses that ultimately result in adverse credit classification.'' [13] The NCUA will take into account the interagency examiner guidance in assessing any loan modification actions taken by credit unions, including interest capitalization, prior to the effective date of this final rule.

Comment: Troubled Debt Restructuring. One commenter stated that the NCUA should emphasize, either in the regulation or in supervisory guidance, the importance of a FICU update to its troubled debt restructuring (TDR) policy because a TDR policy that harmonizes interest capitalization and other accounting tools is essential if NCUA's proposed rule is to achieve its full, intended effect.

NCUA Response. The Board appreciates this comment and agrees that FICUs should update their TDR policies as necessary to maintain consistency with applicable requirements. TDRs are a concept found in generally accepted accounting principles (GAAP),[14] which FICUs are generally required to follow pursuant to section 202 of the FCU Act.[15] The NCUA and the other banking agencies most recently issued guidance regarding TDRs on April 7, 2020. The April 7, 2020, interagency statement is designed to assist financial institutions that are working with borrowers affected by COVID–19.[16] The NCUA is not revising any TDR requirements through this rulemaking.

IV. This Final Rule

A. Capitalization of Interest

The Board is amending Appendix B to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications. As noted, the change applies to workouts of all types of member loans, including commercial and business loans. The NCUA also notes that—consistent with the scope of Appendix B—the regulatory amendments made by this final rule apply only to loan modifications involving the capitalization of interest. The final rule does not address the capitalization of interest that may occur in other contexts. The Board notes that banks frequently include interest capitalization as one of several components in a loan restructuring to mutually benefit the lender and the borrower. The Board expects that FICUs will follow suit, and provide borrowers with the option to capitalize interest along with other loan modification options, such as the lowering of loan payments or the interest rate, extending the maturity date, partial principal or interest forgiveness and other modifications.

The final rule adds a definition of capitalized interest to the Glossary of Appendix B. For the purposes of this rulemaking, capitalization of interest constitutes the addition of accrued but unpaid interest to the principal balance of a loan.

The final rule continues to provide that a FICU may not, under any event, authorize additional advances to finance credit union fees and commissions. FICUs will be permitted to continue to make advances to cover third party fees to protect loan collateral, such as force-placed insurance or property taxes. The Board believes that maintaining the prohibition on the capitalization of credit union fees is an important consumer protection feature of the rule for member borrowers.

The Board underscores that it is maintaining several requirements that apply to all loan workout policies in Appendix B. For example, the Appendix establishes the expectation that loan workouts will consider and balance the best interests of the FICU and the borrower, including consumer financial protection measures. Ensuring the best interest of the borrower prohibits predatory lending practices such as including loan terms that result in negative amortization. In addition, a FICU's policy must establish limits on

[9] As provided in § 701.21(a), certain provisions of § 701.21 apply to FISCUs as specified in § 741.23; however, the part 741 provision does not make § 701.21(b)(1)(ii)(B) applicable to FISCUs.

[10] *See generally* the NCUA Examiner's Guide, for more information regarding the agency's examination process, including examination findings and DORs. The Guide is available at: *https://publishedguides.ncua.gov/examiner/Pages/default.htm#ExaminersGuide/Home.htm%3FTocPath%3D_1.*

[11] *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204 (1988).

[12] Interagency Examiner Guidance for Assessing Safety and Soundness Considering the Effect of the COVID–19 Pandemic on Institutions (June 2020), page 6, available at *https://www.ncua.gov/files/press-releases-news/examiner-guidance-covid19-effect.pdf.*

[13] *Id.*

[14] *See* Federal Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 310–40, *Receivables—Troubled Debt Restructurings by Creditors,* available at *https://asc.fasb.org/subtopic&trid=2196892.*

[15] *See* section 202(b)(6)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1782(b)(6)(C)(i)).

[16] Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) (April 7, 2020), available at: *https://www.ncua.gov/files/press-releases-news/interagency-statement-tdr-policy-revised.pdf.*

the number of modifications allowed for an individual loan. Further, the policy must ensure that a FICU make loan workout decisions based on a borrower's renewed willingness and ability to repay the loan.

If a FICU restructures a loan more frequently than once a year or twice in five years, examiners will have higher expectations for the documentation of the borrower's renewed willingness and ability to repay the loan. The current Appendix also sets forth several supervisory expectations relating to multiple restructurings, stating that examiners will request validation documentation regarding collectability if a FICU engages in multiple restructurings of a loan. The current Appendix also requires that a FICU maintain sufficient documentation to demonstrate that the FICU's personnel communicated the new terms with the borrower, that the borrower agreed to pay the loan in full under the new terms and, most importantly, the borrower has the ability to repay the loan under the new terms.

These requirements and expectations, which currently apply to FICUs' loan workout policies, will apply equally if a FICU adopts a practice of capitalizing interest in connection with loan workouts. In addition, in light of the potential for interest capitalization to have a detrimental effect on borrowers if executed inappropriately, and to mask the true financial status of a loan and a credit union's financial statements, the Board is adding requirements to the Appendix to apply to FICUs that engage in this practice.

Modifications of loans that result in capitalization of unpaid interest are appropriate only when the borrower has the ability to repay the debt in accordance with the modification. At a minimum, if a FICU's loan modification policy permits capitalization of unpaid interest, the policy must require each of the following:

1. Compliance with all applicable consumer protection laws and regulations, including, but not limited to, the Equal Credit Opportunity Act, the Fair Housing Act, the Truth In Lending Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and the prohibitions against the use of unfair, deceptive or abusive acts or practices contained in the Consumer Financial Protection Act of 2010. (The Board notes that FICUs are also expected to comply with applicable State consumer protection laws that, in some instances, may be more stringent than Federal law, prohibiting, for example, the charging of interest on interest, subject to any case-by-case Federal preemption determinations that may be appropriate.)

2. Documentation that reflects a borrower's ability to repay, a borrower's source(s) of repayment, and when appropriate, compliance with the FICU's valuation policies at the time the modification is approved.

3. Providing borrowers with documentation that is accurate, clear, and conspicuous and consistent with Federal and state consumer protection laws.

4. Appropriate reporting of loan status for modified loans in accordance with applicable law and accounting practices. The FICU shall not report a modified loan as past due if the loan was current prior to modification and the borrower is complying with the terms of the modification.

5. Prudent policies and procedures to help borrowers resume affordable and sustainable repayments that are appropriately structured, while at the same time minimizing losses to the credit union. The prudent policies and procedures must consider:

i. Whether the loan modifications are well-designed, consistently applied, and provide a favorable outcome for borrowers.

ii. The available options for borrowers to repay any missed payments at the end of their modifications to avoid delinquencies or other adverse consequences.

6. Appropriate safety and soundness safeguards to prevent the following:

i. Masking deteriorations in loan portfolio quality and understating charge-off levels;

ii. Delaying loss recognition resulting in an understated allowance for loan and lease losses account or inaccurate loan valuations;

iii. Overstating net income and net worth (regulatory capital) levels; and

iv. Circumventing internal controls.

B. Technical Updates to Appendix B

The Board also took this opportunity to propose several technical changes to Appendix B to improve its clarity and update certain references. No commenters opposed these changes, and the Board is adopting them as proposed.

For example, the final rule updates references to the NCUA's or other guidance in the Appendix, such as guidance or standards issued by other federal banking agencies or the Financial Accounting Standards Board (FASB). These changes are intended to provide current information, and are not substantive policy changes.

In May 2014, FASB issued an accounting standard update for revenue recognition (ASU 2014–09) which replaced the cost recovery method of income recognition in ASC 605–10–25–4 with transition guidance found in ASC 606—Revenue from Contracts with Customers. The (2012) Appendix made reference to the cost recovery method of income recognition with citation in the Glossary. As this has been superseded by ASC 606, the Board has eliminated this reference in the Appendix and emphasizes that accrual of interest income ceases on a financial asset when full payment of principal and interest in cash is not expected.

In addition, to conform to the terminology that the Board adopted in 2016 in amending part 723,[17] the final rule updates references to member business loans to also refer to commercial loans. These changes are not intended to create new requirements or standards.

The final rule also makes terminology in the Appendix consistent with its purpose. The Appendix sets forth requirements for FICU policies relating to loan workouts, TDRs, and nonaccrual status. In several instances, the current Appendix uses the word ''should'' when referring to necessary elements of a FICU's policies or refers to the Appendix as ''guidance'' or an interpretive ruling and policy statement. To make the purpose and effect of the Appendix clearer, the final rule uses mandatory language where appropriate and eliminates references to the Appendix as ''guidance.''

Finally, the Board clarified several statements of the Appendix to make it more consistent with plain language principles.

None of these changes were substantive and were outlined for commenters in a redlined copy of the Appendix that the agency made available in the rulemaking docket.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[18] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[19] The final rule allows FICUs to capitalize unpaid interest when working with borrowers. The final rule

[17] 81 FR 13530 (Mar. 14, 2016) (*https://www.govinfo.gov/content/pkg/FR-2016-03-14/pdf/2016-03955.pdf*).

[18] 5 U.S.C. 603(a).

[19] 80 FR 57512 (Sept. 24, 2015) (*https://www.govinfo.gov/content/pkg/FR-2015-09-24/pdf/2015-24165.pdf*).

is not expected to increase the cost burden for FICUs. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133–0092.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[20]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[21] generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

[20] Public Law 105–277, 112 Stat. 2681 (1998).

[21] 5 U.S.C. 551.

List of Subjects in 12 CFR Part 741

Credit, Credit unions, Share insurance.

By the National Credit Union Administration Board on June 24, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. Appendix B to Part 741 is revised to read as follows:

Appendix B to Part 741—Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

This Appendix establishes requirements for the management of loan *workout*[1] arrangements, loan nonaccrual, and regulatory reporting of *troubled debt restructured loans* (herein after referred to as TDR or TDRs). This Appendix applies to all federally insured credit unions.

Under this Appendix, TDRs are as defined in *generally accepted accounting principles (GAAP),* and the Board does not intend to change the Financial Accounting Standards Board's (FASB) definition of TDR in any way through this policy. In addition to existing agency policy, this Appendix sets the NCUA's supervisory expectations governing loan workout policies and practices and loan accruals.

Written Loan Workout Policy and Monitoring Requirements[2]

For purposes of this Appendix, types of workout loans to borrowers in financial difficulties include *re-agings, extensions, deferrals, renewals, or rewrites.* See the Glossary entry on workouts for further descriptions of each term. Borrower retention programs or *new loans* are not encompassed within this policy nor considered by the Board to be workout loans.

A credit union can use loan workouts to help borrowers overcome temporary financial difficulties such as loss of job, medical emergency, or change in family circumstances such as the loss of a family member. Loan workout arrangements must consider and balance the best interests of both the borrower and the credit union.

The lack of a sound written policy on workouts can mask the true performance and *past due* status of the loan portfolio. Accordingly, the credit union board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. The loan workout policy and practices should be commensurate with a credit union's size and complexity, and must conform with a credit union's broader risk mitigation strategies. The policy must define eligibility requirements (that is, under what conditions the credit union will consider a loan workout), including establishing limits on the number of times an individual loan may be modified.[3] The policy must also ensure credit unions make loan workout decisions based on a borrower's renewed willingness and ability to repay the loan. If a credit union restructures a loan more frequently than once a year or twice in five years, examiners will have higher expectations for the documentation of the borrower's renewed willingness and ability to repay the loan. The NCUA is concerned about restructuring activity that pushes existing losses into future reporting periods without improving a loan's collectability. One way a credit union can provide convincing evidence that multiple restructurings improve collectability is to validate completed multiple restructurings that substantiate the claim. Examiners will ask for such validation documentation if a credit union engages in multiple restructurings of a loan.

In addition, the policy must establish sound controls to ensure loan workout actions are appropriately structured.[4] The

[1] Terms defined in the Glossary will be italicized on their first use in the body of this =Appendix.

[2] For additional guidance on commercial and member business lending extension, deferral, renewal, and rewrite policies, see *Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts* (October 30, 2009) transmitted by Letter to Credit Unions No. 10–CU–07, and available at *http://www.ncua.gov.*

[3] Broad based credit union programs commonly used as a member benefit and implemented in a safe and sound manner limited to only accounts in good standing, such as Skip-a-Pay programs, are not intended to count toward these limits.

[4] In developing a written policy, the credit union board and management may wish to consider similar parameters as those established in the FFIEC's ''Uniform Retail Credit Classification and Account Management Policy'' (FFIEC Policy). 65 FR 36903 (June 12, 2000) (*https://www.govinfo.gov/content/pkg/FR-2000-06-12/pdf/00-14704.pdf*). The FFIEC Policy sets forth specific limitations on the number of times a loan can be re-aged (for open-end accounts) or extended, deferred, renewed or rewritten (for closed-end accounts). NCUA Letter to Credit Unions (LCU) 09–CU–19, ''Evaluating Residential Real Estate Mortgage Loan Modification Programs,'' also outlines policy best practices for real estate modifications (*https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-*

Continued

policy must explicitly prohibit the authorization of additional advances to finance credit union fees and commissions. The credit union may, however, make advances to cover third-party fees, such as force-placed insurance or property taxes. For loan workouts granted, a credit union must document the determination that the borrower is willing and able to repay the loan.

Modifications of loans that result in capitalization of unpaid interest are appropriate only when a borrower has the ability to repay the debt. At a minimum, if a FICU's loan modification policy permits capitalization of unpaid interest, the policy must require:

1. Compliance with all applicable federal and state consumer protection laws and regulations, including, but not limited to, the Equal Credit Opportunity Act, the Fair Housing Act, the Truth In Lending Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and the prohibitions against the use of unfair, deceptive or abusive acts or practices in the Consumer Financial Protection Act of 2010.

2. Documentation that reflects a borrower's ability to repay, a borrower's source(s) of repayment, and when appropriate, compliance with the FICU's valuation policies at the time the modification is approved.

3. Providing borrowers with written disclosures that are accurate, clear and conspicuous and that are consistent with Federal and state consumer protection laws.

4. Appropriate reporting of loan status for modified loans in accordance with applicable law and accounting practices. The FICU shall not report a modified loan as past due if the loan was current prior to modification and the borrower is complying with the terms of the modification.

5. Prudent policies and procedures to help borrowers resume affordable and sustainable repayments that are appropriately structured, while at the same time minimizing losses to the credit union. The prudent policies and procedures must consider

i. Whether the loan modifications are well-designed, consistently applied, and provide a favorable outcome for borrowers.

ii. The available options for borrowers to repay any missed payments at the end of their modifications to avoid delinquencies or other adverse consequences.

6. Appropriate safety and soundness safeguards to prevent the following:

i. Masking deteriorations in loan portfolio quality and understating charge-off levels; [5]

ii. Delaying loss recognition resulting in an understated allowance for loan and lease losses account or inaccurate loan valuations;

iii. Overstating net income and net worth (regulatory capital) levels; and

iv. Circumventing internal controls.

The credit union's risk management framework must include thresholds, based on aggregate volume of loan workout activity, which trigger enhanced reporting to the board of directors. This reporting will enable the credit union's board of directors to evaluate the effectiveness of the credit union's loan workout program, understand any implications to the organization's financial condition, and make any compensating adjustments to the overall business strategy. This information will also be available to examiners upon request.

To be effective, management information systems need to track the principal reductions and *charge-off* history of loans in workout programs by type of program. Any decision to re-age, extend, defer, renew, or rewrite a loan, like any other revision to contractual terms, must be supported by the credit union's management information systems. Sound management information systems identify and document any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent of such action. Documentation normally shows that credit union personnel communicated with the borrower, the borrower agreed to pay the loan in full under any new terms, and the borrower has the ability to repay the loan under any new terms.

Regulatory Reporting of Workout Loans Including TDR Past Due Status

Credit unions will calculate the past due status of all loans consistent with loan contract terms, including amendments made to loan terms through a formal restructure. Credit unions will report delinquency on the Call Report consistent with this policy.[6]

Loan Nonaccrual Policy

Credit unions must recognize interest income appropriately. Credit unions must place loans in nonaccrual status when doubt exists as to full collection of principal and interest or the loan has been in default for a period of 90 days or more. Upon placing a loan in nonaccrual, a credit union must reverse or charge-off previously accrued but uncollected interest. A nonaccrual loan may be returned to accrual status when a credit union expects repayment of the remaining contractual principal and interest or it is well secured and in process of collection.[7] This policy on loan accrual is consistent with longstanding credit union industry practice as implemented by the NCUA over the last several decades. The balance of the policy relates to *commercial* and *member business loan* workouts and is similar to the policies adopted by the federal banking agencies [8] as set forth in the FFIEC Call Report for banking institutions and its instructions.[9]

Nonaccrual Status

Credit unions may not accrue interest [10] on any loan where principal or interest has been in default for a period of 90 days or more unless the loan is both ''*well secured*'' and ''in the *process of collection*.'' [11] For purposes of applying the ''well secured'' and ''in process of collection'' test for nonaccrual status listed above, the date on which a loan reaches nonaccrual status is determined by its contractual terms.

While a loan is in nonaccrual status, a credit union may treat some or all of the cash payments received as interest income on a cash basis provided no doubt exists about the collectability of the remaining *recorded investment in the loan.* A credit union must handle the reversal of previously accrued, but uncollected, interest applicable to any loan placed in nonaccrual status in accordance with GAAP.[12]

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guidance/evaluating-residential-real-estate-mortgage-loan-modification-programs). Those best practices remain applicable to real estate loan modifications (with the exception to the capitalization of credit union fees) but could be adapted in part by the credit union in their written loan workout policy for other loans.

[5] Refer to NCUA guidance on charge-offs set forth in LCU 03–CU–01, ''Loan Charge-off Guidance,'' dated January 2003 (*https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/loan-charge-guidance*). Examiners will require that a reasonable written charge-off policy is in place and that it is consistently applied. Additionally, credit unions need to adjust historical loss factors when calculating ALLL needs for pooled loans to account for any loans with protracted charge-off timeframes (for example, 12 months or more). See discussions on the latter point in the 2006 Interagency ALLL Policy Statement transmitted by Accounting Bulletin 06–1 (December 2006) (*https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/interagency-advisory-addressing-alll-key-concepts-and-requirements*). Upon implementation of ASC 326—Financial Instruments—Credit Losses, credit unions will use the guidance in Interagency Policy Statement on Allowances for Credit Losses (May 2020) (*https://www.ncua.gov/files/press-releases-news/policy-statement-allowances-credit-losses.pdf*).

[6] Subsequent Call Reports and accompanying instructions will reflect this policy, including focusing data collection on loans meeting the definition of TDR under GAAP. In reporting TDRs on regulatory reports, the data collections will include all TDRs that meet the GAAP criteria for TDR reporting, without the application of materiality threshold exclusions based on scoping or reporting policy elections of credit union preparers or their auditors. Credit unions should also refer to ASC Subtopic 310–40 when determining if a restructuring of a debt constitutes a TDR.

[7] Placing a loan in nonaccrual status does not change the loan agreement or the obligations between the borrower and the credit union. Only the parties can effect a restructuring of the original loan terms or otherwise settle the debt.

[8] The federal banking agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[9] FFIEC Report of Condition and Income Forms, Instructions and Supplemental Instructions, *https://www.ffiec.gov/forms041.htm.*

[10] Nonaccrual of interest also includes the amortization of deferred net loan fees or costs, or the accretion of discount. Nonaccrual of interest on loans past due 90 days or more is a longstanding agency policy and credit union practice.

[11] A purchased credit impaired loan asset need not be placed in nonaccrual status as long as the criteria for accrual of income under the interest method in GAAP is met. Also, the accrual of interest on workout loans is covered in a later section of this Appendix.

[12] Acceptable accounting treatment includes a reversal of all previously accrued, but uncollected, interest applicable to loans placed in a nonaccrual status against appropriate income and balance sheet accounts. For example, one acceptable method of accounting for such uncollected interest on a loan placed in nonaccrual status is to reverse all of the unpaid interest by crediting the ''accrued interest receivable'' account on the balance sheet; to reverse the uncollected interest that has been accrued during the calendar year-to-date by debiting the appropriate ''interest and fee income on loans'' account on the income statement, and to reverse any uncollected interest that had been accrued

Restoration to Accrual Status for All Loans Except Commercial and Member Business Loan Workouts

A nonaccrual loan may be restored to accrual status when:

- Its past due status is less than 90 days and the credit union expects repayment of the remaining contractual principal and interest within a reasonable period;
- It otherwise becomes both *well secured* and *in the process of collection;* or
- The asset is a purchased impaired loan and it meets the criteria under GAAP for accrual of interest income under the accretable yield method. See ASC 310–30.

In restoring all loans to accrual status, if the credit union applied any interest payments received while the loan was in nonaccrual status to reduce the recorded investment in the loan, the credit union must not reverse the application of these payments to the loan's recorded investment (and must not credit interest income). Likewise, a credit union cannot restore the accrued but uncollected interest reversed or charged-off at the point the loan was placed on nonaccrual status to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

Restoration to Accrual Status on Commercial and Member Business Loan Workouts [13]

A formally restructured commercial or member business loan workout need not be maintained in nonaccrual status, provided the restructuring and any charge-off taken on the loan are supported by a current, well-documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms. Otherwise, the restructured loan must remain in nonaccrual status.

The credit union's evaluation must include consideration of the borrower's sustained historical repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status. A sustained period of repayment performance is a minimum of six consecutive payments, and includes timely payments under the restructured loan's terms of principal and interest in cash or cash equivalents. In returning the commercial or member business workout loan to accrual status, a credit union may consider sustained historical repayment performance for a reasonable time prior to the restructuring. Such a restructuring must improve the collectability of the loan in accordance with a reasonable repayment schedule and does not relieve the credit union from the responsibility to promptly charge off all identified losses.

The following graph provides an example of a schedule of repayment performance to demonstrate a determination of six consecutive payments. If the original loan terms required a monthly payment of $1,500, and the credit union lowered the borrower's payment to $1,000 through formal commercial or member business loan restructure, then based on the first row of the graph, the ''*sustained historical repayment performance for a reasonable time prior to the restructuring*'' would encompass five of the pre-workout consecutive payments that were at least $1,000 (months 1 through 5). In total, the six consecutive repayment burden would be met by the first month post workout (month 6).

In the second row, only one of the pre-workout payments would count toward the six consecutive repayment requirement (month 5), because it is the first month in which the borrower made a payment of at least $1,000 after failing to pay at least that amount. Therefore, the loan would remain on nonaccrual for at least five post-workout consecutive payments (months 6 through 10) provided the borrower continues to make payments consistent with the restructured terms.

Pre-workout					Post-workout				
Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10
$1,500 1,500	$1,200 1,200	$1,200 900	$1,000 875	$1,000 1,000	$1,000 1,000	$1,000 1,000	$1,000 1,000	$1,000 1,000	$1,000 1,000

After a formal restructure of a commercial or member business loan, if the restructured loan has been returned to accrual status, the loan otherwise remains subject to the nonaccrual standards of this policy. If any interest payments received while the commercial or member business loan was in nonaccrual status were applied to reduce the recorded investment in the loan the application of these payments to the loan's recorded investment must not be reversed (and interest income must not be credited). Likewise, accrued but uncollected interest reversed or charged-off at the point the commercial or member business workout loan was placed on nonaccrual status cannot be restored to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

The following tables summarize nonaccrual and restoration to accrual requirements previously discussed:

TABLE 1—NONACCRUAL CRITERIA

Action	Condition identified	Additional consideration
Nonaccrual on All Loans	90 days or more past due unless loan is both well-secured and in the process of collection; or The loan is maintained on the Cash basis because there is a deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected.	See Glossary definitions for ''well secured'' and ''in the process of collection.''
Nonaccrual on Commercial or Member Business Loan Workouts.	Continue on nonaccrual at workout point and until restore to accrual criteria are met.	See Table 2—Restore to Accrual.

during previous calendar years by debiting the ''allowance for loan and lease losses'' account on the balance sheet. The use of this method presumes that credit union management's additions to the allowance through charges to the ''provision for loan and lease losses'' on the income statement have been based on an evaluation of the collectability of the loan and lease portfolios and the ''accrued interest receivable'' account.

[13] This policy is derived from the ''Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' the NCUA and the other financial regulators issued on October 30, 2009.

TABLE 2—RESTORE TO ACCRUAL

Action	Condition identified	Additional consideration
Restore to Accrual on All Loans except Commercial or Member Business Loan Workouts.	When a loan is less than 90 days past due and the credit union expects repayment of the remaining contractual principal and interest within a reasonable period, or When it otherwise becomes both ''well secured'' and ''in the process of collection''; or The asset is a purchased impaired loan and it meets the criteria under GAAP (see ASC 310–30) for accrual of interest income under the accretable yield method.	See Glossary definitions for ''well secured'' and ''in the process of collection.'' Interest payments received while the loan was in nonaccrual status and applied to reduce the recorded investment in the loan must not be reversed and income credited. Likewise, accrued but uncollected interest reversed or charged-off at the point the loan was placed on nonaccrual status cannot be restored to accrual.
Restore to Accrual on Commercial or Member Business Loan Workouts.	Formal restructure with a current, well documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms.	The evaluation must include consideration of the borrower's sustained historical repayment performance for a minimum of six timely consecutive payments comprised of principal and interest. In returning a loan to accrual status, a credit union may take into account sustained historical repayment performance for a reasonable time prior to the restructured terms. Interest payments received while the commercial or member business loan was in nonaccrual status and applied to reduce the recorded investment in the loan must not be reversed and income credited. Accrued but uncollected interest reversed or charged-off at the point the commercial or member business loan was placed on nonaccrual status cannot be restored to accrual.

Glossary [14]

''*Capitalization of Interest*'' constitutes the addition of accrued but unpaid interest to the principal balance of a loan.

''*Cash Basis*'' method of income recognition is set forth in GAAP and means while a loan is in nonaccrual status, some or all of the cash interest payments received may be treated as interest income on a cash basis provided no doubt exists about the collectability of the remaining recorded investment in the loan.[15]

''*Charge-off*'' means a direct reduction (credit) to the carrying amount of a loan carried at amortized cost resulting from uncollectability with a corresponding reduction (debit) of the ALLL. Recoveries of loans previously charged off must be recorded when received.

''*Commercial Loan*'' is defined consistent with Section 723.2 of the NCUA's MEMBER BUSINESS LOANS; COMMERCIAL LENDING Rule, 12 CFR 723.2.

''*Generally accepted accounting principles (GAAP)*'' means official pronouncements of the FASB as memorialized in the FASB Accounting Standards Codification® as the source of authoritative principles and standards recognized to be applied in the preparation of financial statements by federally insured credit unions in the United States with assets of $10 million or more.

''*In the process of collection*'' means collection of the loan is proceeding in due course either:

(1) Through legal action, including judgment enforcement procedures, or

(2) In appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future, *i.e.,* generally within the next 90 days.

''*Member Business Loan*'' is defined consistent with § 723.8 of the NCUA's MEMBER BUSINESS LOANS; COMMERCIAL LENDING Rule, 12 CFR 723.8.

''*New Loan*'' means the terms of the revised loan are at least as favorable to the credit union (*i.e.,* terms are market-based, and profit driven) as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the credit union, and the revisions to the original debt are more than minor.

''*Past Due*'' means a loan is determined to be delinquent in relation to its contractual repayment terms including formal restructures, and must consider the time value of money. Credit unions may use the following method to recognize partial payments on ''consumer credit,'' *i.e.,* credit extended to individuals for household, family, and other personal expenditures, including credit cards, and loans to individuals secured by their personal residence, including home equity and home improvement loans. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing past due status.

''*Recorded Investment in a Loan*'' means the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

''*Troubled Debt Restructuring*'' is as defined in GAAP and means a restructuring in which a credit union, for economic or legal reasons related to a member borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider.[16] The restructuring of a loan may include, but is not necessarily limited to:

(1) The transfer from the borrower to the credit union of real estate, receivables from third parties, other assets, or an equity interest in the borrower in full or partial satisfaction of the loan,

(2) A modification of the loan terms, such as a reduction of the stated interest rate, principal, or accrued interest or an extension of the maturity date at a stated interest rate lower than the current market rate for new debt with similar risk, or

(3) A combination of the above.

A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not to be reported as a restructured troubled loan.

''*Well secured*'' means the loan is collateralized by: (1) A perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount, or (2) by the guarantee of a financially responsible party.

[14] Terms defined in the Glossary will be italicized on their first use in the body of this guidance.

[15] Acceptable accounting practices include allocating contractual interest payments among interest income, reduction of the recorded investment in the asset, and recovery of prior charge-offs. If this method is used, the amount of income that is recognized would be equal to that which would have been accrued on the loan's remaining recorded investment at the contractual rate; and, accounting for the contractual interest in its entirety either as income, reduction of the recorded investment in the asset, or recovery of prior charge-offs, depending on the condition of the asset, consistent with its accounting policies for other financial reporting purposes.

[16] FASB ASC 310–40, ''Troubled Debt Restructuring by Creditors.''

''*Workout Loan*'' means a loan to a borrower in financial difficulty that has been formally restructured so as to be reasonably assured of repayment (of principal and interest) and of performance according to its restructured terms. A workout loan typically involves a *re-aging, extension, deferral, renewal, or rewrite* of a loan.[17] For purposes of this policy statement, workouts do not include loans made to market rates and terms such as refinances, borrower retention actions, or new loans.[18]

''*Extension*'' means extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they must be collected at the time of the extension and not added to the balance of the loan.

''*Deferral*'' means deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral.

''*Renewal*'' means underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms.

''*Rewrite*'' means significantly changing the terms of an existing loan, including payment amounts, interest rates, amortization schedules, or its final maturity.

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BILLING CODE 7535–01–P

[17] ''*Re-Age*'' means returning a past due account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

[18] There may be instances where a workout loan is not a TDR even though the borrower is experiencing financial hardship. For example, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union's recorded investment in the loan, *e.g.,* due to charge-offs.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0790; Project Identifier 2020–NM–077–AD; Amendment 39–21604; AD 2021–12–17]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional Model ATR42–300, –320, and –500 airplanes; and all Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. This AD was prompted by reports of defective seat tracks. This AD requires a detailed visual inspection of each affected part for deficiencies (sealant blockage and out of tolerance ligaments), and depending on findings, accomplishment of applicable corrective actions, 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 is effective August 4, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 4, 2021.

ADDRESSES: 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–2020–0790.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0790; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 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 AD 2020–0097R1, dated May 28, 2020 (EASA AD 2020–0097R1) (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 ATR42–300, –320, –400, and –500 airplanes; and all Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. Model ATR42–400 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain ATR–GIE Avions de Transport Régional Model ATR42–300, –320, and –500 airplanes; and all Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. The NPRM published in the **Federal Register** on September 9, 2020 (85 FR 55619). The NPRM was prompted by reports of defective seat tracks. The NPRM proposed to require a detailed visual inspection of each affected part for deficiencies (sealant blockage and out of tolerance ligaments), and depending on findings, accomplishment of applicable corrective actions, as specified in EASA AD 2020–0097R1.

The FAA is issuing this AD to address a structural failure of the seat track attachment during an emergency landing, possibly resulting in injury to occupants, and affecting emergency evacuation. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0097R1 specifies procedures for a detailed visual inspection of each affected seat track for deficiencies (sealant blockage and out of

tolerance ligaments), and corrective actions if necessary. Corrective actions include replacement of seat track sections, and replacement of the entire seat track. 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.

Costs of Compliance

The FAA estimates that this AD affects 59 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
Up to 28 work-hours × $85 per hour = Up to $2,380	$0	Up to $2,380	Up to $140,420.

The FAA estimates the following costs to do any necessary on-condition replacements 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 replacements:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
172 work-hours × $85 per hour = $14,620	(*)	$14,620

*The FAA has received no definitive data that would enable us to provide parts cost estimates for the on-condition replacements 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:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–12–17 ATR–GIE Avions de Transport Régional: Amendment 39–21604; Docket No. FAA–2020–0790; Project Identifier 2020–NM–077–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the ATR–GIE Avions de Transport Régional airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model ATR42–300, –320, and –500 airplanes, all manufacturer serial numbers, except manufacturer serial numbers 001 through 362 inclusive.

(2) ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of defective seat tracks. The FAA is issuing this AD to address a structural failure of the seat track attachment during an emergency landing, possibly resulting in injury to occupants, and affecting emergency evacuation.

(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, European Union Aviation Safety Agency (EASA) AD 2020–0097R1, dated May 28, 2020 (EASA AD 2020–0097R1).

(h) Exceptions to EASA AD 2020–0097R1

(1) Where EASA AD 2020–0097R1 refers to May 18, 2020 (the effective date of its original issue), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0097R1 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0097R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k) 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) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) 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; phone and fax: 206–231–3220; email: *shahram.daneshmandi@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0097R1, dated May 28, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0097R1, 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–2020–0790.

(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 June 6, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13782 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0184; Project Identifier MCAI–2020–01599–T; Amendment 39–21605; AD 2021–12–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes. This AD was prompted by a report that the auxiliary power unit (APU) aft fuel pump printed circuit board (PCB) varnish had deteriorated; the varnish is one of the layers of protection against development of an ignition source. This AD requires replacing each affected APU aft fuel pump, 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 is effective August 4, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 4, 2021.

ADDRESSES: 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–2021–0184.

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–2021–0184; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0265, dated December 2, 2020 (EASA AD 2020–0265) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–243, A330–223F, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes. The NPRM published in the **Federal Register** on March 22, 2021 (86 FR 15151). The NPRM was prompted by a report that the APU aft fuel pump PCB varnish had deteriorated; the varnish is one of the layers of protection against development of an ignition source. The NPRM proposed to require replacing each affected APU aft fuel pump, as specified in EASA AD 2020–0265.

The FAA is issuing this AD to address PCB varnish deterioration. This condition, if not addressed, could, in case of a spark or flame in the area of the pump PCB, result in a fire or explosion and consequent loss of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0265 specifies procedures for replacing each affected APU aft fuel pump. 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.

Costs of Compliance

The FAA estimates that this AD affects 112 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
4 work-hours × $85 per hour = $340	$7,000	$7,340	$822,080

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–12–18 Airbus SAS: Amendment 39–21605; Docket No. FAA–2021–0184; Project Identifier MCAI–2020–01599–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, specified in paragraphs (c)(1) through (5) of this AD.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel system.

(e) Reason

This AD was prompted by a report that the auxiliary power unit (APU) aft fuel pump printed circuit board (PCB) varnish had deteriorated; the varnish is one of the layers of protection against development of an ignition source. The FAA is issuing this AD to address PCB varnish deterioration. This

condition, if not addressed, could, in case of a spark or flame in the area of the pump PCB, result in a fire or explosion and consequent loss 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, European Union Aviation Safety Agency (EASA) AD 2020–0265, dated December 2, 2020 (EASA AD 2020–0265).

(h) Exceptions to EASA AD 2020–0265

(1) Where EASA AD 2020–0265 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0265 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0265 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k) 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0265, dated December 2, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0265, 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–2021–0184.

(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 June 6, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13781 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0209; Airspace Docket No. 20–ANM–10]

RIN 2120–AA66

Establishment of Class E Airspace; Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E domestic en route airspace extending upward from 1,200 feet above the surface at Great Falls, MT. This airspace facilitates vectoring of Instrument Flight Rules (IFR) aircraft and it properly contains IFR aircraft operating on direct routes under the control of Salt Lake City Air Route Traffic Control Center (ARTCC).

DATES: Effective 0901 UTC, October 7, 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: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Great Falls, MT, to ensure the safety and management of IFR operations within the National Airspace System.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 18485; April 9, 2021) for Docket No. FAA–2021–0209 to establish Class E airspace at Great Falls, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received, however, both comments discussed airspace outside of the area covered by the NPRM and are not germane to this action.

Class E6 airspace designations are published in paragraph 6006 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 establishes Class E en route domestic airspace extending upward from 1,200 feet above the surface at Great Falls, MT. This action provides controlled airspace to facilitate vectoring of IFR aircraft under the control of Salt Lake City ARTCC. The airspace would also ensure proper containment of IFR aircraft operating on direct routes where the current en route structure is insufficient.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM MT E6 Great Falls, MT

That airspace extending upward from 1,200 feet above the surface within an area beginning at lat 46°23′22″ N, long 110°30′0.0″ W, to lat 46°01′40.93″ N, long 112°32′45.82″ W, to lat 47°40′32.29″ N, long 112°32′46.33″ W, to lat 47°41′18″ N, long 112°36′32″ W, to lat 48°03′50″ N, long 112°14′45″ W, to lat 48°15′45″ N, long 111°33′50″ W, to lat 48°12′20″ N, long 111°0.0′10″ W, to lat 47°59′55″ N, long 110°30′0.0″ W, to lat 47°10′40″ N, long 109°52′06″ W, then to the point of beginning.

Issued in Des Moines, Washington, on June 24, 2021.

B.G. Chew,

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

[FR Doc. 2021–13890 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0210; Airspace Docket No. 21–ANM–3]

RIN 2120–AA66

Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 1,200 feet above the surface at Dillon Airport, Dillon, MT. The airspace is designed to support instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 7, 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: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class E airspace at Dillon Airport, Dillon, MT, to ensure the safety and management of IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 18484; April 9, 2021) for Docket No. FAA–2021–0210 to modify the Class E airspace at Dillon Airport, Dillon, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment, in favor of the airspace modification, was received.

Class E5 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 designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace, extending upward from 1,200 feet above the surface, at Dillon Airport, Dillon, MT. This airspace is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. This action increases the airspace's radius from ''25 miles'' to ''50 miles'' around the airport. The 50-mile radius will properly contain IFR aircraft transitioning to/from the 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E5 Dillon, MT [Amended]

Dillon Airport, MT
(Lat. 45°15′19″ N, long. 112°33′09″ W)

That airspace extending upward from 700 feet above the surface within a 5.2-mile radius of the airport, and within 3 miles each side of the 205° bearing from the airport, extending from the 5.2-mile radius to 9.9 miles southwest of the airport, and that airspace within 8 miles west and 4 miles east of the 005° bearing from the airport, extending from the 5.2-mile radius to 16 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 50-mile radius of Dillon Airport.

Issued in Des Moines, Washington, on June 24, 2021.

B.G. Chew,

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

[FR Doc. 2021–13895 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 14–50, 09–182, 07–294, 04–256, 17–289; DA 21–656; FR ID 33718]

Media Bureau Reinstates Commission's Prior Rule Changes Regarding Media Ownership Consistent With the U.S. Supreme Court's Decision

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, consistent with the U.S. Supreme Court's decision in *FCC* v. *Prometheus Radio Project,* the Media Bureau of the Federal Communications Commission reinstates the rule changes that were previously adopted by the Commission in its media ownership proceedings but then vacated and remanded by the U.S. Third Circuit Court of Appeals in 2019. As such, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Television Joint Sales Agreement Attribution Rule are eliminated, and the Local Television Ownership Rule and Local Radio Ownership Rule are reinstated as adopted in the Commission's 2017 *Order on Reconsideration.* In addition, the eligible entity standard and its

application to regulatory measures as set forth in the Commission's 2016 *Second Report and Order* are reinstated. Finally, the regulatory measures adopted in the Commission's 2018 *Incubator Order* are reinstated.

DATES: Effective June 30, 2021.

FOR FURTHER INFORMATION CONTACT: Ty Bream, Industry Analysis Division, Media Bureau, *Ty.Bream@fcc.gov,* (202) 418–0644.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MB Docket Nos. 14–50, 09–182, 07–294, 04–256, and 17–289, DA 21–656, that was adopted and released on June 4, 2021. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/DA-21-656A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.) and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to *fcc504@fcc.gov* or calling the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In *FCC* v. *Prometheus Radio Project,* 141 S.Ct. 1150 (2021), the U.S. Supreme Court reversed the decision of the U.S. Court of Appeals for the Third Circuit in *Prometheus Radio Project* v. *FCC,* 939 F.3d 567 (3rd Cir. 2019), regarding the Commission's media ownership rules. The Third Circuit had vacated and remanded, in their entirety, the Commission's 2018 *Incubator Order* (83 FR 43773, Aug. 28, 2018) and the Commission's 2017 *Order on Reconsideration* (83 FR 755, Jan. 8, 2018). The Third Circuit also had vacated and remanded the definition of eligible entities adopted in the Commission's 2016 *Second Report and Order* (81 FR 76262, Nov. 1, 2016).

2. Consistent with the Supreme Court's decision, the Media Bureau's Order reinstates the changes adopted in the *Incubator Order* and *Order on Reconsideration* and the eligible entity definition as adopted in the *Second Report and Order.* As such, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Television Joint Sales Agreement Attribution Rule are eliminated, and the Local Television Ownership Rule and Local Radio Ownership Rule are reinstated as adopted in the *Order on Reconsideration.* The presumption under the Local Radio Ownership Rule that would apply a two-prong test for waiver requests involving existing parent markets with multiple embedded markets is reinstated. Note 5 to § 73.3555 is reinstated to the version as amended when the Commission adopted the streamlined procedures in March 2019 for reauthorizing television satellite stations when such stations are assigned or transferred. *See Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations, Modernization of Media Regulation Initiative* (84 FR 15125, Apr. 15, 2019). The *Order on Reconsideration* revised § 73.3613(d)(2) of the Commission's rules regarding the filing requirement for joint sales agreements. Because that filing requirement has since been eliminated, the revision to § 73.3613(d)(2) adopted in the *Order on Reconsideration* is not reinstated. *See Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts, Modernization of Media Regulation Initiative* (83 FR 65551, Dec. 21, 2018).

3. In addition, the eligible entity standard and its application to regulatory measures as set forth in the *Second Report and Order* are reinstated. Finally, the regulatory measures adopted in the *Incubator Order* are reinstated.

4. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. 553(b) because this ministerial order merely implements the decision of the U.S. Supreme Court. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* does not apply.

5. Accordingly, *it is ordered* that § 73.3555 of the Commission's rules, 47 CFR 73.3555, is amended as set forth in the Final Rules, effective upon publication in the **Federal Register**. Because of the need during the current broadcast station license renewal cycle to alert prospective applicants to the current, applicable rules, there is ''good cause'' under 5 U.S.C. 553(d) to make the rules effective immediately upon publication in the **Federal Register**.

6. This action is taken pursuant to the authority contained in sections 1, 2(a), 4(i) and (j), 5(c), 257, 303, 307, 308, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 155(c), 257, 303, 307, 308, 309, 310, and 403, section 202(h) of the Telecommunications Act of 1996, and §§ 0.61 and 0.283 of the Commission's rules, 47 CFR 0.61, 0.283.

7. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are 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 73

Radio, Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Amend § 73.3555 by:
■ a. Revising paragraph (b);
■ b. Removing and reserving paragraphs (c) and (d);
■ c. In Note 2, revising the introductory text and paragraphs (a) through (d) and (g) through (k);
■ d. Revising Note 4 through Note 7 and Note 9; and
■ e. Removing Note 12.

The revisions read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) *Local television multiple ownership rule.* (1) An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:

(i) The digital noise limited service contours of the stations (computed in accordance with § 73.622(e)) do not overlap; or

(ii) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.

(2) Paragraph (b)(1)(ii) (Top-Four Prohibition) of this section shall not apply in cases where, at the request of the applicant, the Commission makes a

finding that permitting an entity to directly or indirectly own, operate, or control two television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission will consider showings that the Top-Four Prohibition should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.

* * * * *

Note 2 to § 73.3555: In applying the provisions of this section, ownership and other interests in broadcast licensees will be attributed to their holders and deemed cognizable pursuant to the following criteria:

a. Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee will be cognizable;

b. Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, or if any of the officers or directors of the broadcast licensee are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

c. Attribution of ownership interests in a broadcast licensee that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph i. of this note, attribution of ownership interests in a broadcast licensee that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable. For purposes of paragraph i. of this note, X's interest in ''Licensee'' would be 15% (0.6×0.25) and A's interest in ''Licensee'' would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph i. of this note.]

d. Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee are subject to said trust.

* * * * *

g. Officers and directors of a broadcast licensee are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee shall not be attributed with ownership of that licensee by virtue of such status.

h. Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

1. The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

2. The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

3. The sum of the interests computed under paragraph h. 1. of this note plus the sum of the interests computed under paragraph h. 2. of this note is equal to or exceeds 20 percent.

i.1. Notwithstanding paragraphs e. and f. of this Note, the holder of an equity or debt interest or interests in a broadcast licensee subject to the broadcast multiple ownership rules (''interest holder'') shall have that interest attributed if:

A. The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that broadcast licensee; and

B.(i) The interest holder also holds an interest in a broadcast licensee in the same market that is subject to the broadcast multiple ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, ''market,'' will be defined as it is defined under the specific multiple ownership rule that is being applied, except that for television stations, the term ''market'' will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

2. Notwithstanding paragraph i.1. of this Note, the interest holder may exceed the 33 percent threshold therein without triggering attribution where holding such interest would enable an eligible entity to acquire a broadcast station, provided that:

i. The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or

ii. The total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to

acquire an equity interest in the eligible entity or any related entity. For purposes of this paragraph i.2, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

j. ''Time brokerage'' (also known as ''local marketing'') is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it.

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

2. Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

3. Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraph (b) of this section if the brokering station is a television station or with paragraph (a) of this section if the brokering station is a radio station.

k. ''Joint Sales Agreement'' is an agreement with a licensee of a ''brokered station'' that authorizes a ''broker'' to sell advertising time for the ''brokered station.''

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) of this section.

2. Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraph (a) of this section if the brokering station is a radio station.

* * * * *

Note 4 to § 73.3555: Paragraphs (a) and (b) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, or to FM or AM broadcast minor modification applications for intra-market community of license changes, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled broadcast stations. Paragraphs (a) and (b) of this section will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to all other applications for minor changes to existing stations that seek a change in an FM or AM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or controlled broadcast stations. Commonly owned, operated or controlled broadcast stations that do not comply with paragraphs (a) and (b) of this section may not be assigned or transferred to a single person, group or entity, except as provided in this Note, the Report and Order in Docket No. 02–277, released July 2, 2003 (FCC 02–127), or the Second Report and Order in MB Docket No. 14–50, FCC 16–107 (released August 25, 2016).

Note 5 to § 73.3555: Paragraphs (b) and (e) of this section will not be applied to cases involving television stations that are ''satellite'' operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87–8, FCC 91–182 (released July 8, 1991), as further explained by the Report and Order in MB Docket No. 18–63, FCC 19–17, (released March 12, 2019), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating ''satellite'' television station, the digital noise limited service contour of which overlaps that of a commonly owned, operated, or controlled ''non-satellite'' parent television broadcast station may subsequently become a ''non-satellite'' station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87–8. However, such commonly owned, operated, or controlled ''non-satellite'' television stations may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section.

Note 6 to § 73.3555: Requests submitted pursuant to paragraph (b)(2) of this section will be considered in accordance with the analysis set forth in the Order on Reconsideration in MB Docket Nos. 14–50, et al. (FCC 17–156).

Note 7 to § 73.3555: The Commission will entertain applications to waive the restrictions in paragraph (b) of this section (the local television ownership rule) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received.

We will entertain waiver requests as follows:

1. If one of the broadcast stations involved is a ''failed'' station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the

application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

2. If one of the television stations involved is a ''failing'' station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.

3. If the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

* * * * *

Note 9 to § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled.

* * * * *

[FR Doc. 2021–13811 Filed 6–29–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA–2007–27748]

RIN 2126–AC25

Extension of Compliance Date for Entry-Level Driver Training

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA finalizes its February 4, 2020 interim final rule (interim rule), which revised a December 8, 2016, final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (ELDT final rule). This action finalizes the extension of the compliance date for the ELDT final rule from February 7, 2020, to February 7, 2022. This action provides FMCSA additional time to complete development of the Training Provider Registry (TPR) and provides State Driver Licensing Agencies (SDLAs) time to modify their information technology (IT) systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR.

DATES: This final rule is effective on July 30, 2021.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 30, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Joshua Jones, Commercial Driver's License Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–7332, *Joshua.Jones@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Rulemaking Documents
  A. Availability of Rulemaking Documents
  B. Privacy Act
II. Executive Summary
  A. Purpose of the Regulatory Action
  B. Summary of Major Provisions
  C. Costs and Benefits
III. Abbreviations, Acronyms, and Symbols
IV. Legal Basis
V. Regulatory History
  A. 2016 ELDT Final Rule
  B. NPRM To Extend Partially the ELDT Compliance Date
  C. Interim Final Rule
VI. Discussion of Comments and Changes to the Interim Final Rule
VII. Section-by-Section Analysis
VIII. Regulatory Analyses
  A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
  B. Congressional Review Act
  C. Regulatory Flexibility Act
  D. Assistance for Small Entities
  E. Unfunded Mandates Reform Act of 1995
  F. Paperwork Reduction Act
  G. E.O. 13132 (Federalism)
  H. Privacy
  I. E.O. 13175 (Indian Tribal Governments)
  J. National Environmental Policy Act of 1969

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2007–27748 to read background documents and comments received, go to *https://www.regulations.gov* at any time, or to Dockets Operations at U.S. Department of Transportation, Room W12–140, West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice ''DOT/ALL 14—Federal Docket Management System (FDMS),'' which can be reviewed at *https://www.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Regulatory Action

FMCSA finalizes the extension of the compliance date for the ELDT final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (81 FR 88732, Dec. 8, 2016), from February 7, 2020, to February 7, 2022. As noted in the interim final rule, this extension is necessary so that FMCSA can complete the IT infrastructure to support the TPR, which will allow training providers to self-certify, to request listing on the TPR, and to upload the driver-specific ELDT completion information to the TPR. Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the SDLAs. This delay also provides SDLAs with time to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver ELDT completion information transmitted from the TPR.

B. Summary of Major Provisions

This action finalizes the 2-year extension of the interim final rule. The extension applies to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific ELDT certification information to the TPR;
2. The date by which SDLAs must confirm that applicants for a commercial driver's license (CDL) have complied with ELDT requirements prior to taking a specified knowledge or skills test;
3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and
4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

In addition to finalizing this delay, FMCSA is also making clarifying and

conforming changes to the regulations. FMCSA does not make any other substantive changes to the requirements established by the ELDT final rule, or to the length of the delay established in the interim final rule.

C. Costs and Benefits

In the interim rule, the Agency estimated annualized cost savings of $179 million and $196 million at 3 percent and 7 percent discount rates, respectively, over a 4-year period from 2020 through 2023. The full regulatory analyses may be found in the interim rule located in the public docket for this rulemaking (FMCSA–2007–27748–1474). Because the interim rule was effective upon publication, the Agency treats the interim rule as the baseline for this analysis. Therefore, this final rule will not result in any incremental impacts relative to that baseline, as it merely finalizes the 2-year extension of the interim rule.

III. Abbreviations, Acronyms, and Symbols

AAMVA American Association of Motor Vehicle Administrators
ANPRM Advance Notice of Proposed Rulemaking
BTW Behind the Wheel
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act
DOT U.S. Department of Transportation
ELDT Entry-Level Driver Training
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
IT Information Technology
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PRA Paperwork Reduction Act
RIA Regulatory Impact Analysis
RIN Regulation Identifier Number
SDLA State Driver Licensing Agency
SORN Systems of Records Notice
§ Section symbol
TPR Training Provider Registry
U.S.C. United States Code

IV. Legal Basis

The legal basis of the ELDT final rule, set forth at 81 FR 88738–88739, also serves as the legal basis for this final rule. A summary of the statutory authorities identified in that discussion follows.

FMCSA's authority to amend the ELDT final rule by extending the compliance date, and making other necessary clarifying and conforming changes, is derived from several concurrent statutory sources. The Motor Carrier Act of 1935, as amended, codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (the Secretary) to prescribe requirements for the safety of motor carrier operations. The rule also relies on the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. 31136(a)(1) and (2), requiring the Secretary to establish regulations to ensure that CMVs are operated safely, and that responsibilities placed on CMV drivers do not impair their ability to safely operate CMVs. The rule does not address medical standards for drivers or physical effects related to CMV driving (49 U.S.C. 31136(a)(3) and (4)). The Agency does not anticipate that drivers will be coerced as a result of this rule (49 U.S.C. 31136(5)). The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified in 49 U.S.C. chapter 313, established the CDL program and required the Secretary to promulgate implementing regulations, including minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The specific statutory provision underlying the ELDT final rule, enacted as part of The Moving Ahead for Progress in the 21st Century Act and codified at 49 U.S.C. 31305(c), required the Secretary to establish minimum entry-level driver training standards for certain individuals required to hold a CDL.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315, as they relate to CMV operators, programs, and safety.

V. Regulatory History

A. 2016 ELDT Final Rule

The ELDT final rule established minimum training standards for individuals applying for a Class A or Class B CDL for the first time; individuals upgrading their CDL to a Class B or Class A; and individuals obtaining the following endorsements for the first time: Hazardous materials (H), passenger (P), and school bus (S). The ELDT final rule also defined curriculum standards for theory and behind-the-wheel (BTW) instruction for Class A and B CDLs and the P and S endorsements, and theory instruction requirements for the H endorsement. In addition, the ELDT final rule required that SDLAs verify ELDT completion before allowing the applicant to take a skills test for a Class A or Class B CDL, or a P or S endorsement; or a knowledge test prior to obtaining the H endorsement.

The ELDT final rule also established the TPR, an online database which would allow ELDT providers to electronically register with FMCSA and certify that individual driver-trainees completed the required training. The rule set forth eligibility requirements for training providers to be listed on the TPR, including a certification, under penalty of perjury, that their training programs meet those requirements. The ELDT final rule, when fully implemented, will require training providers to register with the TPR, and thereafter electronically upload driver-specific ELDT information to the TPR, which FMCSA will then verify before transmitting to the SDLA. The process is designed to deliver a finished ''product'' (*i.e.,* verified driver-specific ELDT information) to the end user, the SDLA, for their review prior to administering the CDL skills test or issuing the CDL credential.

B. NPRM To Extend Partially the ELDT Compliance Date

On July 18, 2019, FMCSA published a notice of proposed rulemaking (NPRM) titled ''Partial Extension of Compliance Date for Entry-Level Driver Training'' (84 FR 34324). That NPRM proposed delaying, from February 7, 2020, to February 7, 2022, two provisions from the ELDT final rule published on December 8, 2016 (81 FR 88732): The requirement that training providers upload driver-specific training certification information to the TPR, and the requirement that SDLAs confirm driver applicants are in compliance with the ELDT requirements prior to administering a skills test for a Class A or Class B CDL, or a P or S endorsement, or prior to administering the knowledge test to obtain the H endorsement. In the NPRM, FMCSA explained that the proposed delay was necessary to allow both the Agency and SDLAs to complete the requisite IT infrastructure to accommodate the two requirements. The NPRM, which did not propose extending the compliance date for any other ELDT requirement, also proposed several clarifying and conforming changes to the ELDT final rule. FMCSA received 56 comments on the NPRM. No public meeting was requested and none was held.

C. Interim Final Rule

On February 4, 2020, FMCSA published in the **Federal Register** an

interim final rule titled ''Extension of Compliance Date for Entry-Level Driver Training'' (85 FR 6088). That interim rule extended the compliance date for the ELDT final rule, from February 7, 2020, to February 7, 2022. The 2-year extension applied to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific ELDT certification information to the TPR;

2. The date by which SDLAs must confirm that applicants for a CDL have complied with ELDT requirements prior to taking a specified knowledge or skills test;

3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and

4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

In the interim rule, FMCSA cited IT development issues largely beyond its control that prevented the Agency from completing the TPR in time for the February 7, 2020, compliance date established by the ELDT final rule. Accordingly, the partial delay proposed in the NPRM was no longer feasible. FMCSA issued the interim rule with an immediate effective date, but provided a 45-day comment period. FMCSA received 20 comments on the interim rule, which are discussed below.

VI. Discussion of Comments and Changes to the Interim Final Rule

As noted above, FMCSA received 20 comments on the interim final rule, with 10 of them coming from individuals raising issues beyond the scope of the rulemaking. The rulemaking focused on one issue: The extension of the compliance date. Comments received about changes to the underlying ELDT rule are beyond the scope of the NPRM and will not be discussed. The remaining comments were from three organizations and seven individuals. The organizations that commented were the Institute for Policy Integrity at the New York University School of Law (IPI), the Commercial Vehicle Training Association (CVTA), and the Oregon Department of Transportation (Oregon).

Comment: The IPI comment focuses on the method FMCSA used to monetize the forgone benefits of its interim rule. According to the IPI, FMCSA undervalued the forgone benefits by using an interim social cost of carbon, instead of using the emission reduction benefits included in the ELDT final rule.

FMCSA Response: This rule accounts for delays in the implementation of the TPR that were not foreseen at the time of the ELDT final rule. The projected disbenefits resulting from the interim rule are not directly comparable to the benefits estimated in the ELDT final rule, as they are to be interpreted relative to a baseline consisting of the ELDT final rule, whereas the benefits presented in the ELDT final rule were relative to a no-action baseline.

A direct comparison of the ELDT final rule's carbon dioxide benefits to the disbenefits of the interim rule is further complicated by the interim rule's use of the interim social cost of carbon values developed under E.O. 13783. The Agency applied these values in lieu of those used in the ELDT final rule because they were the estimates applicable during the development of the interim final rule. FMCSA notes that if those values were recalculated today, yet a different value would result. FMCSA is not presenting revised calculations as this final rule is not changing the compliance date established by the IFR and showing a different cost would not change that date.

Another factor driving the differential is the time frame over which the interim rule is estimated. The Agency did not expect that the cumulative 10-year estimates from the ELDT final rule would be comparable to an interim rule that projects relative impacts resulting from a 2-year delay. Comparing the two annualized estimates may not prove to be informative either, as the ELDT final rule was annualized over 10 years, and this one over 4 (see footnote 2, infra).

Comment: The Commercial Vehicle Training Association (CVTA) made several recommendations for FMCSA to increase communication as the new compliance date nears.

FMCSA Response: These recommendations will be considered by the Agency.

Comment: Oregon welcomed the delay but noted several errors in the regulatory text, found in the headings for subparts E & F of part 380 and in § 384.230.

FMCSA Response: FMCSA corrects these errors, as discussed below in the ''Section-by-Section Analysis.''

Comment: One of the individual commenters explicitly supported the extension, and requested that FMCSA publish a compliance guide on or before the new compliance date so businesses have time to understand training requirements fully.

FMCSA Response: While FMCSA was not required to publish small business compliance guides when it published the ELDT final rule (see ELDT final rule, 81 FR 88732, 88787, Dec. 8, 2016), the Agency provided guidance to the public, which can be found at *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/eldt.* FMCSA plans to provide further guidance as the compliance date approaches.

Comment: A second commenter stated that the compliance date should not be upheld until the States are fully on board and are compliant.

FMCSA Response: FMCSA agrees; the new compliance date should provide States with the time needed to adjust their IT systems to allow them to receive the information that the ELDT final rule requires.

Comment: The five remaining individual commenters expressed disappointment with the delay. One of these commenters questioned why FMCSA doesn't require ''paper registration'' to allow the rule to come into effect.

FMCSA Response: FMCSA did not consider implementing ''paper registration'' for either training providers or students, as doing so would have increased the cost of the ELDT final rule, and would require approval from OMB, a process which could require further delay of the compliance date. In addition, the ELDT Advisory Committee strongly advised against using paper records due to concerns about fraud. FMCSA believes the electronic transmission of data is more secure, more efficient, and ensures that the required informational elements will be uniformly understood and reported.

Comment: Another commenter expressing disappointment noted that schools have taken steps to get ready for the ELDT final rule, including determining how to prove the 80 percent proficiency, creating certificates of training, and changing curriculum. This commenter noted that it is imperative to get the ELDT requirements in place to reap the safety benefits as soon as possible.

FMCSA Response: FMCSA agrees that it is important to get the ELDT requirements in place as soon as possible and acknowledges that training providers have been proactive in implementing the ELDT final rule requirements. This activity will be useful when the requirements come into effect in 2022. FMCSA also notes that training schools may voluntarily implement updated ELDT curricula at any time prior to February 7, 2022.

Comment: Two commenters questioned what had changed since 2016, when FMCSA stated that the original 3-year compliance date

timeframe would be sufficient for implementation of the ELDT requirements.

FMCSA Response: As noted in the interim rule, FMCSA experienced IT development issues, including changes to DOT internal requirements for cloud-based IT systems, which added time to the development process. This delay also impacts the States, as SDLAs cannot implement necessary IT changes until FMCSA completes its IT specifications.

VII. Section-by-Section Analysis

This final rule affirms the changes made by the interim rule. It also makes non-substantive revisions to correct errors that were discovered after the interim rule published. These affirmed changes and non-substantive revisions are as follows:

FMCSA revises the headings for subparts E and F in part 380, to reflect the change in the compliance date for entry-level drivers to obtain the training set forth in subpart F. This change was inadvertently left out of the interim rule, though it was included as an intended change in the section-by-section analysis of that document. The changes to the headings have no impact, however, as the actual regulatory text included the changed dates. FMCSA affirms the revisions to §§ 380.600 and 380.603. FMCSA also revises the heading for subpart G in part 380, which was erroneously left out of the interim rule. Finally, FMCSA is making a technical correction in § 380.707(a) to add a missing word.

FMCSA affirms the changes in § 383.71, paragraphs (a)(3), (b)(11), and (e)(5), which changed the individual drivers' compliance date from February 7, 2020, to February 7, 2022.

FMCSA also affirms the changes in § 383.73: In paragraphs (b)(11), (e)(9), and (p), the interim rule changed the States' compliance date from February 7, 2020, to February 7, 2022; and in paragraphs (b)(3) introductory text, (b)(3)(ii), and (e)(9), FMCSA made clarifying changes.

Finally, the Agency affirms the change to the States' compliance date in §§ 384.230 and 384.301, from February 7, 2020, to February 7, 2022. FMCSA is also making changes to cross references in § 384.230, to account for the changes made in § 383.73.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulations (49 CFR 5.13(a)) and does not require an assessment of potential costs and benefits under E.O. 12866. Accordingly, OMB has not reviewed it under that order.

Because the interim rule was effective upon publication, the Agency treats the interim rule as the baseline for this analysis. Therefore, this final rule will not result in any incremental impacts relative to that baseline, as it merely finalizes the 2-year extension of the interim rule.[1]

B. Congressional Review Act

This rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801, *et seq.*).[2]

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996), note following 5 U.S.C. 601), requires Federal agencies to consider the effects of the regulatory action on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA is not required to complete a regulatory flexibility analysis because the interim rule was not subject to notice and comment under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)).

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $168 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2019 levels) or more in any one year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule in section IX, subsections A. and B., above.

F. Paperwork Reduction Act

This rule calls for an information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

[1] The full regulatory analyses may be found in the interim rule located in the public docket for this rulemaking (FMCSA–2007–27748–1474).

[2] A ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

3520) (PRA). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The 2016 ELDT final rule discussed the changes to the approved collection of information, but did not revise the supporting statement for that collection at that time, because the changes from the final rule would not take effect until after the expiration date of that approved collection (see PRA discussion at 81 FR 88732, 88788). This collection was revised as part of its renewal cycle, and as required by the PRA (44 U.S.C. 3507(d)), and FMCSA submitted its estimate of the burden of the proposal contained in this final rule to OMB for its review of the collection of information renewal. FMCSA published the 60-day notice in the **Federal Register** on July 3, 2019 (84 FR 31982). FMCSA published the 30-day notice in the **Federal Register** on April 7, 2020 (85 FR 19570), reflecting the changes made by the interim rule. OMB approved the collection on June 26, 2020 under OMB Control Number 2126–0028, which expires on June 30, 2023.

The information collection may be viewed at *www.reginfo.gov/public/do/PRAMain.* Find this information collection by entering OMB control number 2126–0028 in the search bar and clicking on the last entry.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, (Dec. 8, 2004), note following 5 U.S.C. 552a), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this rule does not change the collection of personally identifiable information (PII) as set forth in the 2016 ELDT final rule. The supporting Privacy Impact Analysis, available for review on the DOT website, *http://www.transportation.gov/privacy,* gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the ELDT final rule, which would also apply to this final rule.

As required by the Privacy Act (5 U.S.C. 552a), FMCSA and DOT will publish, with request for comment, a system of records notice (SORN) that will describe FMCSA's maintenance and electronic transmission of information affected by the requirements of the ELDT final rule that are covered by the Privacy Act. This SORN will be published in the **Federal Register** not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their actions. In accordance with NEPA, FMCSA's NEPA Order 5610.1 (NEPA Implementing Procedures and Policy for Considering Environmental Impacts), and other applicable requirements, FMCSA prepared an Environmental Assessment (EA) to review the potential impacts of the ELDT final rule. That EA is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

Because this rule only finalizes the interim rule's delay of the compliance date of the ELDT final rule without any other substantive change to the regulations, FMCSA continues to rely upon the previously published 2016 EA to support this final rule. As noted in that EA, implementation of the ELDT final rule imposed new training standards for certain individuals applying for their CDL, an upgrade of their CDL, or hazardous materials, passenger, or school bus endorsement for their license. FMCSA found that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, as amended by Public Law 109–59, would not be impacted. The impact areas that may be affected and were evaluated in the 2016 EA included air quality, hazardous materials transportation, solid waste, and public safety. Specifically, as outlined in the ELDT final rule RIA, FMCSA anticipated that an increase in driver training would result in improved fuel economy based on changes to driver behavior, such as smoother acceleration and braking practices. Such improved fuel economy is anticipated to result in lower air emissions and improved air quality for gases, including carbon dioxide. For the interim rule, FMCSA estimated the forgone environmental benefits for years 2020 through 2023. As mentioned above, the interim rule temporally shifted the benefits of the 2016 final rule by two years but otherwise retains the overall environmental impacts of the 2016 final rule. This final rule makes no changes that will impact the discussion from the interim rule.

List of Subjects

49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons set forth in the preamble, FMCSA adopts as final, the interim final rule amending 49 CFR parts 380, 383, and 384, published February 4, 2020, at 85 FR 6088, with the following changes:

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); sec. 32304 of Pub. L. 112–141; and 49 CFR 1.87.

■ 2. Revise the heading for subpart E to read as follows:

Subpart E—Entry-Level Driver Training Requirements Before February 7, 2022

■ 3. Revise the heading for subpart F to read as follows:

Subpart F—Entry-Level Driver Training Requirements On and After February 7, 2022

■ 4. Revise the heading for subpart G to read as follows:

Subpart G—Registry of Entry-Level Driver Training Providers On and After February 7, 2022

§ 380.707 [Amended]

■ 5. In § 380.707, amend the first sentence of paragraph (a) by adding the word ''with'' after the words ''certify that they will comply''.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 6. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 7. In § 384.230, revise paragraph (a) to read as follows:

§ 384.230 Entry-level driver certification.

(a) Beginning on February 7, 2022, a State must comply with the requirements of § 383.73(b)(11) and (e)(9) of this subchapter to verify that the applicant completed the training prescribed in subpart F of part 380 of this subchapter.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021–13893 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 86, No. 123
Wednesday, June 30, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AO13

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of Actuaries and published in the **Federal Register** on March 29, 2021, as required by law.

DATES: Send comments on or before August 30, 2021.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On March 29, 2021, OPM published a notice at 86 FR 16401 in the **Federal Register** to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the revisions to the actuarial assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.309 of title 5, Code of Federal Regulations, regulates the payment of the basic employee death benefit. Under 5 U.S.C. 8442(b), the basic employee death benefit may be paid to a surviving spouse as a lump sum or as an equivalent benefit in 36 installments. These rules amend 5 CFR 843.309(b)(2) to conform the factor used to convert the lump sum to 36-installment payments with the revised economic assumptions.

Section 843.311 of title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under 5 U.S.C. 8442(c). This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence under 5 U.S.C. 8424, he or she may elect to receive the unexpended balance instead of an annuity. If the separated employee died before having attained the minimum retirement age, the annuity commences on the day the deceased separated employee would have been eligible for an unreduced annuity as specified under this section. If the current or former spouse instead elects to receive an adjusted annuity beginning on the day after the death of the separated employee, the annuity is reduced using the factors in appendix A to subpart C of part 843 to make the annuity actuarially equivalent to the present value of the annuity that the spouse or former spouse otherwise would have received. These rules amend appendix A to subpart C of part 843 to conform the factors to the revised actuarial assumptions.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs 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). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule was not designated as a ''significant regulatory action,'' under Executive Order 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United

States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this is not a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA Application for Death Benefits (FERS)/Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death (FERS), 3206–0172. The public reporting burden for this collection is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 16,751 hours. The systems of record notice for this collection is: OPM SORN CENTRAL–1-Civil Service Retirement and Insurance Records.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; 843.309 also issued under 5 U.S.C. 8442; 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. In § 843.309, revise paragraph (b)(2) to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2) For deaths occurring on or after October 1, 2021, 36 equal monthly installments of 2.94259 percent of the amount of the basic employee death benefit.

* * * * *

■ 3. Revise appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10 but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	.1096
27	.1162
28	.1232
29	.1305
30	.1382
31	.1464
32	.1550
33	.1643
34	.1742
35	.1845
36	.1958
37	.2074
38	.2198
39	.2327
40	.2459
41	.2609
42	.2770
43	.2936
44	.3119
45	.3308
46	.3518
47	.3735
48	.3969
49	.4220
50	.4490
51	.4781
52	.5094
53	.5430
54	.5792
55	.6178
56	.6601
57	.7059
58	.7555
59	.8092
60	.8674
61	.9308

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	.2254
37	.2389
38	.2532
39	.2682
40	.2836
41	.3010
42	.3195
43	.3388
44	.3599
45	.3818
46	.4059
47	.4311
48	.4581
49	.4871
50	.5182
51	.5518
52	.5878
53	.6265
54	.6682
55	.7128
56	.7615
57	.8142
58	.8712
59	.9329

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
46	.4988	.5332
47	.5298	.5664
48	.5631	.6019
49	.5987	.6401
50	.6370	.6810
51	.6781	.7249
52	.7224	.7722
53	.7698	.8229
54	.8209	.8775
55	.8759	.9363

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
56	.9355	1.0000

[FR Doc. 2021–13774 Filed 6–29–21; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0043]

RIN 1904–AE61

Energy Conservation Program: Energy Conservation Standards for Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On June 4, 2021, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') pertaining to the energy conservation standards for dehumidifiers. The notice provided an opportunity for submitting written comments, data, and information by July 6, 2021. On June 18, 2021, DOE received a request from the Association of Home Appliance Manufacturers (''AHAM'') to extend the public comment period by 30 days. DOE has reviewed this request and is granting a 15-day extension of the public comment period to allow public comments to be submitted until July 21, 2021.

DATES: The comment period for the RFI published on June 4, 2021 (86 FR 29964), is extended. DOE will accept comments, data, and information regarding this RFI on or before July 21, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0043 by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email:* To *Dehumidifiers2019STD0043@ee.doe.gov.* Include docket number EERE–2019–BT–STD–0043 in the subject line of the message.

No telefacsimilies (''faxes'') will be accepted.

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

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

The docket web page can be found at: *www.regulations.gov/docket/EERE-2019-BT-STD-0043.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, 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. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 4, 2021, DOE published an RFI seeking data and information that could enable the agency to determine whether DOE should propose a ''no-new-standard'' determination because a more stringent standard: Would not result in a significant savings of energy; is not technologically feasible; is not economically justified; or any combination of the foregoing. 86 FR 29964. On June 18, 2021, an interested party in the matter, AHAM, requested a 30-day extension of the public comment period for the RFI.[1] AHAM asked for this additional time given that comments on DOE's preliminary technical support document for clothes dryers are also due on July 6, 2021. In addition, AHAM commented that the industry is spending a considerable amount of time responding to proposals from Natural Resources Canada related to five categories of home appliances, as well as DOE's proposed test procedure for direct heating equipment. AHAM stated that it understands and appreciates that DOE is working to move quickly on a number of rulemakings to satisfy the President's climate objectives as well as advance rulemakings that have missed statutory deadlines. AHAM noted that the statutory deadline for dehumidifiers is a year away and, thus, asserted that a brief delay in the comment period should not negatively impact DOE's ability to meet this deadline, nor should it detract from DOE's ability to catch up on other rulemakings, but it would significantly assist AHAM and its members in providing quality input on DOE's RFI.

DOE has reviewed the request and is extending the comment period to allow additional time for interested parties to submit comments. As noted, the RFI was issued as part of the preliminary stage of a rulemaking to consider amendments to the energy conservation standards for dehumidifiers. If DOE determines that amended energy conservation standards may be appropriate, additional notices will be

[1] AHAM submitted the request to DOE via email.

published (*e.g.,* a notice of proposed rulemaking), providing interested parties additional opportunity to submit comments. As such, DOE has determined that a 15-day extension is sufficient for this preliminary stage. Therefore, DOE is extending the comment period to July 21, 2021.

Signing Authority

This document of the Department of Energy was signed on June 25, 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 June 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–13986 Filed 6–29–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0026]

Energy Conservation Program: Test Procedures for Consumer Products; Early Assessment Review: Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is undertaking an early assessment review to determine whether to proceed with a rulemaking to amend the test procedure for dehumidifiers. Through this request for information (''RFI''), DOE seeks data and information regarding issues pertinent to whether an amended test procedure would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product without being unduly burdensome to conduct. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before July 30, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0026, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *Dehumidifier2019TP0026@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0026 in the subject line of the message.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

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

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

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2019–BT–TP–0026.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, 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. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE established an early assessment review process to conduct a more focused analysis that would allow DOE to determine, based on statutory criteria, whether an amended test procedure is warranted. The purpose of this review is to limit the resources, from both DOE and stakeholders, committed to rulemakings that will not satisfy the requirements in the Energy Policy and Conservation Act, as amended (''EPCA''),[1] that an amended test procedure more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or

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

period of use for the product, and not be unduly burdensome to conduct. See 85 FR 8626, 8653–8654 (Feb. 14, 2020).

As part of the early assessment, DOE publishes an RFI in the **Federal Register**, announcing that DOE is initiating a rulemaking proceeding and soliciting comments, data, and information on whether an amended test procedure would more accurately measure energy use during a representative average use cycle or reduce testing burden. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for an amended test procedure.

If DOE makes an initial determination based upon available evidence that an amended test procedure would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that an amended test procedure is not warranted.

Conversely, if DOE makes an initial determination that an amended test procedure would satisfy the applicable statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue an amended test procedure. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that an amended test procedure would not satisfy the requirements in EPCA, based upon the full suite of DOE's analyses. *Id.* at 85 FR 8654.

A. Authority and Background

EPCA, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include dehumidifiers, the subject of this RFI. (42 U.S.C. 6293(b)(13); 42 U.S.C. 6295 (cc))

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 specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), energy conservation standards (42 U.S.C. 6295), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

EPCA requires that the test procedure for dehumidifiers be based on the test criteria used under the ENERGY STAR Program Requirements for Dehumidifiers developed by the U.S. Environmental Protection Agency, as in effect on August 8, 2005, unless revised by DOE pursuant to 42 U.S.C. 6293. (42 U.S.C. 6293(b)(13)) Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE review test procedures for all covered products, including dehumidifiers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use and not be unduly burdensome to conduct (42 U.S.C. 6293(b)(1)(A)) DOE is publishing this RFI to collect data and information to inform its decision in satisfaction of this 7-year review requirement.

B. Rulemaking History

DOE last amended the test procedure for dehumidifiers on July 31, 2015 (''July 2015 Final Rule''), to provide technical clarifications and improve repeatability of the test procedure. 80 FR 45802. The July 2015 Final Rule also established a new test procedure for dehumidifiers at appendix X1 that, among other things, established separate provisions for testing whole-home dehumidifiers. *Id.* DOE's test procedures for dehumidifiers are prescribed at Title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix X1 (''appendix X1''). Manufacturers were not required to use appendix X1 until the compliance date of a subsequent amendment to the energy conservation standards for dehumidifiers. On June 13, 2016, DOE published a final rule establishing amended energy conservation standards for dehumidifiers, for which compliance was required beginning June 13, 2019. 81 FR 38338.

II. Request for Information

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an amended test procedure rulemaking. Accordingly, in the following sections, DOE has identified a variety of issues on which it seeks input to determine whether, and if so how, amended test procedures for dehumidifiers would more accurately or fully comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect energy use during a representative average use cycle or period of use, without being unduly burdensome to conduct (42 U.S.C. 6293(b)(3)).

A. Scope and Definitions

EPCA defines a dehumidifier as a self-contained, electrically operated, and mechanically encased assembly consisting of—(1) a refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)) In codifying a regulatory definition of ''dehumidifier,'' DOE interpreted the statutory definition as excluding portable air conditioners, room air conditioners, and packaged terminal air conditioners. 10 CFR 430.2. Products meeting this definition are subject to DOE's regulations for testing, certifying,

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

and complying with energy conservation standards.

In the July 2015 Final Rule, DOE established definitions for two dehumidifier configurations: ''portable dehumidifiers'' and ''whole-home dehumidifiers.'' 80 FR 45802, 45805. A ''portable dehumidifier'' is a dehumidifier designed to operate within the dehumidified space without ducting (although means may be provided for optional duct attachment). 10 CFR 430.2. A ''whole-home dehumidifier'' is a dehumidifier designed to be installed with ducting to deliver return process air to its inlet and dehumidified process air to one or more locations in the dehumidified space. *Id.*

Issue 1: DOE seeks comment on whether the current definitions of ''dehumidifier,'' ''portable dehumidifier,'' and ''whole-home dehumidifier'' require amendment, and if so, how the terms should be defined.

Issue 2: DOE requests comment on whether the existing equipment definitions specified in 10 CFR 430.2 for dehumidifiers require amendments to distinguish further between portable and whole-home units. If they do, DOE seeks information on what identifying characteristics may be included in potential amended definitions to differentiate better between the two configurations.

B. Test Procedure

Dehumidifiers are tested in accordance with appendix X1, which incorporates American National Standard Institute (''ANSI'')/Association of Home Appliance Manufacturers (''AHAM'') Standard DH–1–2008, ''Dehumidifiers,'' (''ANSI/AHAM DH-1–2008''), with modification. In part, the DOE test procedure specifies a different dry- bulb temperature (65 degrees Fahrenheit (''°F'') for portable dehumidifiers and 73 °F for whole-home dehumidifiers) than ANSI/AHAM DH–1–2008, while still maintaining the relative humidity specified by ANSI/AHAM DH–1–2008. *See* Section 4.1.1 of appendix.

X1. Appendix X1 also includes instructions regarding instrumentation, condensate collection, control settings, setup, and ducting for whole-home dehumidifiers. *See* Sections 3.1.2.2; 3.1.1.4; 3.1.1.5; 3.1.1.1; and 3.1.3 of appendix X1.

Under the current test procedure, there is a single method to measure a dehumidifier's product capacity. A unit's capacity is the volume of water, in pints, the unit removes from the ambient air per day, normalized to a standard ambient temperature and relative humidity. *See* Section 2.14 of appendix X1. The Integrated Energy Factor (''IEF''), representing the efficiency of the unit expressed in liters per kilowatt-hour, is the ratio between the capacity and the combined amount of energy consumed by the unit in dehumidification mode and standby and/or off mode(s), adjusted for the representative number of hours per year spent in each mode. *See* Section 5.4 of appendix X1.

1. Updates to Industry Standards

As discussed, the dehumidifier test procedure at appendix X1 references ANSI/AHAM DH–1–2008, an industry test procedure for dehumidifiers, with modification. In 2017, AHAM published a revision to ANSI/AHAM DH–1 (''ANSI/AHAM DH–1–2017''). ANSI/AHAM DH–1–2017 includes provisions for testing dehumidifier energy use in off-cycle, inactive, and off modes, and for including energy consumption in those modes in efficiency calculations. ANSI/AHAM DH–1–2017 also made other changes. First, it lowered the standard dry-bulb temperature condition for dehumidifiers from 80 °F (as in ANSI/AHAM DH–1–2008) to 65 °F (with the required wet-bulb temperature changing accordingly to maintain the same relative humidity).

Second, it tightened the maximum allowed variation for dry-bulb and wet-bulb temperature readings from 2.0 °F to 1.0 °F and from 1.0 °F to 0.5 °F, respectively. Third, it added guidance for instrumentation setup, multiple air-intakes and control settings.

Issue 3: DOE seeks comment on whether the references to ANSI/AHAM DH–1–2008 at appendix X1 should be updated to the most current version, ANSI/AHAM DH–1–2017.

Issue 4: DOE requests comment and information on whether, and if so, how updating the references in appendix X1 to ANSI/AHAM DH–1–2017 would impact the measured energy efficiency of dehumidifiers tested under the current DOE test procedure.

Issue 5: DOE requests comment on the impact on test burden were DOE to reference ANSI/AHAM DH–1–2017.

Issue 6: DOE specifically requests feedback on the reduction of the maximum-allowed temperature variation in ANSI/AHAM DH–1–2017, the potential test burden increase from this change, and any effects on reliability or reproducibility of results.

Issue 7: DOE requests information on whether any modifications to ANSI/AHAM DH–1–2017, other than modifications consistent with those made to ANSI/AHAM DH–1–2008 in the current DOE test procedure, would be needed to ensure that DOE's test procedure produces results that are representative of an average use cycle and is not unduly burdensome to conduct.

2. Variable-Speed Dehumidifiers

DOE is aware that dehumidifiers are available on the United States market that incorporate variable-speed compressors; *i.e.,* ''variable-speed dehumidifiers.'' Variable-speed dehumidifiers can avoid compressor cycling efficiency losses by modulating the compressor speed to match the amount of dehumidification required for a room. These units also avoid condensate re-evaporation into the ambient room air, which can occur when a dehumidifier cycles off its compressor but not its fan during off-cycle mode. The current test procedure in appendix X1 does not capture these ''cycling losses'' for single-speed dehumidifiers (and avoidance of such losses for variable-speed dehumidifiers) because the test unit operates at full capacity throughout the test.

In the July 2015 Final Rule, DOE considered a load-based test which would capture cycling behavior in dehumidifiers with single-speed compressors or speed modulation for variable-speed dehumidifiers. The load-based test would involve adding moisture to the test chamber at a fixed rate and allowing the control system of the dehumidifier to respond to changing moisture levels in the room. 80 FR 45802, 45809. DOE elected not to adopt a load-based test for the dehumidifier test procedure in the July 2015 Final Rule, due to concerns about the potential increase in test burden. *Id.* at 80 FR 45810.

Issue 8: DOE seeks data on single-speed dehumidifiers: (1) Their energy use when cycling on and off due to varying relative humidity in the room, (2) the extent of re-evaporation when operating in off-cycle mode, and (3) the effect of re-evaporation on dehumidification mode efficiency.

Issue 9: DOE seeks feedback and data regarding any alternative test methods that may produce results that are more representative of variable-speed dehumidifier energy consumption, including, but not limited to, a load-based test approach.

Issue 10: DOE is also interested in information about the nature and extent of the test burden associated with a load-based test for dehumidifiers.

3. Psychrometer Setup

Appendix X1, with reference to Section 4 ''Instrumentation'' of ANSI/AHAM DH–1–2008, requires dehumidifiers with a single air intake to

be monitored with an aspirating-type psychrometer[3] perpendicular to, and one foot in front of, the unit; and, in the case of multiple air intakes, to be monitored with a separate sampling tree. *See* Sections 3.1.1, 3.1.1.2, 3.1.1.3 of appendix X1. In the July 2015 Final Rule, DOE considered whether certain psychrometer configuration issues, such as variable levels of residual heat from the psychrometer fan and variable air velocity influencing the accuracy of temperature sensors, were detrimental to test repeatability. 80 FR 45812–45813. As discussed in the July 2015 Final Rule, DOE was unable to determine whether any repeatability improvements are associated with adjusting the fan location in relation to the dry-bulb and wet-bulb temperature sensors, or with tightening the air velocity requirements through the psychrometer. DOE also did not have sufficient data to quantify the burdens associated with such requirements. *Id.* at 80 FR 45813.

Additionally, since publication of the July 2015 Final Rule, DOE has received feedback from a testing laboratory that use of a sampling tree ducted to an aspirating psychrometer is a common configuration for testing of other refrigerant-based products, and that placing the psychrometer itself in front of the test unit may impede the instrument's ability to effectively monitor the inlet air conditions. In the July 2015 Final Rule, DOE considered a proposal to require sampling trees for testing all dehumidifiers, regardless of the number of air intakes, for consistency and repeatability. However, based on available data, DOE was unable to conclude at that time that the use of a sampling tree would be more reliable than the psychrometer-only approach. *Id.* at 80 FR 45812–45813.

Issue 11: DOE seeks data on the effect of residual heat from the psychrometer fan and the effects of psychrometer air velocity on temperature measurement repeatability when using a psychrometer, rather than a humidity sensor, under the current (appendix X1) test procedure.

DOE seeks information and data on measures that can be employed to minimize any such effects when using a psychrometer, as well as information regarding the repeatability of measurements when such measures are used.

Issue 12: DOE requests comment on any potential test burden increases associated with additional requirements regarding psychrometer fan placement and orientation relative to the temperature sensors, and any burden associated with reducing the acceptable psychrometer air velocity range.

Issue 13: DOE requests comment on whether it would be appropriate to require, or to allow, sampling trees to be used with aspirating psychrometers regardless of the number of air intakes for a given model, including any data confirming repeatability and especially repeatability relative to using an aspirating psychrometer without a sampling tree.

4. Smart Technology

DOE notes that many types of household products (*e.g.* refrigerators, dryers, room air conditioners) are now equipped with ''connected'' functionality, such as mobile alerts/messages, remote control, and energy information and demand response capabilities to support future smart grid interconnection. DOE is aware that certain manufacturers have incorporated some of these features, such as WiFi capability, into dehumidifiers. On September 17, 2018, DOE published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886. In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data and information on the issues presented in the RFI as they may apply to dehumidifiers.

Issue 14: DOE requests data on the prevalence of connected functionality in dehumidifiers currently on the market in the United States.

Issue 15: DOE requests information on whether the current test procedures for dehumidifiers impede the ability of manufacturers to provide smart technology operations on dehumidifiers.

5. Ventilation Air

Appendix X1 requires that any fresh-air inlet on a whole-home dehumidifier be capped and sealed during testing. *See* Section 3.1.3 of appendix X1. In the July 2015 Final Rule, DOE determined that, while sealing the fresh-air inlet on dehumidifiers designed to operate with the fresh-air intake open may negatively impact capacity and efficiency, those effects are not significant enough to warrant the added test burden of providing separate fresh-air inflow. 80 FR 45811. DOE also noted the lack of data regarding representative consumer use of fresh-air inlet ducts for whole-home dehumidifiers.

Issue 16: DOE requests data about the prevalence of fresh-air inlet use among whole-home dehumidifier consumers.

Issue 17: DOE seeks feedback on the test burden increases associated with adding another air-stream in the testing configuration to account for the fresh-air inlet on those whole-home dehumidifiers equipped with such a feature.

C. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedures for dehumidifiers.

III. Submission of Comments

DOE invites all interested parties to submit in writing by July 30, 2021, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for dehumidifiers. These comments and information will aid in the development of a test procedure notice of proposed rulemaking for dehumidifiers if DOE determines that amended test procedures may be appropriate for these products.

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

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

[3] In an aspirating-type psychrometer, a wet-bulb and a dry-bulb thermometer are mounted inside a case that also contains a fan. The fan draws air across both thermometers, and the resulting wet-bulb and dry-bulb temperatures are used to determine the percent relative humidity.

correspondence containing comments, and any documents submitted with the comments.

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

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

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

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

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

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

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email to *Dehumidifier2019TP0026@ee.doe.gov.* DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on June 25, 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 June 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–13982 Filed 6–29–21; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 235

[Regulation II; Docket No. R–1748]

RIN 7100–AG15

Debit Card Interchange Fees and Routing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On May 13, 2021, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** a proposal to amend Regulation II to clarify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions, clarify the requirements that Regulation II imposes on debit card issuers to ensure that at least two unaffiliated payment card networks have been enabled for debit card transactions, and standardize and clarify the use of certain terminology. The proposal provided for a comment period ending on July 12, 2021. The Board is extending the comment period for 30 days, until August 11, 2021.

DATES: The comment period for the notice of proposed rulemaking published on May 13, 2021 (86 FR 26189), is extended. Comments must be received by August 11, 2021.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT: Jess Cheng, Senior Counsel (202–452–2309), Legal Division; or Krzysztof Wozniak, Manager (202–452–3878), Elena Falcettoni, Economist (202–452–2528), or Larkin Turman, Financial Institution and Policy Analyst (202–452–2388), Division of Reserve Bank Operations and Payment Systems. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: On May 13, 2021, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** a proposal to amend Regulation II to

clarify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions, clarify the requirements that Regulation II imposes on debit card issuers to ensure that at least two unaffiliated payment card networks have been enabled for debit card transactions, and standardize and clarify the use of certain terminology.[1]

The proposal provided for a comment period ending on July 12, 2021. Since the publication of the proposal, the Board has received comments requesting a 30-day extension of the comment period. An extension of the comment period will provide additional opportunity for interested parties to analyze the proposal and prepare and submit comments. Therefore, the Board is extending the end of the comment period for the proposal from July 12, 2021 to August 11, 2021.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2021–13533 Filed 6–29–21; 8:45 am]

BILLING CODE P

[1] 86 FR 26189 (May 13, 2021).

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AD44

Bank Liquidity Reserve

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA, we, our) is contemplating revising its liquidity regulations so Farm Credit System (FCS or System) banks can better withstand crises that adversely impact liquidity and pose a risk to their viability. FCA is considering whether to amend our existing liquidity regulatory framework. We are seeking comments from the public on how to amend or restructure our liquidity regulations.

DATES: Please send us your comments on or before September 28, 2021.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by email or through FCA's website. We do not accept comments submitted by facsimiles (fax), as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive on our website at *http://www.fca.gov.* Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam. You may also review comments at our office in McLean, Virginia. Please call us at (703) 883–4056 or email us at *reg-comm@fca.gov* to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, *LeistR@fca.gov,* Senior Accountant, or Jeremy R. Edelstein, *EdelsteinJ@fca.gov,* Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056, or *ORPMailbox@fca.gov;*

or

Legal information: Richard Katz, *KatzR@fca.gov,* Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Objectives of the Advance Notice of Proposed Rulemaking

FCA's purpose in this Advance Notice of Proposed Rulemaking is to gather public input to:

- Ensure that each FCS bank operates under a comprehensive liquidity framework, so it consistently maintains adequate liquidity to cover all of its potential obligations, including unfunded commitments and other material contingent liabilities, under stressful conditions;
- Assess if, and to what extent, the Basel III International framework for liquidity risk measurement, standards and monitoring (hereafter ''Basel III Liquidity Framework''), issued by the Basel Committee on Banking Supervision (BCBS), and regulations of the Federal banking regulatory agencies (FRBAs) implementing this framework for banking organizations should influence revisions to FCA's existing liquidity framework; [1]
- Determine if the Basel III Liquidity Framework is appropriate for FCS banks, and evaluate the impacts of augmenting FCA's existing liquidity framework to incorporate appropriate aspects of the Basel III Liquidity Framework and the FBRAs' implementation of the framework; [2] and
- Determine the respective costs and benefits of updating FCA's liquidity framework for FCS banks.

B. Background on System Liquidity

In 1916, Congress created the System to provide permanent, stable, affordable,

[1] The Federal banking regulatory agencies include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System (hereafter Federal Reserve Board), and the Federal Deposit Insurance Corporation. *See* ''Liquidity Coverage Ratio: Liquidity Risk Measurement Standards,'' 79 FR 61440 (October 10, 2014) and ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements,'' 86 FR 9120 (February 11, 2021).

[2] Basel III was published in December 2010 and revised in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm.* The BCBS was established in 1974 by central banks with bank supervisory authorities in major industrial countries. The BCBS develops banking guidelines and recommends them for adoption by member countries and others. BCBS documents are available at *https://www.bis.org/.* The FCA does not have representation on the Basel Committee, as do the FBRAs, and is not required by law to follow the Basel standards. The Basel III Liquidity Coverage Ratio and liquidity risk monitoring tools document was published in January 2013 and the Net stable funding ratio document was published in October 2014.

and reliable sources of credit and related services to American agricultural and aquatic producers. The System currently consists of 3 Farm Credit Banks, 1 agricultural credit bank, 66 agricultural credit associations, 1 Federal land credit association, service corporations, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).[3] Farm Credit banks (which include both the Farm Credit Banks and the agricultural credit bank) issue System-wide consolidated debt obligations in the capital markets through the Funding Corporation,[4] which enable the System to extend short-, intermediate-, and long-term credit and related services to farmers, ranchers, aquatic producers and harvesters, their cooperatives, rural utilities, exporters of agricultural commodities products, and capital equipment, farm-related businesses, and certain rural homeowners.[5] The System's enabling statute is the Farm Credit Act of 1971, as amended (Act).[6]

In many respects, the FCS is different from other lenders. In contrast to most commercial banks and other financial institutions, the System lends primarily to agriculture and other eligible borrowers in rural areas. Unlike most other lenders, FCS banks and associations are cooperatives that are owned and controlled by their member-borrowers. Their common equity is not publicly traded. The System also funds its operations differently than most commercial lenders. FCS banks and associations are not depository institutions, and for this reason, System-wide debt securities, not deposits, are the System's primary source for funding loans to agricultural producers, their cooperatives, and other eligible borrowers. Although section 4.2(a) of the Act authorizes FCS banks to borrow from commercial banks and other lending institutions, lines of credit with such lenders are only used as a secondary source of liquidity.

As a government-sponsored enterprise (GSE), the System depends on continuing access to the capital markets to obtain the funds necessary to extend credit to agriculture, aquaculture, rural utilities, and rural housing in both good and bad economic times. If access to the capital markets becomes impeded for any reason, FCS banks must have enough readily available funds and assets that can be quickly converted into cash to continue operations and pay maturing obligations. Unlike commercial banks, the System does not have a lender of last resort and does not have a guaranteed line of credit from the U.S. Treasury or the Federal Reserve.

As part of our ongoing efforts to ensure the FCS banks have sufficient liquidity to fund operations in the event of market disruptions, and in light of updated guidance and regulations published by the BCBS and FBRAs, we are soliciting comments on the best ways to enhance FCA's existing liquidity framework.

II. Recent Updates to System Liquidity Regulations

FCA regulations governing System banks' liquidity were last substantially updated in 2013 in response to the 2008 financial crisis.[7] FCA proposed amendments to its liquidity requirements in 2011 to improve the quality of liquidity and bolster the ability of the System banks to fund their operations during times of economic, financial, or market adversity.[8] At the time, FCA considered the Basel III Liquidity Framework that was published in September 2008 and December 2010,[9] but decided not to adopt the Basel III liquidity ratios. The final rule incorporated the liquidity coverage principles of Basel III as appropriate to the System, improved the System's ability to withstand market disruptions by strengthening liquidity management practices at Farm Credit banks, and enhanced the liquidity of assets in their liquidity reserves. The objectives of our 2013 liquidity final rule[10] were to:

- Improve the capacity of FCS banks to pay their obligations and fund their operations by maintaining adequate liquidity to withstand various market disruptions and adverse economic or financial conditions;
- Strengthen liquidity management at all FCS banks;
- Enhance the liquidity of assets that System banks hold in their liquidity reserves;
- Require FCS banks to maintain a three-tiered liquidity reserve. The first tier of the liquidity reserve must consist of a sufficient amount of cash and cash-like instruments to cover each bank's financial obligations for 15 days. The second and third tiers of the liquidity reserve must contain cash and highly liquid instruments that are sufficient to cover the bank's obligations for the next 15 and subsequent 60 days, respectively;
- Establish a supplemental liquidity buffer that a bank can draw upon during an emergency and is sufficient to cover the bank's liquidity needs beyond 90 days; and
- Strengthen each bank's Contingency Funding Plan (CFP).

As explained in the preamble to the 2013 final rule, the amendments to § 615.5134 incorporated many of the principles that the BCBS and the FBRAs have articulated on liquidity management because many of these fundamental concepts apply to all financial institutions, including FCS banks. The comprehensive supervisory approach developed by the BCBS and the FBRAs effectively strengthens both the liquidity reserves and the liquidity risk management practices at regulated financial institutions.

FCA's update created three levels of liquid assets (levels 1, 2, and 3) which are similar to, but not exactly the same as, the three levels of high-quality liquid assets (HQLA) established in the Basel III Liquidity Framework (levels 1, 2a, and 2b) and used in the Liquidity Coverage Ratio (LCR).[11] In addition, FCA's framework adopted core concepts of the FBRA's rules, including the supplemental liquidity buffer, specific policies and internal controls that combat liquidity risk, and CFPs based in part on the results of liquidity stress tests.

The Basel III Liquidity Framework is not the only basis for the existing liquidity regulation. The regulation was also based upon the System's own initiatives to improve liquidity

[3] Number of institutions as of January 1, 2021. The Federal Agricultural Mortgage Corporation (Farmer Mac), which is also a System institution, has authority to operate secondary markets for agricultural real estate mortgage loans, rural housing mortgage loans, and rural utility cooperative loans. The FCA has a separate set of liquidity regulations that apply to Farmer Mac. This Advance Notice of Proposed Rulemaking does not affect Farmer Mac, and the use of the term ''System institution'' in this preamble does not include Farmer Mac.

[4] The Funding Corporation is established pursuant to section 4.9 of the Farm Credit Act of 1971, as amended, and is owned by all Farm Credit banks.

[5] The agricultural credit bank lends to, and provides other financial services to farmer-owned cooperatives, rural utilities (electric and telecommunications), and rural water and waste water disposal systems. It also finances U.S. agricultural exports and imports, and provides international banking services to cooperatives and other eligible borrowers. The agricultural credit bank operates a Farm Credit Bank subsidiary.

[6] 12 U.S.C. 2001–2279cc. The Act is available at *www.fca.gov* under ''Laws and regulations,'' and ''Statutes.''

[7] *See* 78 FR 23438 (April 18, 2013), as corrected by 78 FR 26701 (May 8, 2013). In addition, technical, non-substantive revisions to the terms ''Government-sponsored enterprise (GSE)'' and ''U.S. Government agency'' were made in 2018 (83 FR 27486 (June 12, 2018)).

[8] *See* 76 FR 80817 (December 27, 2011).

[9] *See* ''Principles for Sound Liquidity Risk Management and Supervision.'' September 2008; and ''Basel III: International framework for liquidity risk measurement, standards and monitoring.'' December 2010.

[10] *See supra footnote* 7.

[11] *See* 79 FR 61440 (October 10, 2014).

management as well as the FCA's experiences from examining liquidity risk management at Farm Credit banks and the Funding Corporation. In this context, the regulation implemented the best practices available for liquidity management at FCS banks at the time.

The Farm Credit System Insurance Corporation (FCSIC) may use its Insurance Fund as a backup source of liquidity for System banks through its assistance authorities.[12] Additionally, subsequent to FCA adopting the rule, FCSIC entered into an agreement with the Federal Financing Bank (FFB) for a $10 billion line of credit.[13] Pursuant to this agreement, the FFB may advance funds to FCSIC when exigent market circumstances [14] make it extremely doubtful that: The Funding Corporation can issue new System-wide debt obligations to repay maturing obligations; and one or more insured System banks will be able to pay maturing debt obligations without selling available liquidity reserve assets at a material loss. If necessary, FCSIC would use the funds advanced by the FFB to increase amounts in its Insurance Fund to provide assistance to the System banks until market conditions improve.[15]

The decision whether to provide assistance, including seeking funds from the FFB, is at the discretion of FCSIC, and each funding obligation of the FFB is subject to various terms and conditions and, as a result, there can be no assurance that funding would be available if needed by the System. This FCSIC–FFB revolving credit facility is subject to annual renewal. Additionally, the agreement only applies during exigent market circumstances, and can only be used if the amount needed to repay maturing System-wide insured debt obligations will exceed available Insurance Fund reserves. As such, FCA does not consider potential FCSIC assistance, including additional amounts available through its agreement with the FFB, when determining liquidity requirements or completing examinations of liquidity and related management practices at FCS institutions.

FCA has closely monitored how the FBRAs have adjusted Basel III and applied it to the institutions they supervise since 2013. In response to these developments and more recent adverse market conditions, FCA believes it is appropriate to consider updates to the existing FCA liquidity framework.[16]

III. Potential Areas for Improvement

Our current liquidity regulation § 615.5134, which we finalized in 2013, responded to the 2008 financial crisis. More specifically, this regulation improves the System's liquidity management and bolsters the ability of the System banks to fund their operations during times of economic, financial, or market adversity. At the time, FCA considered the Basel III Liquidity Framework and how to tailor it to the unique circumstances of System banks. The FBRAs had not yet enacted regulations that implemented Basel III, and we decided it would be premature for FCA to adopt the LCR and the Net Stable Funding Ratio (NSFR) for System banks. FCA's existing regulation has achieved FCA's objectives by ensuring that System banks have a satisfactory liquidity framework. Yet, the time has come for FCA to revisit these issues and decide how best to strengthen and update § 615.5134 so System banks are in a better position to respond to emerging risks and constantly changing market conditions.

Between 2013 and 2020, the BCBS and FBRAs issued new guidance and regulations to improve the liquidity framework for the banking sector. The new regulations included the LCR that was finalized in 2014 [17] and the NSFR, which was proposed in 2016 [18] and finalized in November 2020.[19] The LCR [20] focuses on short-term liquidity risk from severe market stresses and the NSFR [21] promotes stable funding structures over a one-year horizon. The NSFR is designed to act as a complement to the LCR to mitigate the risks of banking organizations supporting their assets with insufficiently stable funding. The LCR applies to large banking organizations and does not apply to community banking and savings associations. When the final NSFR rule becomes effective on July 1, 2021, it too will apply to large banking organizations, but not community banks and small saving associations.

The Basel III Liquidity Framework encourages regulated entities to account for unfunded commitments and other contingent obligations in their liquidity reserve calculations, and for this reason, its concepts are relevant to this rulemaking and the maintenance of adequate liquidity at FCS banks. After careful consideration of the comments received on the 2011 liquidity proposed rule, FCA decided not to incorporate unfunded commitments into the existing regulation, however, FCA stated it may address unfunded commitments at a later time. As a result, FCA's liquidity reserve requirement does not capture funds held or unfunded commitments on retail loans or on the direct note. While these unfunded commitments are generally captured as part of the liquidity stress tests incorporated into a bank's CFP, the CFP in the existing rule gives System banks considerable discretion to determine the cash flow assumptions and discount factors used to determine the amount of liquidity reserves they should hold for these potential cash outflows.

Modifying FCA's liquidity reserve requirement to capture unfunded commitments or adopting an LCR/NSFR framework may promote stronger liquidity profiles at System banks by improving how liquidity is measured and reported. Furthermore, this modification would help ensure that a System bank has enough liquidity to meet its unfunded commitments during a liquidity crisis.

The containment measures adopted in early 2020 in response to COVID–19 slowed economic activity in the United States.[22] Financial conditions tightened markedly in March and April 2020 and sudden disruptions in financial markets put increasing liquidity pressure on certain credit markets. In response to the pandemic, the Federal Reserve Board established a number of funding, credit, liquidity, and loan facilities to provide liquidity to the financial

[12] *See* 12 U.S.C. 2277a–10(a)(1); Section 5.61(a)(1) of the Act.

[13] On September 24, 2013, FCSIC entered into an agreement with the FFB, a U.S. government corporation subject to the supervision and direction of the U.S. Treasury.

[14] An ''exigent market circumstance'' is a broad disruption across U.S. credit markets that originates external to and independent of the Farm Credit System.

[15] The agreement provides for a short-term revolving credit facility of up to $10 billion, is renewable annually and terminates on September 30, 2021, unless otherwise further extended.

[16] The FCA has broad authority under various provisions of the Act to supervise and regulate liquidity management at FCS banks. Section 5.17(a) of the Act authorizes the FCA to: (1) Approve the issuance of FCS debt securities under section 4.2(c) and (d) of the Act; (2) establish standards regarding loan security requirements at FCS institutions, and regulate the borrowing, repayment, and transfer of funds between System institutions; (3) prescribe rules and regulations necessary or appropriate for carrying out the Act; and (4) exercise its statutory enforcement powers for the purpose of ensuring the safety and soundness of System institutions.

[17] *See* 79 FR 61440 (October 10, 2014).

[18] *See* 81 FR 35124 (June 1, 2016).

[19] *See* 86 FR 9120 (February 11, 2021). The final rule will become effective on July 1, 2021.

[20] *See* BCBS, ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013).

[21] *See* BCBS, ''Basel III: The net stable funding ratio'' (October 2014).

[22] *See* Proclamation 9994, ''Declaring a National Emergency Concerning the Novel Coronavirus Disease COVID–19 Outbreak,'' 85 FR 15337 (March 18, 2020).

system.[23] One of these programs, the Paycheck Protection Program (PPP) Liquidity Facility, was directly available to System institutions, while other facilities indirectly increased the liquidity of System institutions' assets held in their liquidity reserves.[24] FCA provided System institutions with guidance to manage the challenges associated with the COVID–19 pandemic, including certain regulatory capital relief for PPP loans and PPP loans pledged to the PPP Liquidity Facility.[25] Throughout the market turbulence in early 2020, System banks maintained satisfactory liquidity reserves, however; the market conditions caused by COVID–19 provided FCA the opportunity to observe the existing liquidity framework under adverse market conditions.

Based on these developments, FCA is considering whether changes to our liquidity regulations are appropriate or needed.

IV. Request for Comments

We request and encourage any interested person(s) to submit comments on the following questions and ask that you support your comments with relevant data, analysis, or other information. We remind commenters that comments, data, and other information submitted in support of a comment, will be available to the public through our website.

We have organized our questions into the following categories: (A) Existing FCA Liquidity Regulations and (B) Applicability of the LCR and NSFR.

A. Existing FCA Liquidity Regulations

Unfunded Commitments of FCS Banks

Each FCS bank has its own unique circumstances and risk profile and, therefore, exposure to unfunded commitments and other contingent obligations varies within the FCS. As part of each System bank's general financing agreement (GFA) with its affiliated associations, System banks have an unfunded commitment to each affiliated association that is a possible outflow of liquidity. The unfunded commitment amount is the difference between the association's maximum credit limit with the System bank under the GFA or promissory note[26] and the amount the association has borrowed from the System bank.

The GFA permits a System bank to terminate an association's loan or to refuse to make additional disbursements in the event of default. The Act prohibits an association from borrowing from commercial banks or other financial institutions without its funding bank's approval.[27] We believe there may be merit in incorporating these possible outflows for the bank's unfunded commitment to its affiliated associations into the existing liquidity reserve requirement because the associations are fully dependent on the bank for funding its operations so it can fulfill its mission.

System banks also have unfunded commitments or other material contingent liabilities to other financing institutions (OFIs) that increase liquidity risk.[28] System banks are required to provide funding, or provide similar financial assistance to any creditworthy OFI that meets certain requirements.[29] Although the GFAs with OFIs may permit a System bank to refuse to make additional disbursements in the event of default, a System bank would likely be required to give prior notice to cancel unfunded commitments to OFIs. As part of their GFA with OFIs, System banks can be legally obligated to fund these commitments. These types of outflows may include retail funding, contractual settlements related to derivative transactions, pledging collateral, or other off-balance sheet commitments.

FCS banks may also have outstanding lines of credit to retail borrowers who may draw funds to meet their seasonal, business, or liquidity needs. A line of credit may be used as a liquidity facility to function as an undrawn backup that would be utilized to refinance debt obligations of a borrower in situations where the borrower is unable to rollover that debt in financial markets. Alternatively, credit facilities provide a line of credit for borrower's general corporate or working capital purposes. These lines of credit to retail borrowers may or may not be unconditionally cancellable. A sudden surge in borrower demand for funds under these lines may increase demands on the bank's liquidity at a time when market access is becoming impeded. These unfunded commitments potentially expose both FCS banks and associations to significant safety and soundness risks.[30]

To incorporate consideration of these unfunded commitments, the liquidity rules of the FBRAs apply a multiplier or ''factor'' to the gross notional amount to reflect assumptions on how exposures will result in ''cash outflows.'' These factors are multiplied by the total amount of each outflow item to determine the regulatory outflow amount. The factor applied is dependent on the type of exposure, and is consistent with the Basel III Liquidity Framework and the FBRAs' evaluation of relevant supervisory information. The factors applied consider the potential impact of idiosyncratic and market-wide shocks.[31]

While unfunded commitments at System banks should be analyzed in the CFP, banks have significant discretion about the assumptions (*i.e.,* factor) applied. For example, to reflect varying drawdown assumptions System banks may apply a factor, similar to the factors applied in the FBRAs' rules, to notional amounts outstanding. A higher factor reflects a higher drawdown potential of the undrawn portion of these commitments and results in a higher liquidity requirement in the CFP. For example, a $10 billion exposure at a 10 percent factor would add only $1 billion to the discounted outflows, while a 40 percent factor would add $4 billion to the outflows.

[23] Section 1101 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 13(3) of the Federal Reserve Act, 12 U.S.C. 343(3), to allow the Federal Reserve Board, in consultation with the Secretary of the Treasury, to establish by regulation, policies and procedures that would govern emergency lending under a program or facility for the purpose of providing liquidity to the financial system. Under section 13(3) of the Federal Reserve Act, as amended, the Federal Reserve Board must establish procedures that prohibit insolvent and failing entities from borrowing under the emergency program or facility.

See Public Law 11–203, title XI, sec. 1101(a), 124 Stat. 2113 (Jul. 21, 2010).

[24] To provide liquidity to small business lenders and the broader credit markets and to help stabilize the financial system, the Federal Reserve Board has created the PPP Liquidity Facility using its authority under section 13(3) of the Federal Reserve Act.

[25] *See* FCA's Supplement to the January 5, 2021, FCA Informational Memorandum: Guidance for System Institutions Affected by the COVID–19 Pandemic: Regulatory Capital Requirements for PPP Loans.

[26] *See* § 614.4125(d).

[27] Under section 2.2(12) of the Act, direct lender associations may borrow money from their affiliated Farm Credit bank, and with the approval of their funding banks, may borrow from and issue notes or other obligations to any commercial bank or financial institution.

[28] OFI means any entity referred to in section 1.7(b)(1)(B) of the Act.

[29] *See* § 614.4540(b) which specifies the criteria for assured access for certain OFIs.

[30] The Tier 1/Tier 2 Capital framework regulation requires that System banks hold capital against this unfunded wholesale commitment due to the risk presented. *See* § 628.33 and preamble discussion—81 FR 49737 (July 28, 2016).

[31] *See* 79 FR 61440, 61444 (October 10, 2014). Examples include those shocks that would result in: (1) A partial loss of unsecured wholesale funding capacity; (2) a partial loss of secured, short-term financing with certain collateral and counterparties; (3) losses from derivative positions and the collateral supporting those positions; (4) unscheduled draws on committed credit and liquidity facilities that a covered company has provided to its customers; and (5) other shocks that affect outflows linked to structured financing transactions and mortgages.

To evaluate this further, we are seeking comment to determine if we should incorporate unfunded commitments into the existing FCA liquidity framework and what type of factor would be appropriate to capture the drawdown risks.

1. How should FCA incorporate the liquidity risk of unfunded commitments on affiliated associations' direct notes into the System banks' liquidity reserve requirement?

a. Should drawdown factors be applied to unfunded commitments?

b. If so, what would be an appropriate factor to apply to the direct note unfunded commitments?

2. How should FCA incorporate the liquidity risk of unfunded commitments to OFIs into the System banks' liquidity reserve requirement?

a. Should drawdown factors be applied to unfunded commitments?

b. If so, what would be an appropriate factor to apply to OFI unfunded commitments?

c. Does the liquidity risk of unfunded commitments to OFIs pose a different risk than unfunded commitments to affiliated associations' direct notes? If so, how should FCA incorporate this risk into the liquidity reserve requirement?

3. How should FCA incorporate the liquidity risk of unfunded commitments to bank retail borrowers into the System banks' liquidity reserve requirement?

a. What would be an appropriate factor to apply to retail borrower unfunded commitments?

b. Should unfunded commitments to retail borrowers that are not unconditionally cancellable be treated differently from those that are unconditionally cancellable? Please explain why.

c. Should we consider applying different factors to differentiate the risk between retail credit and liquidity facilities for such retail borrowers?

Association Lines of Credit to Retail Borrowers

FCS associations often have outstanding lines of credit to retail borrowers who may draw funds to meet their seasonal or other business needs. Associations can be legally obligated to fund these commitments and would generally rely on their System bank for funding under the GFA. A sudden surge in borrower demand for funds under these lines may increase demands on the bank's liquidity at a time when market access is becoming impeded. More specifically, during periods of economic or market uncertainty, retail borrowers may desire to increase their cash holdings to cover operating and business expenses and accordingly, draw from their operating lines. As System banks are ultimately responsible to fund associations, we are seeking comment to determine if a revised liquidity requirement should ''look-through'' System banks to consider each association's unfunded commitment to retail borrowers as a potential outflow item.

4. How should FCA incorporate the risk of unfunded commitments from association retail borrowers for the funding banks' liquidity reserve requirement?

a. What would be an appropriate factor for System banks to apply to association unfunded commitments?

b. Should unfunded commitments at associations that are not unconditionally cancellable be treated differently from those that are unconditionally cancellable? Please explain why.

c. If so, should we consider applying a different factor to differentiate the risk between credit and liquidity facilities for association retail borrowers?

d. Should FCA incorporate the liquidity risk of unfunded commitments to association retail borrowers through a ''look through'' approach or using the direct note unfunded commitment amount?

Voluntary Advance Conditional Payment Accounts

Section 614.4175 allows member-borrowers to make voluntary advance conditional payments (VACP) on their loans and allows institutions to set up involuntary payment accounts for funds held to be used for insurance premiums, taxes, and other reasons.[32] VACP (where the advanced payment is not compulsory) accounts have the potential to expose the System to additional liquidity risk in a crisis. More specifically, some VACP accounts may be structured so that System member-borrowers may withdraw funds at their request (although prior notice for withdrawals may be required). A sudden surge in member-borrower draws from VACP accounts held at associations would increase the funding required from the bank to the association. This sudden increase in funding may increase demands on the bank's liquidity at a time when market access is becoming impeded. To evaluate this further, we are seeking comment on how we should mitigate the risk VACP accounts pose to the liquidity of System banks.

[32] Sections 1.5(6) and 2.2(13) of the Act authorize institutions to accept advance payments.

5. How should FCA incorporate the liquidity risk of VACP accounts at associations into the funding banks' liquidity reserve requirement?

a. What would be an appropriate factor to apply to these VACP accounts?

b. If different factors should apply to different types of VACP accounts, please specify.

Continuously Redeemable Perpetual Preferred Stock

Some System associations have issued continuously redeemable perpetual preferred stock (typically called Harvest Stock or H Stock) to their members who wish to invest and participate in their cooperative beyond the minimum member-borrower stock purchase. H Stock is an at-risk investment; it is issued without a stated maturity and is retireable only at the discretion of the institution's board. A common feature of H stock is that the issuing association will redeem it upon the request of the holder only if the association is in compliance with its regulatory capital requirements. Because of this feature, FCA considers the stock to be continuously redeemable. Some associations reduce the operational hurdles to redeeming H stock by delegating the board's authority to retire such stock to management provided certain board-approved minimum regulatory capital ratios are maintained. FCA has determined that holders reasonably expect the institution to redeem the stock shortly after they make a request. A sudden surge in member-borrower redemptions of H Stock held at associations would increase the funding from System bank to its associations. This sudden increase in funding may increase demands on the bank's liquidity at a time when market access is becoming impeded. To evaluate this further, we are seeking comment on how we should mitigate the risk H Stock poses to the liquidity of System banks.

6. How should FCA incorporate the liquidity risk of H Stock redemptions at associations into the funding banks' liquidity reserve requirement? What would be an appropriate factor to apply to H Stock?

Cash Inflows

As discussed above, modifying FCA's liquidity reserve requirement to capture potential cash outflows, including unfunded commitments, may promote a stronger liquidity profile at System banks. To improve how liquidity is measured and reported, we are also considering incorporating cash inflows into the liquidity reserve requirement. FCA's existing liquidity regulation,

§ 615.5134, does not consider how expected cash inflows would affect the bank's liquidity reserve requirement. Outside of CFP stress analysis (discussed below), FCA's existing liquidity framework views the discounted market value of assets held in the liquidity reserve and supplemental buffer as the only source of liquidity during a liquidity event.[33]

However, in a liquidity event, certain borrowers will still be making payments on their loans, allowing money to flow into the institution that can be used to support ongoing operations. Cash inflows from sources other than the liquidity reserve typically include payments from wholesale and retail borrowers and coupon and scheduled principal payments from securities not included in the liquidity reserve.[34]

The CFP requirement at § 615.5134(f) allows System banks to consider inflows when analyzing how much contingent liquidity they must hold under a 30-day acute stress scenario. However, for the purposes of the CFP, System banks have considerable discretion to determine the assumptions pertaining to the amount of inflows that will offset potential outflows. To evaluate this further, we are seeking comment to determine if we should incorporate inflows into the existing FCA liquidity framework.

7. How should FCA incorporate the uncertainty of cash inflows into System banks' liquidity reserve requirements?

8. What would be an appropriate discount percentage to apply to the different types of inflows (such as payments from wholesale and retail borrowers, payments from securities not included in the liquidity reserve)?

9. What type of operational changes (such as data elements, general ledger requirements, and systems) would be required to accurately capture inflow and outflow information to calculate liquidity ratios on a daily or monthly basis?

Stability of a Bank's Balance Sheet

The amount of liquid assets that a bank must maintain is generally a function of the stability of its funding structure, the risk characteristics of the balance sheet, and the adequacy of its liquidity risk measurement program. System banks provide funding to their affiliated associations through the direct note which is a significant portion of the bank's assets. The bank's direct note assets are impacted by the funding and liquidity demands of their affiliated associations. However, System banks directly control the mix of funding for these assets, as well as the risk characteristics of other assets acquired.

System banks issue System-wide debt securities as the primary source for funding loans and investments. As part of the examination process, FCA evaluates how each bank's debt structure helps limit liquidity risks. For example, if a bank funds its balance sheet wholly with short-term debt, the resulting large amounts of debt maturing each week would cause the bank to be vulnerable to market disruptions and liquidity risk. Therefore, debt maturities should be structured in a manner that they are extended and align with the tenor and composition of the bank's assets. In addition, debt maturities should ensure longer-term stable funding.

FCA's existing liquidity framework does not directly address the stability of a bank's balance sheet and does not require compliance with specific debt structure ratios. To evaluate this further, we are seeking comment to determine if we should add requirements regarding the structure of a bank's balance sheet into the existing FCA liquidity framework.

10. How should FCA amend its liquidity regulations to strengthen the stability of the balance sheet structure at FCS banks?

11. Under what circumstances might it be appropriate for FCA's liquidity framework to better address funding methods such as discount notes and short funding?

Marketability of the Supplemental Liquidity Buffer

Currently, investments held in a bank's liquidity reserve must be marketable in accordance with the criteria in § 615.5134(d). However, investments held in the supplemental liquidity buffer are not subject to the same marketability standard.[35] Thus, there is the potential that the supplemental liquidity buffer may include investments that are not marketable or liquid under certain circumstances. To evaluate this further, we are seeking comment to determine if we should hold investments in the supplemental liquidity buffer to the same or similar marketability standards as assets in the liquidity reserve.

12. Should FCA apply the criteria for ''marketable'' investments in § 615.5134(d) to assets that FCS banks hold in their supplemental liquidity buffer? If yes, why? If no, what criteria should FCA adopt to address its concerns about the liquidity and marketability of assets in the supplemental liquidity buffers of FCS banks when access to the markets are becoming impeded, and why?

Money Market Instruments and Diversified Investment Funds

The existing liquidity framework allows certain money market instruments and diversified investment funds to be included as Level 1 reserves at § 615.5134(b). The FBRAs decided not to include similar instruments in the LCR's HQLA framework, such as mutual funds and money market funds.[36] The FBRAs stated that certain underlying investments of the investment companies may include high-quality assets, however, similar to securities issued by many companies in the financial sector, shares of investment companies have been prone to lose value and become less liquid during periods of severe market stress or an idiosyncratic event involving the fund's sponsor. Additionally, Securities and Exchange Commission (SEC) rules regarding money market funds may also impose some barriers on investors' ability to withdraw all their funds during a period of stress.[37]

Certain money market instruments exhibited liquidity stress during the 2008 financial crisis and the economic shock in March 2020 caused by the

[33] The discounts applied to the assets held for liquidity in FCA's regulations approximate the cost of liquidating investments over a short period of time during adverse situations. The mechanism of discounting assets is designed to accurately reflect true market conditions. For example, FCA regulations assign only a minimal discount to investments that are less sensitive to interest rate fluctuations because they are exposed to less price risk. Conversely, the discount for long-term fixed rate instruments is higher because they expose FCS banks to greater market risk.

[34] *See* FDIC's Liquidity Risk Management Standards. Inflow amounts are defined at 12 CFR 329.33.

[35] Assets held in the supplemental liquidity buffer are not subject to the marketability standard in § 615.5134(d). However, a System bank must be able to liquidate any qualified eligible investment in its supplemental liquidity buffer within the liquidity policy timeframe established by the bank's liquidity policy at no less than 80 percent of its book value. Assets having a market value of less than 80 percent of their book value at any time must be removed from the supplemental buffer. *See* § 615.5134(e).

[36] FCA defined money market instruments to include short-term instruments such as (1) Federal funds, (2) negotiable certificates of deposit, (3) bankers' acceptances, (4) commercial paper, (5) non-callable term Federal funds (6) Eurodollar time deposits, (7) master notes, and (8) repurchase agreements collateralized by eligible investments as money market instruments. 83 FR 27486, 27489 (June 12, 2018). Of the seven items, the FBRAs only allow Federal funds to be included in Level 1 HQLA. *See supra footnote* 1. Federal funds represent a small amount of the System's cash and liquidity included in Level 1 money market instruments.

[37] *See* SEC, ''Money Market Fund Reform; Amendments to Form PF,'' 79 FR 47736 (August 14, 2014).

COVID–19 pandemic.[38] For example, in March 2020, Commercial paper (CP) and Certificate of deposit (CD) markets both became stressed.[39] Under normal market conditions, secondary trading volume in CP and CD markets is limited as most investors purchase and hold these short-dated instruments to maturity. However, in March 2020, as some market participants, including money market mutual funds and others, may have sought secondary trading, they experienced a ''frozen market.'' For liquidity purposes, both secondary trading and new issuances of CP and CD halted for a period of time during the pandemic.[40]

FCA's existing definition of ''marketable'' in § 615.5134(d) makes an exception for money market instruments. Specifically, § 615.5134(d)(4) exempts money market instruments from the requirement that investments in the liquidity reserve must be easily bought and sold in active and sizeable markets without significantly affecting prices. Additionally, money market instruments are not subject to FCA's investment portfolio diversification requirements and are not limited in the liquidity reserve requirement.[41] To evaluate the type of instruments and definitions allowed under the FCA liquidity framework, we are seeking comment to determine if we should align the instruments in FCA's liquidity reserve requirement with the FBRAs HQLA framework.

13. Given the risks of money market instruments and diversified investment funds and that the FBRAs do not consider these instruments to be high quality liquid assets, why should FCA continue to permit these instruments to be included in an FCS bank's liquidity reserve? If you believe that we should continue to allow money market instruments and diversified investment funds in the liquidity reserve requirement, how could FCA mitigate the risks they pose?

14. What factors should FCA consider in evaluating the risk of money market instruments and diversified investment funds in the context of the total liquidity reserve requirement?

15. Should FCA consider limiting money market instruments and diversified investment funds included in specific levels in the liquidity reserve to mitigate concentration risk? Please explain your reasoning.

FCA's Liquidity Reserve and High-Quality Liquid Assets in Liquidity Coverage Ratio

The FBRAs' HQLA allowed in the LCR differ from liquid assets allowed in FCA's liquidity regulation. FCA's regulation allows certain instruments to qualify as liquid assets even though they are excluded from the LCR, such as investment company shares (mutual funds and money market funds). However, the LCR allows certain instruments to be included in HQLA that are excluded from FCA's liquidity regulation, such as municipal obligations and certain corporate bonds.[42] There are also certain instruments in HQLA that System banks do not have the authority to purchase.[43] FCA's regulation also differentiates liquid assets by tenor while the LCR does not. Additionally, the LCR applies more substantial discounts or ''haircuts'' to HQLA than FCA's liquidity regulation applies to the same assets. The FRBAs also limit certain assets to a percentage of the total eligible HQLA amount, whereas FCA does not. To evaluate this further, we are seeking comment to determine if we should consider aligning FCA's existing requirements for liquid assets with the LCR's HQLA.

16. Should FCA consider expanding the instruments eligible under the liquidity reserve to more closely align with the HQLA framework of the FBRAs? If so, which instruments should be considered and how would including the instruments add strength to the existing liquidity framework?

17. Should FCA consider reviewing tenor requirements in its existing liquidity regulations? If so, which instruments should be considered and how would the requirements add strength to the existing liquidity framework?

18. Should FCA consider changing discount values assigned to assets held for liquidity to more closely align with those applied under the LCR's HQLA framework?

19. Should FCA consider limiting certain assets included in the liquidity reserve to mitigate concentration risk? If so, what assets should be limited and what percent should they be allowed to count towards the reserve requirement?

Liquidity and COVID–19

FCS banks withstood the recent economic and financial turmoil from COVID–19 with their liquidity intact. However, both the FCA and FCS continue to gain insights into the effects that sudden and severe stress have on liquidity at individual FCS institutions and in the entire financial system. For example, in March of 2020, financial markets experienced a ''flight to cash'' where demand for cash and the highest quality cash like instruments dramatically increased, while demand (and thus prices) for less liquid instruments declined.[44] System banks are required to adopt a CFP to ensure sources of liquidity are sufficient to fund normal operations under a variety of stress events.[45] Such stress events include, but are not limited to market disruptions, rapid increase in loan demand, unexpected draws on unfunded commitments, difficulties in renewing or replacing funding with desired terms and structures, requirements to pledge collateral with counterparties, and reduced market access.

As addressed above, we are reviewing our regulatory and supervisory approaches towards liquidity so that System institutions are in a better position to withstand whatever future crises may arise. As part of our ongoing efforts to limit the adverse effect of rapidly changing economic, financial, and market conditions on the liquidity of any FCS bank, we are seeking comment to determine if we should make updates to our regulations to better prepare for future liquidity crises.

20. How should FCA further incorporate the demand for cash and highly liquid U.S. Treasury securities during times of crisis into the System banks liquidity reserve requirement?

21. What type of updates should FCA consider to the CFP requirements in § 615.5134(f)?

B. Applicability of the Liquidity Coverage Ratio and Net Stable Funding Ratio

System Banks and the LCR and NSFR

For the reasons discussed above, the FCA is exploring whether, and to what extent, the LCR and NSFR should apply to System banks now that the FBRAs

[38] *See* 79 FR 61440, 61465 (October 10, 2014) and Financial Stability Board's ''COVID–19 Pandemic: Financial Stability Impact and Policy Responses; Report submitted to the G20.'' November 17, 2020.

[39] Both CP and CD are included in FCA's definition of money market instruments.

[40] *See* SEC's Division of Economic and Risk Analysis ''U.S. Credit Markets Interconnectedness and the Effects of the COVID–19 Economic Shock.'' October 2020.

[41] *See* § 615.5133(f)(3)(iii).

[42] System banks can purchase certain municipal securities and corporate bonds under § 615.5140(a)(1)(ii)(A)—non-convertible senior debt securities.

[43] Investments such as publicly traded common equity, certain corporate debt securities, and certain other securities are included in the LCR but are not eligible investments under § 615.5140.

[44] *See* Bank for International Settlements Bulletin No 14 ''US dollar funding markets during the Covid–19 crisis—the money market fund turmoil.'' May 12, 2020.

[45] *See* § 615.5134(f).

issued final rules implementing the Basel III Liquidity Framework in the United States. More specifically, we are evaluating whether it is feasible to adjust the LCR and NSFR to the System's cooperative and non-depository structures and its mission as a GSE, and we are seeking your input. In the alternative, we are considering whether to incorporate specific elements of the LCR and NSFR into our liquidity regulation, and we are interested in your ideas about how to do so.

22. What core principles would be most important in FCA's consideration of the Basel III Liquidity Framework? How relevant is the Basel III Liquidity Framework to the cooperative and non-depository structure of the FCS?

23. To what extent should FCA propose a similar rule to the FBRA's LCR and NSFR?

a. Should FCA completely replace its existing liquidity regulations with an LCR and NSFR framework or only augment existing regulations with certain elements of the LCR and NSFR framework? If so, please explain.

b. What specific modifications, if any, should FCA consider making to the LCR and NSFR ratios for application to System banks, and why?

c. If FCA proposed to incorporate the LCR and NSFR ratios as part of the CFP requirement in § 615.5134(f), what types of modifications would be necessary to include elements of the ratios, without being redundant or overly burdensome?

24. If the FCA closely aligned the LCR and NSFR to the FBRA's regulations, and made only narrow modification to accommodate the System's unique structure, would the results enable FCS banks to better withstand liquidity crises, or in the alternative, prove too costly or burdensome? Please explain.

25. How would the implementation of an LCR and NSFR impact the System's funding structure, lending activities, or use of discount notes?

Outflows to Credit Facilities

The LCR requires covered institutions to hold liquidity against the undrawn amount of a committed credit facility to a borrower. The outflow factor applied to this undrawn amount depends on the type of credit facility (credit or liquidity facility)[46] and the type of borrower (financial sector entity or non-financial sector entity). The direct notes from System banks to System associations under the GFAs are credit facilities, not liquidity facilities. Unfunded commitments on a credit facility to a financial sector entity have a 40 percent factor, while the same commitment to a non-financial sector entity only have a 10 percent factor. Financial sector entities typically have shorter-term funding structures and higher correlations of drawing down commitments during times of stress which support a higher factor when compared to non-financial sector entities.[47] A higher factor results in a higher liquidity requirement under the LCR.

The FBRAs' LCR regulation defines a financial sector entity to include a regulated financial company, but specifically excludes GSEs. The FCS is a cooperative system of financial institutions that the FCA charters and regulates in accordance with the Act. System associations lend directly to and provide certain financially-related services to eligible borrowers. The System's lending activities to retail borrowers, and its structure are different than the activities and structure of other GSEs excluded from the FBRAs' definition of a financial sector entity.[48] Unlike the other GSEs, most FCS institutions lend directly to retail borrowers in a manner that is substantially similar to lenders that the FBRAs define as financial sector entities. To evaluate this further, we are seeking comment to determine if we propose an LCR, should FCA treat System institutions as financial sector entities and apply the relevant factor under the FBRAs' definition.

26. If FCA proposes an LCR, should FCA treat System institutions as financial sector entities and apply a 40 percent factor to the unfunded portion of the associations' direct note commitments?

a. If so, what supports FCA treating System institutions as financial sector entities and applying a 40 percent factor on the unfunded commitments System banks have to associations?

b. If not, what supports FCA treating System institutions as non-financial sector entities and applying a 10 percent factor on the unfunded commitments System banks have to associations?

System Bank Member Investment Bonds

Two System banks offer investment bonds to their member-borrowers and other specified individuals, such as bank employees (Member Investment Bonds). Both programs are similar in that each bank offers overnight or short-term, uninsured bonds to the bank's members and other specified individuals. Member Investment Bonds are structured so that holders may redeem funds at their request (although prior notice for withdrawals may be required). Given their short maturity, a holder's investment may be continuously rolled over until they provide notice to redeem the investment, which may be at any time. Member Investment Bonds present a liquidity demand similar to maturing System bonds. Accordingly, FCA treats Member Investment Bonds and maturing System bonds the same under the existing liquidity rules. Under the LCR, there are several different outflow categories that Member Investment Bonds could fall into. To evaluate this further, we are seeking comment to determine if we propose an LCR, what the most appropriate factor for these investment bonds would be.

27. If FCA proposes an LCR, what would be an appropriate factor to apply to the Member Investment Bonds and why?

Voluntary Advance Conditional Payment Accounts

As discussed above, FCA regulation § 614.4175 allows member-borrowers to make VACP on their loans and allows institutions to set up involuntary payment accounts for funds held to be used for insurance premiums, taxes, and other reasons. A sudden surge in member-borrower draws from VACP accounts held at associations would increase the funding required from the System bank to the affiliated association at a time when market access is becoming impeded. To evaluate this further, we are seeking comment to determine if we propose an LCR, what the most appropriate factor for these VACP accounts would be.

28. If FCA proposes an LCR, given the uniqueness of VACP accounts and the ability of member-borrowers to withdraw certain VACP account funds at their request, what would be an appropriate factor?

29. If different factors should apply to different VACP accounts, please specify.

[46] Credit and liquidity facility are defined at 12 CFR 329.3. A credit facility is a legally binding agreement to extend funds at a future date and generally includes working capital facilities (*e.g.,* revolving line of credit used for general corporate or working capital purposes). A liquidity facility is a legally binding agreement to extend funds for purposes of refinancing the debt of a counterparty when it is unable to obtain a primary or anticipated source of funding. If a facility has characteristics of both credit and liquidity facilities, the facility must be classified as a liquidity facility.

[47] *See* 79 FR 61440, 61485 (October 10, 2014).

[48] Other GSEs currently include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Bank System. As noted in footnote 3, supra, Farmer Mac is a GSE that has a charter to operate a secondary market for certain types of loans originated by retail lenders. Farmer Mac is not a cooperative. Instead, it is a stockholder-owned, federally chartered corporation.

High Quality Liquid Assets in LCR

As discussed above, the FBRAs' HQLA allowed in the LCR differ from liquid assets allowed in FCA's liquidity regulation. To evaluate this further, we are seeking comment to determine if we propose an LCR, should FCA consider aligning FCA's liquid assets with the LCR's HQLA.

30. If FCA proposes an LCR, should we replace the current list of eligible instruments for the liquidity reserve with a list that is more closely aligned to the FBRA's HQLA instrument list (excluding common equities)? Please explain.

a. Should FCA's liquidity regulation continue to allow FCS banks to hold in their liquidity reserve instruments that are currently excluded from the FBRA's HLQA list? Which instruments and why?

b. Should FCA allow FCS banks to hold in their liquidity reserves instruments that are included in the FBRAs HLQA list, but are currently excluded from FCA's liquidity regulation? Which instruments and why?

Net Stable Funding Ratio Applicability

The BCBS introduced the NSFR to require banks to maintain a stable funding profile to reduce the likelihood that disruptions in a bank's regular sources of funding will erode its liquidity position that may increase its risk of failure. Furthermore, during periods of financial stress, financial institutions without stable funding sources may be forced to monetize assets in order to meet their obligations, which may drive down asset prices and compound liquidity issues. The NSFR implements a standardized quantitative metric designed to limit maturity mismatches and applies favorable factors to a commercial bank's primary funding source—deposits. The NSFR requires a bank to maintain an amount of available stable funding (ASF) that is not less than the amount of its required stable funding (RSF) on an ongoing basis. ASF and RSF are calculated based on the liquidity characteristics of a bank's assets, derivative exposures, commitments, liabilities, and equity over a one-year time horizon.

The NSFR and its corresponding factors adopted by the FBRAs were established to measure and maintain the stability of the funding profiles of banking organizations that rely primarily on deposits. In contrast, FCS banks issue System-wide debt securities as the primary source for funding its operations. The System would potentially need to modify its funding structure to meet an NSFR by incorporating more long-term debt issuances. To evaluate this further, we are seeking comment to determine if the NSFR is applicable to the System's funding structure, authorities, and mission.

31. What core principles would be most important in FCA's consideration of the NSFR? How does the cooperative and non-depository structure of the System relate to the NSFR?

32. How could NSFR metrics replace any existing regulations, to ensure System banks have sufficiently stable liabilities (and regulatory capital) to support their assets and commitments over a one-year time horizon?

33. Is it beneficial or detrimental to replace existing regulations with NSFR metrics and why?

Other Considerations

The BCBS developed the Basel NSFR standard as a longer-term balance sheet funding metric to complement the Basel LCR standard's short-term liquidity stress metric. In developing the Basel NSFR standard, the FBRAs and their international counterparts in the BCBS considered a number of possible funding metrics.[49] The Basel guidance and FBRA's NSFR regulation incorporated consideration of these and other funding risks.[50]

34. What other approaches or methodologies to measuring and regulating liquidity not discussed above should FCA consider and why?

C. Other Comments Requested

We welcome comments on every aspect of this advance notice of proposed rulemaking. We encourage any interested person(s) to identify and raise issues pertaining to other aspects of the liquidity framework for FCS banks and associations that we did not address in this ANPRM. Please designate such comments as ''Other Relevant Issues.''

* * * * *

Dated: June 10, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

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[49] For example, the BCBS considered the traditional ''cash capital'' measure, which compares the amount of a firm's long-term and stable sources of funding to the amount of the firm's illiquid assets. The BCBS found that this cash capital measure failed to account for material funding risks, such as those related to off-balance sheet commitments and certain on-balance sheet short-term funding and lending mismatches.

[50] *See* 86 FR 9120 (February 11, 2021). *See supra footnote* 19.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0504; Project Identifier AD–2020–01380–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–03–26, which applies to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2019–03–26 requires modifying the passenger service units (PSUs) and life vest panels by replacing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels; measuring the distance between the hooks of the torsion spring of the lanyard assembly; replacing discrepant lanyard assemblies; and re-identifying serviceable lanyard assemblies. Since the FAA issued AD 2019–03–26, it has been determined that certain airplanes are listed in the wrong configuration and certain PSUs have not been correctly re-identified. This proposed AD would retain the requirements of AD 2019–03–26, and, for certain airplanes, would require an inspection to determine if the re-identified PSU part number is correct, and further re-identification if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 16, 2021.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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–2021–0504.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0504; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tony Koung, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3985; email: *tony.koung@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0504; Project Identifier AD–2020–01380–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tony Koung, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3985; email: *tony.koung@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–03–26, Amendment 39–19578 (84 FR 7266, March 4, 2019) (AD 2019–03–26), for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2019–03–26 was prompted by reports of PSUs becoming detached from the supporting airplane structure in several Model 737 series airplanes. AD 2019–03–26 requires modifying the PSUs and life vest panels by replacing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels; measuring the distance between the hooks of the torsion spring of the lanyard assembly; replacing discrepant lanyard assemblies; and re-identifying serviceable lanyard assemblies. The agency issued AD 2019–03–26 to address PSUs and life vest panels detaching from the supporting airplane structure, which could lead to passenger injuries and impede passenger and crew egress during evacuation.

Actions Since AD 2019–03–26 Was Issued

Since the FAA issued AD 2019–03–26, Boeing found that, in the service information required by AD 2019–03–26, some airplanes were not assigned to the correct group and configuration. In addition, Boeing determined that the service information had missing or incorrect re-identification part numbers for those PSUs that were modified using Boeing Service Bulletin 737–35–1107. The FAA determined that the new requirements in this proposed AD would take a minimal amount of time to accomplish. Therefore, the proposed compliance time would remain the same as the time required by AD 2019–03–26 (within 60 months after April 8, 2019 (the effective date of AD 2019–03–26)).

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Service Bulletin 737–25–1707, Revision 2, dated July 27, 2020. This service information specifies procedures for modifying the PSUs and life vest panels by: Replacing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels (secondary retention features); measuring the distance between the hooks of the torsion spring of the lanyard assembly; replacing any discrepant lanyard assemblies; and re-identifying serviceable lanyard assemblies. For some airplanes, the service information specifies procedures for inspecting PSUs for correct re-identification part numbers and, if necessary, re-identifying the PSU. 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.

Proposed AD Requirements in This NPRM

Although this proposed AD does not explicitly restate the requirements of AD 2019–03–26, this proposed AD would retain all of the requirements of AD 2019–03–26. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would add additional actions for certain airplanes. This proposed AD would also require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–25–1707, Revision 2, dated July 27, 2020, described previously, except as discussed under

''Differences Between the Proposed AD and the Service Information.''

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0504.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Special Attention Service Bulletin 737–25–1707, Revision 2, dated July 27, 2020, is limited to Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, having certain line numbers, without a Boeing Sky Interior (BSI). However, the applicability of this proposed AD includes all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes without a BSI. Because the affected lanyard assemblies are rotable parts, the FAA has determined that these affected parts could later be installed on airplanes that were initially delivered with acceptable lanyard assemblies, thereby subjecting those airplanes to the unsafe condition.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,045 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement and modification (retained actions from AD 2019–03–26).	Up to 70 work-hour × $85 per hour = Up to $5,950.	Up to $13,000	Up to $18,950	Up to $38,752,750.
Inspection of re-identified parts (per PSU) (new proposed actions).	1 work-hour × $85 per hour = $85	$0	$85	$173,825.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement or re-identification (per PSU or life vest panel).	Up to 2 work-hour × $85 per hour = Up to $170	Up to $196	Up to $366.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–03–26, Amendment 39–19578 (84 FR 7266, March 4, 2019), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2021–0504; Project Identifier AD–2020–01380–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by August 16, 2021.

(b) Affected ADs

This AD replaces AD 2019–03–26, Amendment 39–19578 (84 FR 7266, March 4, 2019) (AD 2019–03–26).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in

any category, without a Boeing Sky Interior (BSI).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of passenger service units (PSUs) becoming detached from the supporting airplane structure in several Model 737 series airplanes during survivable accidents. The FAA is issuing this AD to address PSUs and life vest panels detaching from the supporting airplane structure, which could lead to passenger injuries and impede passenger and crew egress during evacuation.

(f) Compliance

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

(g) Required Actions

Within 60 months after April 8, 2019 (the effective date of AD 2019–03–26), do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–25–1707, Revision 2, dated July 27, 2020.

(h) Parts Installation Prohibition

As of the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, no person may install on any airplane a PSU or life vest panel, unless the lanyard assembly has been modified (secondary retention features added) or re-identified, as applicable, as required by paragraph (g) of this AD.

(1) For airplanes that have PSUs or life vest panels without the secondary retention features installed: After modification or re-identification, as applicable, of the airplane as required by paragraph (g) of this AD.

(2) For airplanes that have PSUs or life vest panels with the secondary retention features installed: As of the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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 The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2019–03–26 are approved as AMOCs for the corresponding provisions of Boeing Special Attention Service Bulletin 737–25–1707, Revision 2, dated July 27, 2020, that are required by paragraph (g) of this AD.

(j) Related Information

(1) For more information about this AD, contact Tony Koung, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3985; email: *tony.koung@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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.

Issued on June 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13931 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0457; Project Identifier AD–2020–01461–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by a report that during a fleet sampling inspection, cracks were found on the inner cylinder pivot pins of the left and right main landing gear (MLG) on one of the airplanes. This proposed AD would require repetitive lubrications of the left and right MLG truck beam and inner cylinder pivot joint, reviewing the maintenance program documentation to verify certain lubrication tasks are incorporated, doing repetitive inspections of the MLG inner cylinder pivot pins and inner cylinder bushings of the MLG truck beam and inner cylinder joint for any friction, heat damage, excessive wear, cracking and smearing of bushing material, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 16, 2021.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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–2021–0457.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0457; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Allen Rauschendorfer, Senior Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and

fax: 206–231–3528; email: *allen.rauschendorfer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0457; Project Identifier AD–2020–01461–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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Background

The FAA has received a report indicating that during a fleet sampling inspection, cracks were found on the inner cylinder pivot pins of the left and right MLG on one of the airplanes. The pins exhibited cracking of the high velocity oxygen fuel (HVOF) tungsten carbide-cobalt-chrome coating. Removal of the outer diameter coating disclosed cracking of the custom 465 CRES substrate. The cause of the cracking was determined to be heat damage due to in-service friction. This condition, if not addressed, could result in a fractured pivot pin, which could lead to loss of all or part of the pivot pin assembly, and subsequent collapse of the MLG and reduced controllability of the airplane during takeoff and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020. This service information specifies procedures for repetitive lubrication of the left and right MLG truck beam and inner cylinder pivot joint with MIL–PRF–32014 grease, reviewing the maintenance program documentation to verify that it includes lubrication tasks for the left and right MLG truck beam and inner cylinder pivot joint with MIL–PRF–32014 grease, repetitive detailed and fluorescent penetrant inspections (FPI) of the left and right MLG pivot pin outer diameter (OD) surface for any friction and heat damage, repetitive detailed inspections of the left and right MLG inner cylinder bushing inner diameter (ID) surface for any excessive wear, cracking and smearing of bushing material, and applicable on-condition actions.

On-condition actions include updating the maintenance program to incorporate lubrication tasks for the left and right MLG truck beam and inner cylinder pivot joint with MIL–PRF–32014 grease, detailed and FPI inspections on the inner cylinder lug bore for any heat and friction damage, installing a new pivot pin, applying lubrication using MIL–PRF–32014 grease and making sure lubrication passages are clear, installing new aluminum-nickel-bronze inner cylinder bushings, installing new copper-nickel-tin inner cylinder bushings, and repair.

The service information also specifies terminating actions for the repetitive inspections. The terminating actions include the installation of certain parts and incorporation of the lubrications tasks into the maintenance program.

The FAA also reviewed Boeing 787 Certification Maintenance Requirements (CMRs), D011Z009–03–03, dated June 2020. This service information specifies procedures for, among other actions, for CMR item number 32–CMR–01, to lubricate the main landing gear truck beam pivot joint.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0457.

Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, specifies updating the maintenance program to incorporate lubrication tasks for the left and right MLG truck beam and inner cylinder pivot joint with MIL–PRF–32014 grease. Operators have different methods of updating the maintenance program. If operators want to terminate the repetitive lubrications required by paragraph (g) of this AD, only revising the maintenance or inspection program, as applicable, to incorporate CMR item number 32–CMR–01 of Section G, ''Certification Maintenance Requirement Task,'' of Boeing 787 Certification Maintenance Requirements (CMRs), D011Z009–03–03, dated June 2020, is terminating action.

This proposed AD includes an optional action that would include revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this proposed AD.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 131 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive lubrications	1 work-hour × $85 per hour = $85 per lubrication cycle.	$0	$85 per lubrication cycle	$11,135 per lubrication cycle.
Verification of lubrication tasks.	1 work-hour × $85 per hour = $85.	0	$85	$11,135.
Repetitive inspections	40 work-hours × $85 per hour = $3,400 per inspection cycle.	0	$3,400 per inspection cycle	$445,400 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of new pivot pin	8 work-hours × $85 per hour = $680	$97,517 per pivot pin component assembly.	$98,197
Installation of new bushings	1 work-hour × $85 per hour = $85	$5,968 per bushing	6,053
Lubrication and making sure lubrication passages are clear.	1 work-hour × $85 per hour = $85	$0	85
Detailed and FPI inspections on the inner cylinder lug bore.	2 work-hour × $85 per hour = $170	$0	170
Update lubrication tasks (except for CMR item number 32–CMR–01 incorporation).	1 work-hour × $85 per hour = $85	$0	85

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

For the optional action to revise the maintenance or inspection program by incorporating CMR item number 32–CMR–01, as applicable, the FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–0457; Project Identifier AD–2020–01461–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 32, Main landing gear.

(e) Unsafe Condition

This AD was prompted by a report that during a fleet sampling inspection, cracks were found on the inner cylinder pivot pins of the left and right main landing gear (MLG) on one of the airplanes. The FAA is issuing this AD to address any heat damage and cracking to the MLG inner cylinder pivot pin, which could result in a fractured pivot pin and lead to loss of all or part of the pivot pin assembly, and subsequent collapse of the MLG and reduced controllability of the airplane during takeoff and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020. Actions identified as terminating action in Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, terminate the applicable required actions of this AD, provided the terminating action is done in accordance with the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB320045–00, Issue 001, dated November 9, 2020, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB320045–00 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) Where the action for ''CONDITION 2'' in Table 7 of the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB320045–00 RB, Issue 001, dated November 9, 2020, specifies ''Do a detailed FPI inspection of the inner cylinder lug bore for heat and friction damage,'' for this AD, the action is ''Do a detailed and FPI inspection on the inner cylinder lug bore for heat and friction damage.''

(i) Optional Terminating Action

Revising the existing maintenance or inspection program, as applicable, to incorporate the information in CMR item number 32–CMR–01 of Section G, ''Certification Maintenance Requirement Task,'' of Boeing 787 Certification Maintenance Requirements (CMRs), D011Z009–03–03, dated June 2020, terminates the repetitive lubrications required by paragraph (g) of this AD.

(j) No Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(k) Parts Installation Prohibition

At the applicable time specified in paragraph (k)(1) or (2) of this AD, do not install an aluminum-nickel-bronze inner cylinder bushing on a MLG inner cylinder on any airplane.

(1) For airplanes with aluminum-nickel-bronze inner cylinder bushings installed on a MLG inner cylinder as of the effective date of this AD: After the bushing has been replaced with a copper-nickel-tin inner cylinder bushing.

(2) For airplanes with copper-nickel-tin inner cylinder bushings installed on a MLG inner cylinder as of the effective date of this AD: As of the effective date of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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 The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Allen Rauschendorfer, Senior Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3528; email: *allen.rauschendorfer@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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.

Issued on June 6, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13932 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0503; Project Identifier AD–2021–00163–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2005–05–18, which applies to certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2005–05–18 requires repetitive inspections for cracking of the webs of the aft pressure bulkhead at a certain body station, and corrective action if necessary. Since the FAA issued AD 2005–05–18, cracking was found in that inspection area on airplanes not identified in the applicability of AD 2005–05–18. This proposed AD would retain the requirements of AD 2005–05–18, revise the applicability to include additional airplanes, and add an inspection for existing repairs on the newly added airplanes. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 16, 2021.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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–2021–0503.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0503; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0503; Project Identifier AD–2021–00163–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2005–05–18, Amendment 39–14007 (70 FR 12410, March 14, 2005) (AD 2005–05–18), for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2005–05–18 was prompted by a report of cracks found, during fatigue testing, at several of the fastener rows in the web lap splices at the dome apex of the aft pressure bulkhead. AD 2005–05–18 requires repetitive detailed, low frequency eddy current (LFEC), and high frequency eddy current (HFEC) inspections for cracking of the webs of the aft pressure bulkhead at body station (BS) 1016, and corrective action if necessary. The FAA issued AD 2005–05–18 to detect and correct fatigue cracks in the webs of the aft pressure bulkhead, which could result in rapid decompression of the airplane.

Actions Since AD 2005–05–18 Was Issued

Since the FAA issued AD 2005–05–18, cracking has been found at apex webs on airplanes outside the applicability of AD 2005–05–18, which includes line numbers 1 through 1166 inclusive. Line numbers 1167 through 1755 inclusive, which are included in this proposed AD, use a revised fastener pattern in the 0.032-inch webs that was intended to correct the cracking addressed by AD 2005–05–18. During the assembly process on line numbers 1167 through 1755, the fasteners in the apex dome region are subjected to

fuselage pressurization fatigue cycles and clamp-up stresses. Cracks in the inspection area of AD 2005–05–18 have now been found on airplanes within the range of line numbers 1167 through 1755 inclusive. At one location, the crack was linked from the first to the second fastener row. This cracking was identified during an inspection for cracking of the web lap splice of the aft pressure bulkhead, as required by AD 2017–10–22, Amendment 39–18896 (82 FR 23507, May 23, 2017) (AD 2017–10–22). The inspections and intervals specified in AD 2017–10–22 are not adequate to address the specific fatigue cracking occurring in the web apex area that is the subject of this NPRM.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 737–53A1251, Revision 2, dated January 20, 2021. This service information specifies procedures for a general visual inspection for existing repairs, repetitive detailed and HFEC inspections for cracks around the web fasteners, repetitive LFEC inspection for cracks around the hidden web lap splice fastener locations, and repair of cracks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

Although this proposed AD does not explicitly restate the requirements of AD 2005–05–18, this proposed AD would retain all of the requirements of AD 2005–05–18. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would revise the applicability to include additional airplanes, and add an inspection for existing repairs on those airplanes. This proposed AD would also require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1251, Revision 2, dated January 20, 2021, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0503.

Differences Between This Proposed AD and the Service Information

For Group 1 airplanes, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, do not include any ''RC'' (required for compliance) steps. The RC tagging was inadvertently removed from Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021. For Group 1 airplanes, this proposed AD would therefore require treating Step 3.B.2. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, as an RC step.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 744 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed, HFEC, and LFEC inspections.	Up to 10 work-hours × $85 per hour = Up to $850 per inspection cycle.	$0	Up to $850 per inspection cycle.	Up to $632,400 per inspection cycle.
General visual inspection (194 airplanes).	1 work-hour × $85 per hour = $85	0	$85	$16,490.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 30* work-hours × $85 per hour = Up to $2,550	Up to $30,000*	Up to $32,550*

*Repair costs will vary depending on size of the repair required.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2005–05–18, Amendment 39–14007 (70 FR 12410, March 14, 2005), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2021–0503; Project Identifier AD–2021–00163–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by August 16, 2021.

(b) Affected ADs

This AD replaces AD 2005–05–18, Amendment 39–14007 (70 FR 12410, March 14, 2005) (AD 2005–05–18).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks found at several of the fastener rows in the web lap splices at the dome apex of the aft pressure bulkhead, and the determination that airplanes not affected by AD 2005–05–18 are subject to this unsafe condition. The FAA is issuing this AD to address fatigue cracks in the webs of the aft pressure bulkhead, which could result in rapid decompression of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021. For Group 1 airplanes, as defined in Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021: Step 3.B.2. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, is an RC step, and the provisions of paragraphs (j)(5)(i) and (ii) of this AD apply.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, uses the phrase ''the Revision 1 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin 737–53A1251, Revision 2, dated January 20, 2021, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

(1) For airplanes having line numbers 1 through 1166 inclusive: This paragraph provides credit for the corresponding actions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, that are required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 737–53–1251, dated June 3, 2004, which was incorporated by reference in AD 2005–05–18.

(2) This paragraph provides credit for the corresponding actions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, that are required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53–1251, Revision 1, dated September 22, 2020, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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 The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–05–18 are approved as AMOCs for the corresponding provisions of Boeing Alert Service Bulletin 737–53A1251 Revision 2, dated January 20, 2021, that are required by paragraph (g) of this AD.

(5) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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.

Issued on June 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13930 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0478; Airspace Docket No. 21–AWP–28]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Mesa Del Rey Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Mesa Del Rey Airport, King City, CA. The establishment of Class E airspace will support the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before August 16, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0478; Airspace Docket No. 21–AWP–28, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace at Mesa Del Rey Airport, King City, CA, to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0478; Airspace Docket No. 21–AWP–28''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Mesa Del Rey Airport, King City, CA. This airspace is designed to contain IFR departure to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. The establishment of Class E airspace will support the airport's transition from VFR to IFR operations.

Class E5 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 designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 King City, CA [New]

Mesa Del Rey Airport, CA
(Lat. 36°13′43″ N, long. 121°07′17″ W)

That airspace extending upward from 700 feet above the surface within a 3.7-mile radius of the airport, and within 4.1 miles each side of the 126° bearing from the airport extending from the airport to 12.8 miles southeast of the airport, and within 3.7 miles each side of the 332° bearing from the airport extending from the 3.7-mile radius to 9.3 miles northwest of the airport.

Issued in Des Moines, Washington, on June 23, 2021.

B.G. Chew,

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

[FR Doc. 2021–13844 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2021–C–0522]

Gardenia Blue Interest Group; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Gardenia Blue Interest Group (GBIG), proposing that the color additive regulations be amended to provide for the safe use of gardenia blue powder in various foods.

DATES: The color additive petition was filed on April 20, 2021.

ADDRESSES: For access to the docket to read background documents or 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.

FOR FURTHER INFORMATION CONTACT: Stephen DiFranco, Office of Food Additive Safety (HFS–255), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2710; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 721(d)(1) (21 U.S.C. 379e(d)(1))), we are giving notice that we have filed a color additive petition (CAP 1C0319), submitted by GBIG, c/o Exponent, Inc., 1150 Connecticut Avenue NW, Suite 1100, Washington, DC 20036. The petition proposes to amend the color additive regulations in part 73 (21 CFR part 73, ''Listing of Color Additives Exempt From Certification'') to provide for the safe use of gardenia blue powder as a color additive in: (1) Sport drinks; (2) flavored or enhanced, noncarbonated water; (3) fruit drinks and ades; (4) ready-to-drink tea; (5) hard candy; and (6) soft candy, at levels consistent with good manufacturing practice.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: June 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13952 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

[Docket ID ED–2021–OPEPD–0054]

Proposed Priorities and Definitions—Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs

AGENCY: U.S. Department of Education.

ACTION: Proposed priorities and definitions.

SUMMARY: To support a comprehensive education agenda, the Secretary proposes six priorities and related definitions for use in discretionary grant programs. The Secretary may choose to include an entire priority within a grant program or one or more of its subparts. These proposed priorities and definitions are intended to replace the current supplemental priorities published on March 2, 2018, the Opportunity Zones final priority published on November 27, 2019, and the Remote Learning priority published on December 30, 2020. However, those priorities remain in effect for notices inviting applications (NIAs) published before the Department finalizes the proposed priorities in this document. Retaining the Administrative Priorities published on March 9, 2020, allows us

to continue to prioritize rural applicants, new applicants, and other priorities while the Department continues to examine potential updates to the Education Department General Administrative Regulations, which may include incorporation of those March 9, 2020, priorities.

DATES: We must receive your comments on or before July 30, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities and definitions, address them to Nkemjika Ofodile-Carruthers, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W308, Washington, DC 20202.

Privacy Note: The Department of Education's (Department's) policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Nkemjika Ofodile-Carruthers, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W308, Washington, DC 20202. Telephone: (202) 401–4389. Email: *nkemjika.ofodile-carruthers@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities and definitions. To ensure that your comments have maximum effect in developing the final priorities and definitions, we urge you to clearly identify the specific section of the proposed priority or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed priorities and definitions by accessing *Regulations.gov*. Due to the novel coronavirus 2019 (COVID–19) pandemic, the Department buildings are currently not open to the public. However, upon reopening, you may also inspect the comments in person in Room 4W308, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Program Authority: 20 U.S.C. 1221e–3.

Proposed Priorities: This document contains six proposed priorities.

Background

The Secretary proposes six priorities and related definitions for use in discretionary grant programs to reflect the Secretary's vision for American education. This vision includes a respect for the dignity and potential of each and every student and their access to educational opportunity. These proposed priorities are aligned with evidence-based (as defined in this document) and capacity-building approaches to addressing various interconnected policy issues in the Nation's education system.

With a focus on creating the conditions under which students have equitable access to opportunity, these proposed priorities address a variety of areas. In K–12 education, these areas include closing the large gaps in funding and opportunity within school districts, schools, classrooms, and other learning environments; implementing effective approaches to teaching and learning; closing the divides in digital access and use; meeting the social, emotional, and academic needs of all students and creating safe, nurturing, and inclusive learning environments; improving educator diversity; expanding opportunities for educators to receive the preparation, support, and respect they need and deserve; and expanding access to high-quality early learning (as defined in this document). In postsecondary education, the proposed priorities address increasing access and success in postsecondary education for underserved students (as defined in this document), including making college affordable and fostering supportive career pathways. In both K–12 and postsecondary education, the proposed priorities include a focus on providing all students with access to high-quality schools and institutions that prepare them for college and career with a balance of quality coursework that includes the arts and sciences; ensuring post-enrollment success; supporting preparatory and current educator growth; and strengthening high-quality career and technical education.

The Secretary proposes these priorities to advance evidence-based and capacity building approaches with an understanding that meeting these goals requires multifaceted efforts. For example, rather than a priority that is focused solely on educator professional development, the proposed priority addresses the needs of all educators, all aspects of the educator pipeline, and the diversity of and equitable access to those educators. This approach to the priorities provides a vision for systems-level approaches that build capacity for long-term change. Furthermore, in order to ensure those change efforts are effectively targeted to meet the needs of students, these proposed priorities also include a focus on specific subgroups of students, such as military- and veteran-connected students (as defined in this document), which will provide greater flexibility for the Secretary to focus the work of grantees on areas of critical need.

Additionally, regarding each technology reference, all technology developed or used under these proposed priorities must be accessible to English learners and 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.

These proposed priorities and definitions are intended to replace the current supplemental priorities published on March 2, 2018 (83 FR 9096), the Opportunity Zones final priority published on November 27, 2019 (84 FR 65300), and the Remote Learning priority published on December 30, 2020 (85 FR 86545); NIAs published before the finalization of these proposed priorities that use the current priorities remain in effect. At this time, we are retaining the Administrative Priorities published on March 9, 2020 (85 FR 13640) while the Department continues to examine potential updates to the Education Department General Administrative Regulations, which may include incorporation of these March 9, 2020, priorities.

Proposed Priority 1—Addressing the Impact of COVID–19 on Students, Educators, and Faculty.

Background:

The COVID–19 pandemic negatively affected many students, educators, and faculty throughout the country. Although virtually everyone was affected to some degree, the pandemic has had a disproportionate impact on underserved students and laid bare the unique challenges faced by these students. Many of these challenges pre-date the pandemic and will be felt for years to come. For example, some of these students were already less likely to have access to the resources, such as broadband, and student supports required to participate in high-quality remote education. Underserved students are also more likely to rely on key school- or campus-supported resources such as food programs, special education and related services, health services (including mental health), counseling, or after-school programs to meet basic or developmental needs.[1] For parents, guardians, or caregivers who have less flexible jobs, staying at home to provide childcare or aid with remote learning may be impracticable or impossible, which may further exacerbate these challenges.[2]

To mitigate the impact of the COVID–19 pandemic and support safe in-person instruction, schools and campuses need sufficient resources, close collaboration with local public health officials, and the support of community members who commit to following State and local public health guidelines. Consistent implementation of effective strategies for preventing the transmission of COVID–19 during all school-related activities is critical for keeping schools and campuses open. It is essential that schools and students receive the resources, technical assistance, and other supports necessary to plan and implement comprehensive prevention strategies and that administrators, educators, and faculty consistently engage students, parents, and community partners throughout the process—paying close attention to underserved communities including communities of color, which have borne a disproportionate burden of COVID–19.[3]

Moving forward, as the effects of the pandemic will be residual and last for years, schools will also need to increase their support of students' social, emotional, mental health, and academic needs in response to the impacts of COVID. As students return to in-person learning, they will need ongoing support and innovative approaches to learning in the coming years to accelerate learning and succeed. Educators may need resources to learn new approaches to supporting students, especially in communities that have faced significant loss and trauma. In addition, educators may need additional support and development to mitigate the longer-term impact of COVID on their own well-being. States and districts also need resources to stabilize current workforce positions and protect the pipeline into the profession.

The impact of the COVID–19 pandemic changed the education landscape for the foreseeable future, especially as students continue to make up for lost classroom instruction. However, it also provides an opportunity to redesign how schools approach teaching and learning in ways that both address long-standing gaps in educational opportunity and better prepare students for college and careers. This priority would support recovery and innovation to best serve students and support educators.

Proposed Priority:

Projects that are designed to address the impacts of the COVID–19 pandemic, including impacts that extend beyond the timing of the pandemic itself, the students most impacted by the pandemic, and the educators who serve them through one or more of the following priority areas:

(a) Conducting community asset-mapping and needs assessments that may include an assessment of the extent to which students have become disengaged from learning, including students not participating in in-person or remote instruction, and specific strategies for reengaging and supporting students.

(b) Providing resources and supports to meet the basic, fundamental, health and safety needs of students and educators.

(c) Addressing students' social, emotional, mental health, and academic needs.

(d) Addressing teacher, faculty, and staff well-being.

(e) Providing students and educators with access to reliable high-speed broadband and devices; providing students with access to high-quality, technology-supported learning experiences that are accessible to children or students with disabilities[4] and educators with disabilities to accelerate learning; and providing educators with access to job-embedded professional development to support the effective use of technology.

(f) Using technology to enable evidence-based interventions to support personalized in-person student learning as well as evidence-based supplemental activities that extend learning time and increase student engagement and, where possible, increase parent engagement.

(g) Using evidence-based instructional approaches and supports to accelerate learning for students in ways that ensure all students have the opportunity to successfully meet challenging academic content standards without contributing to tracking or remedial courses.

(h) Using evidence-based instructional approaches or supports to better allow individuals who did not enroll in, withdrew from, or reduced course loads in postsecondary education or training programs due to COVID–19 to enroll, remain enrolled, and complete credit-bearing coursework and earn recognized postsecondary credentials.

Proposed Priority 2—Promoting Equity in Student Access to Educational Resources, Opportunities, and Welcoming Environments.

Background:

Improving educational equity is a priority for the Biden-Harris Administration, with particular focus on supporting underserved students. The Department seeks to remedy the deeply rooted inequities in this country's education system which when addressed, will better allow access to educational opportunity for

[1] *https://learningpolicyinstitute.org/sites/default/files/product-files/Educating_Whole_Child_REPORT.pdf.*

[2] *https://files.eric.ed.gov/fulltext/ED610000.pdf.*

[3] See *www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html.*

[4] In an NIA, the Department would use either ''children with disabilities'' or ''students with disabilities,'' depending on which term is more appropriate for the program. In this document, we use these terms interchangeably.

underserved students and enable educators to work toward closing achievement gaps.

Inadequate access to and the inequitable distribution of resources negatively affect underserved students' educational experience in a number of ways, which may include fewer opportunities for educational enrichment, high-quality early learning, well-rounded coursework, and high-quality college and career pathways; discriminatory design and administration of school discipline and its associated outcomes; and limited access to the most prepared, experienced, and effective teachers. These factors can limit access to resources and success in student learning.

For example, a December 2020 brief from the National Center for Education Statistics at the Department's Institute of Education Sciences [5] reported that a lower percentage of schools in which 75 percent or more of students were approved for free or reduced-price lunch offered dual enrollment opportunities for students than did schools with lower participation rates in free or reduced-price lunch programs (71 percent, compared with 93 percent for schools in which 35 to 49 percent of students were approved for free or reduced price lunch).

These inequities also include the disproportionate impact of school discipline policies on students of color.[6] For example, during the 2017–18 school year, African American male students comprised 7.7 percent of all male students enrolled in grades K–12 but accounted for 35.4 percent of male students who received one or more out-of-school suspensions.[7] White male students, on the other hand, account for 24.4 percent of all male students enrolled, but represent 35.5 percent of male students who received one or more out-of-school suspensions. Black male students are one-third the populace of White male students with disproportionate suspensions that lead to greater education interruption and can have long-term negative consequences. Data from the same year show that African American female students represented 7.4 percent of the total female enrollment but accounted for 13.3 percent of female students who receive one or more out-of-school suspensions, while White females make up 22.9 percent of the total female enrollment and represent 7.99 percent of female students receiving one or more out-of-school suspensions. Research suggests that these disparities can be exacerbated by or are the result of educators' subjective evaluations of students' actions rather than being the product of objective differences in student behavior.[8] English learners, LGBTQ+ students, children or students with disabilities (as defined in this document), and students from low-income backgrounds also experience higher rates of discipline compared to their peers.[9]

Finally, underserved students have less access to qualified educators. For example, schools with high enrollments of students of color were four times as likely to employ uncertified teachers as were schools with low enrollments of students of color.[10] Students in schools with high enrollments of students of color also have less access to experienced teachers. In these schools, nearly one in every six teachers is just beginning his or her career, compared to one in every 10 teachers in schools with low enrollments of students of color.[11]

This proposed priority seeks to address the inequities in our education system and better enable students to access the educational opportunities they need to succeed in school and reach their future goals, in tandem with other Departmental statutes, which require applicants to develop and describe plans for equity for students, educators, and other program beneficiaries.

Proposed Priority:

Projects designed to promote educational equity and adequacy in resources and opportunity for underserved students—

(a) In one or more of the following educational settings:

(1) Early learning programs.

(2) Elementary school.

(3) Middle school.

(4) High school.

(6) Out-of-school-time (OST) settings.

(7) Juvenile justice system or correctional facilities.

(8) Adult learning; and

(b) That are designed to examine the sources of inequities related to, and implement responses through, one or more of the following:

(1) Promoting student access to and success in rigorous and engaging approaches to learning that are racially, ethnically, culturally, and linguistically inclusive and prepare students for college, career, and civic life, including one or more of the following:

(i) Student-centered learning models that leverage technology to address learner variability (*e.g.,* universal design for learning (as defined in this notice), K–12 competency-based education (as defined in this notice), project-based learning, or hybrid/blended learning) and provide high-quality learning content, applications, or tools.

(ii) Middle school courses or projects that prepare students to participate in advanced coursework in high school.

(iii) Advanced courses and programs, including dual enrollment and early college programs.

(iv) Project-based and experiential learning, including service and work-based learning.

(v) High-quality career and technical education courses, pathways, and industry-recognized credentials that are integrated into the curriculum.

(vi) Science, technology, engineering, and mathematics (STEM), including computer science coursework.

(vii) Civics programs that support students in understanding and engaging in American democratic practices,

(2) Increasing the number and proportion of experienced, fully certified, in-field, and effective educators, and educators from traditionally underrepresented backgrounds or the communities they serve.[12]

(3) Improving the preparation, recruitment, and early career support and development of educators in high-need fields (as may be defined in the program statute or regulations) or hard to staff schools.

(4) Improving the retention of fully certified, experienced, and effective educators in high-need schools, and high-need fields.

(5) Addressing inequities in access to and success in learning through racially, ethnically, culturally, and linguistically inclusive pedagogical practice in educator preparation programs and professional development programs so that educators are better prepared to address bias in their classrooms and create inclusive, supportive, equitable, and identity-safe learning environments for their students.

[5] *nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020125.*

[6] *http://www.pnas.org/content/116/17/8255.abstract.*

[7] 2017–18 Civil Rights Data Collection, released October 2020, updated May 2021, is available at *www2.ed.gov/about/offices/list/ocr/docs/crdc-2017-18.html.*

[8] *www.apa.org/ed/resources/racial-disparities.pdf.*

[9] Snapp, S. D., & Russell, S. T. (2016). Discipline disparities for LGBTQ youth: Challenges that perpetuate disparities and strategies to overcome them. In *Inequality in school discipline* (pp. 207–223). Palgrave Macmillan, New York.

[10] *https://files.eric.ed.gov/fulltext/EJ990114.pdf.*

[11] *learningpolicyinstitute.org/sites/default/files/product-files/CRDC_Teacher_Access_REPORT.pdf.*

[12] All strategies to increase racial diversity of educators must comply with non-discrimination requirements, including Title VI of the Civil Rights Act of 1964.

(6) Using technology to enable evidence-based interventions to support student learning in the classroom or support supplemental activities that extend learning time and increase student engagement and, where possible, increase parent engagement.

(7) Creating more equitable and adequate approaches to school funding.

(8) Expanding access to high-quality early learning, including in school-based and community-based settings.

(9) Establishing, expanding, or improving learning environments, which includes early learning, for multilanguage learners, and increasing public awareness about the benefits of fluency in more than one language and how the coordination of language development in the school and the home improves student outcomes for multilanguage learners.

(10) Establishing, expanding, or improving the engagement of underserved community members (including underserved students) in informing and making decisions that influence policy and practice at the school, district, or State level by elevating their voices and their perspectives and providing them with access to opportunities for leadership (*e.g.,* establishing student government programs)).

(11) Improving the quality of educational programs in juvenile justice facilities (such as detention facilities and secure and non-secure placements) or adult correctional facilities.

(12) Supporting re-entry of, and improving long-term outcomes for, youth and adults after release from correctional facilities by linking youth or adults to appropriate support, education, or workforce training programs.

(13) Increasing student racial or socioeconomic diversity at multiple levels, through one or more of the following:

(i) Using high-quality data collection methods to identify racial and socioeconomic stratification, trends in and contributors to stratification, and barriers to racial and socioeconomic diversity.

(ii) Developing or implementing evidence-based policies or strategies that include one or more of the following:

(A) Ongoing, robust family and community involvement.

(B) Intra- or inter-district or regional coordination.

(C) Cross-agency collaboration, such as with housing or transportation authorities.

(D) Alignment with an existing public diversity plan or diversity needs assessment.

(E) Consideration of school assignment or admissions policies that are designed to promote socioeconomic diversity and give preference to students from low-income backgrounds or students residing in neighborhoods experiencing concentrated poverty.

(iii) Establishing or expanding schools, as well as programs within schools, that are designed to attract and foster meaningful interactions among substantial numbers of students from different racial and/or socioeconomic backgrounds, such as magnet schools.

(iv) Developing evidence related to, or providing technical assistance on, evidence-based policies or strategies designed to increase racial and socioeconomic diversity in educational settings.

Proposed Priority 3—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning.

Background:

In Proposed Priority 3, the Department recognizes that diverse, well-prepared, and well-supported educators play a critical role in ensuring equity in our education system and student success and emphasizes the importance of promoting the continued development and growth of educators, including through leadership opportunities. It is also important that the diversity of our educator workforce reflect the diversity of our Nation. A diverse educator workforce benefits all students, and educator diversity in particular can improve school-related outcomes for students of color. Higher levels of student achievement,[13] enrollment in more rigorous courses,[14] increased referrals to gifted and talented programs,[15] and reductions in exclusionary discipline [16] have all been noted when students of color and educators of color share the classroom. Although no single factor is wholly responsible for these findings, research suggests that teachers of color are more likely to have higher academic expectations for students with whom they share a cultural background.[17] [18] Teachers of color may also be more likely to address issues of racism in their schools, by, for example, supporting efforts to break down negative stereotypes and prepare all students to live and work in a multiracial society.[19] Teachers of color may also be drawn to working with students of color and it has been noted that ''three in four teachers of color work in the quartile of schools serving the most students of color nationally''.[20] Because teachers of color are more likely to teach in these schools, which often also have difficulty hiring adequate numbers of qualified teachers, increasing educator diversity can play a critical role in addressing teacher shortages.[21]

Effective teachers, including experienced [22] teachers who are fully certified,[23] make significant contributions to student academic outcomes.[24] [25] Despite the importance of these characteristics, there is significant inequity in students' access to well-qualified, experienced, and effective

[13] Egalite, Anna, Brian Kisida, and Marcus A. Winters. ''Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,'' Economics of Education Review, 45 (April 2015), 44–52.

[14] Grissom, Jason, Sarah Kabourek, and Jenna Kramer. ''Exposure to Same-race or Same-ethnicity Teachers and Advanced Math Course-taking in High School: Evidence from a Diverse Urban District,'' Teachers College Record, 122 (2020), 1–42.

[15] Grissom, Jason, and Christopher Redding. ''Discretion and Disproportionality: Explaining the Underrepresentation of High-achieving Students of Color in Gifted Programs,'' AERA Open, 2 (2016), 1–15.

[16] Lindsay, Constance, and Cassandra Hart. ''Exposure to Same-race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina,'' Educational Evaluation and Policy Analysis, 39 (2017), 485–510.

[17] Ferguson, Ronald. ''Teachers' Perceptions and Expectations and the Black-White Test Score Gap,'' Urban Education, 38 (2003), 460–507.

[18] Gersheson, Seth, Stephen Holt, and Nicholas Papageorge. ''Who Believes in Me? The Effect of Student-Teacher Demographic Match on Teacher Expectations,'' Economics of Education Review, 52, (2016), 209–224.

[19] Villegas, Ana María, and Jacqueline Jordan Irvine. ''Diversifying the Teaching Force: An Examination of Major Arguments,'' The Urban Review, 42 (2010), 175–192.

[20] *https://learningpolicyinstitute.org/sites/default/files/product-files/Diversifying_Teaching_Profession_REPORT_0.pdf.*

[21] Villegas, Ana María, and Jacqueline Jordan Irvine.

[22] Kini, Tara, and Podolsky, Anne. (2016). Does teaching experience increase teacher effectiveness? A review of the research. Palo Alto, CA: Learning Policy Institute. *https://learningpolicyinstitute.org/product/does-teaching-experience-increase-teacher-effectiveness-review-research.*

[23] Darling-Hammond, Linda, Deborah Holtzman, Sue Jin Gatlin, and Julian Vasquez Heilig. (2005). Does teacher preparation matter? Evidence about teacher certification, Teach for America, and teacher effectiveness. Education Policy Analysis Archives, 13(42). DOI: *https://doi.org/10.14507/epaa.v13n42.2005.*

[24] Chetty, Raj, John N. Friedman, and Jonah E. Rockoff. ''Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood,'' American Economic Review, 104(9) (2014), 2633–2769.

[25] Clotfelter, Charles T., Helen F. Ladd, and Jacob L. Vigdor. (2007). How and why do teacher credentials matter for student achievement? (NBER Working Paper 12828). Cambridge, MA: National Bureau of Economic Research.

teachers,[26] particularly for students from low-income backgrounds, students of color, and children or students with disabilities.

As such, it is essential to attract, support, and retain a diverse, well-qualified, experienced, and effective pool of educators and the first step in that effort is to ensure that candidates have access to high-quality comprehensive preparation programs that have high standards and provide necessary supports for successful completion. It is equally important to support and retain qualified and effective educators through practices such as mentoring early career teachers; improving working conditions; creating or enhancing opportunities for professional growth, including through leadership opportunities; providing competitive compensation and opportunities for educators to take on leadership roles; and creating conditions for successful teaching and learning.

This proposed priority focuses on strengthening teacher recruitment, selection, preparation, support, development, effectiveness, recognition, and retention in ways that are consistent with the Department's policy goals of supporting teachers as the professionals they are and improving outcomes for all students by ensuring that students from low-income backgrounds, students of color, students with disabilities, English learners, and other underserved students have equal access to well-qualified, experienced, diverse, and effective educators.

Proposed Priority:

Projects that are designed to increase the proportion of well-prepared, diverse, and effective educators serving students, with a focus on underserved students, through one or more of the following priority areas:

(a) Increasing the number of diverse educator candidates who have access to an evidence-based comprehensive educator preparation program.

(b) Increasing the number of teachers with certification in an educator shortage area, or advanced certifications from nationally recognized professional organizations.

(c) Promoting knowledge of universal design for learning in educator preparation.

(d) Integrating universal design for learning principles in pedagogical practices and classroom features, such as instructional techniques, classroom materials and resources, and classroom seating.

(e) Implementing loan forgiveness or service-scholarship programs for educators based on completing service obligation requirements.

(f) Building or expanding high-poverty school districts' (as may be defined in the program statute or regulations) capacity to hire, support, and retain an effective and diverse educator workforce, through one or more of the following:

(1) Providing beginning educators with evidence-based mentoring or induction programs.

(2) Adopting or expanding comprehensive, strategic career and compensation systems that provide competitive compensation and include opportunities for educators to serve as mentors and instructional coaches, or to take on additional leadership roles and responsibilities for which educators are compensated.

(3) Developing data systems, timelines, and action plans for promoting inclusive and bias-free human resources practices that promote and support development of educator and school leader diversity.

(g) Supporting effective instruction and building educator capacity through one or more of the following:

(1) Providing high-quality job-embedded professional development opportunities focused on one or more of the following:

(i) Designing and delivering instruction in ways that are engaging, effectively integrate technology, and provide students with opportunities to think critically and solve complex problems, apply their learning in authentic and real-world settings, communicate and collaborate effectively, and develop academic mindsets, including through project-based, work-based, or other experiential learning opportunities.

(ii) Supporting students and their families at key transitional stages in their education as they enter into one or more of the following:

(A) Elementary school.

(B) Middle school.

(C) High school.

(D) Postsecondary education.

(E) Work.

(iii) Meeting the needs of English learners.

(iv) Meeting the needs of children or students with disabilities, including children or students with the most significant disabilities.

(v) Addressing inequities and bias and developing racially, ethnically, culturally, and linguistically inclusive pedagogy.

(vi) Building meaningful and trusting relationships with students' families to support in-home, community-based, and in-school learning.

(vii) For school leaders, improving mastery of essential instructional and organizational leadership skills designed to improve teacher and student learning.

(viii) Supporting teachers in creating safe, healthy, inclusive, and productive classroom environments.

(2) Developing and implementing high-quality assessments (as defined in this notice) of and for student learning (including curriculum-aligned and performance-based tools aligned with State grade-level content standards or, for career and technical education, relevant industry standards) and strategies that allow educators to use the data from assessments to inform instructional design and classroom practices that meet the needs of all students, with a focus on underserved students, and providing high-quality professional development to support educators in implementing these strategies.

(h) Increasing educator capacity to collaborate with diverse stakeholders to carry-out rapid, iterative cycles of evaluation, such as design-based research, improvement science, or other rapid cycle techniques, to design, develop, or improve promising innovations that are designed to benefit underserved students.

Proposed Priority 4— Meeting Student Social, Emotional, and Academic Needs.

Background: The ongoing effects of the dual crises of COVID–19 and systemic racism have affected communities across this country. Countless students have been exposed to trauma and disruptions in learning and have experienced disengagement from school and peers, negatively impacting their mental health and well-being. While all students' overall levels of wellness have been affected, students of color and other underserved students have experienced a disproportionate burden of the pandemic.[27] Targeted supports, including those that leverage technology, are needed for students who have been disproportionately affected

[26] Isenberg, Eric, Jeffrey Max, Philip Gleason, Matthew Johnson, Jonah Deutsch, and Michael Hansen (2016). Do Low-Income Students Have Equal Access to Effective Teachers? Evidence from 26 Districts (NCEE 2017–4007). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

[27] Kuhfeld, M., Soland, J., Tarasawa, B., Johnson, A., Ruzek, E., & Liu, J. (2020). Projecting the potential impact of COVID–19 school closures on academic achievement. *Educational Researcher, 49*(8), 549–565. See also Weissman, S. (April 29, 2021. Steep Enrollment Declines this Spring. Inside Higher ED. *https://www.insidehighered.com/news/2021/04/29/spring-brings-even-steeper-enrollment-declines.*

by the pandemic. Research has demonstrated that, in elementary and secondary schools, children learn, grow, and achieve at higher levels in safe and supportive environments, and in the care of responsive adults they can trust.[28] It is critical, then, to prioritize support for students' social, emotional, and academic needs, not only to benefit students' social-emotional wellness, but also to support their academic success and prepare them for their future.

Because mounting evidence suggests that supporting social-emotional learning (SEL) can contribute to overall student development,[29] [30] [31] educators need access to tools, supports, and other resources focused on SEL supports that can improve effective instructional practices. Integrating evidence-based instructional strategies and approaches proven to support SEL in the classroom has the potential to yield important benefits in students' social, emotional, and academic growth—and avert potential negative outcomes for students. For example, students with unmet social and emotional needs can struggle with social interactions and engagement during instructional and social times during the school day. In turn, this can diminish students' sense of social and academic connection, leading to chronic absenteeism and antisocial behavior in elementary and secondary education.[32]

The world of work is also rapidly shifting, and the pre-existing equity gaps in access to high-quality career and technical education-—including dual enrollment, industry-recognized credentials, and work-based learning—have been further exacerbated by the COVID–19 pandemic. Creating more equitable systems of multiple, high-quality, flexible college and career pathways that align our schools and postsecondary learning with the demands of the 21st century economy will help narrow disparities in financial security and broaden economic opportunity.

With appropriate and effective supports, students will be more likely to stay engaged in school, experience social-emotional wellness and academic success, and experience positive long-term outcomes in both school and life.[33]

Proposed Priority:

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(a) Developing and supporting educator and school capacity to support social and emotional learning and development that—

(1) Fosters skills and behaviors that enable academic progress developed through explicit instruction in social, emotional, and cognitive skills;

(2) Identifies and addresses conditions in the learning environment, that may negatively impact social and emotional well-being for underserved students, including conditions that affect physical safety; and

(3) Is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students (as defined in this notice).

(b) Creating supportive, positive, and identity-safe education or work-based settings that provide racially, ethnically, culturally, and linguistically inclusive instruction, through one or more of the following activities:

(1) Developing trusting relationships between students, educators, families, and community partners, including engaging underserved students.

(2) Providing high-quality professional development opportunities designed to reduce bias, increase engagement and belonging, and build asset-based mindsets for adults working in and throughout schools.

(3) Engaging parents, caregivers, students, and community members as full partners in school climate review and improvement efforts.

(4) Developing and implementing inclusive and culturally informed discipline policies and addressing disparities in school discipline policy by identifying and addressing the root causes of those disparities, including by providing training and resources to support educators.

(5) Supporting students to engage in real-world, hands-on learning in community-based settings, such as apprenticeships, pre-apprenticeships, work-based learning and service learning, and engaging in civic activities, that allow them to apply their knowledge and skills, strengthen their employability skills, and access career exploration opportunities.

(c) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through one or more of the following activities:

(1) Fostering a sense of belonging and inclusion for underserved students.

(2) Implementing evidence-based practices for advancing student success for underserved students.

(3) Providing evidence-based professional development opportunities designed to reduce bias and build asset-based mindsets for faculty and staff on campus, including high-quality racially, ethnically, culturally, and linguistically inclusive practices for students, faculty, staff, and community.

(4) Developing any necessary updates to the institution's harassment policies and procedures to ensure they apply to harassment that occurs in the institution's educational programs and activities, including during hybrid and distance education.

(d) Providing multi-tiered systems of supports to meet students' academic, social, and emotional needs, including by offering evidence-based trauma-informed practices, to address learning barriers both in and out of the classroom, that enable healthy development and respond to students needs and which may include professional development for educators on avoiding deficit-based approaches.

(e) Developing or implementing policies and practices that prevent or reduce significant disproportionality on the basis of race or ethnicity with respect to the identification, placement, and disciplining of children or students with disabilities.

(f) Providing all students access to physically healthy learning environments, such as energy-efficient spaces, for one or more of the following:

(1) Early learning environments.

(2) Elementary or secondary schools.

(3) Out-of-school time learning spaces.

(4) Postsecondary institutions.

(g) Providing students equitable access to social workers, psychologists, counselors, nurses, or mental health professionals and other integrated services and supports, which may include in early learning environments.

(h) Preparing educators to implement project-based or experiential learning opportunities for students to strengthen their metacognitive skills, self-direction,

[28] Reyes, M.R., Brackett, M.A., Rivers, S.E., White, M., & Salovey, P. (2012). Classroom emotional climate, student engagement, and academic achievement. *Journal of educational psychology, 104*(3), 700.

[29] Cross Francis, D., Liu, J., Bharaj, P.K., & Eker, A. (2019). ''Integrating Social-emotional and Academic Development in Teachers' Approaches to Educating Students,'' *Policy Insights from the Behavioral and Brain Sciences, 6*(2), 138–146.

[30] Swanson, E., Melguizo, T., & Martorell, P. (2020). Examining the Relationship between Psychosocial and Academic Outcomes in Higher Education: A Descriptive Analysis. (EdWorkingPaper: 20–286).

[31] Robbins, S.B., Lauver, K., Le, H., Davis, D., Langley, R., & Carlstrom, A. (2004). Do Psychosocial and Study Skill Factors Predict College Outcomes? A Meta-Analysis. Psychological Bulletin, 130(2), 261–288.

[32] Darling-Hammond, Linda, and Cook-Harvey, C. (2018). Educating the Whole Child: Improving School Climate to Support Student Success. LPI

[33] Durlak, J.A., Domitrovich, C.E., Weissberg, R.P., and Gullotta, T.P. (Eds.). (2015). Handbook of social and emotional learning: Research and practice. New York: Guilford.

self-efficacy, competency, or motivation, including through instruction that: Connects to students' prior knowledge and experience; provides rich, engaging, complex, and motivating tasks; or offers opportunities for collaborative learning.

(i) Creating comprehensive schoolwide frameworks (such as small schools or learning communities, advisory systems, or looping educators) that support strong and consistent student and educator relationships.

(j) Fostering partnerships, including across government agencies (*e.g.,* housing, human services or employment agencies), LEAs, community-based organizations and postsecondary education intuitions, to provide comprehensive services to children, students and families that support student social, emotional, mental health and academic needs.

Proposed Priority 5—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success.

Background:

Postsecondary education, including career and technical education, is increasingly necessary for individuals to compete in a global economy. Therefore, the Nation must boost completion rates at all levels of postsecondary education. This proposed priority supports projects that prepare students, particularly underserved students, for college and the workforce; enroll more students in postsecondary education and help them succeed; and make college more affordable. This proposed priority also supports career and technical education that connects with and leads to postsecondary education programs of study and provides students with the knowledge and skills to succeed in the workforce, earn a competitive wage, and pursue lifelong learning and career and economic advancement opportunities.

With this proposed priority, we also aim to encourage adult learners to reengage in learning, by meeting them where they are and preparing them to succeed in postsecondary coursework such as through adult education and literacy activities that will help increase their employability.

In addition to supporting projects that prepare students for careers and college, we must make it easier for all students to afford postsecondary education, including career and technical education, to complete their credential in a timely manner, and to understand the returns to their program of study. The average net price of a college education has risen for many undergraduates, particularly full-time students attending four-year public colleges and universities, widening the affordability gap.[34] Potential strategies for addressing these challenges as part of a broader structure supporting student success could include: Reducing time to degree and credential; improving transferability between community colleges and four year institutions; supporting degree and credential completion, particularly among underserved students; providing financial and non-financial comprehensive supports; and increasing transparency about the price of college, typical levels of student indebtedness, and median earnings.

Proposed Priority:

Projects that are designed to increase postsecondary access, affordability, success, and completion for underserved students by addressing one or more of the following priority areas:

(a) Projects implemented by or in partnership with one or more of the following entities:

(1) Community colleges (as defined in this notice).

(2) Historically Black colleges and universities (as defined in this notice).).

(3) Tribal colleges and universities (as defined in this notice).).

(4) Minority-serving institutions (as defined in this notice).).

(b) Increasing postsecondary attainment and reducing the cost of college by creating clearer pathways for students between institutions and making transfer of course credits more seamless and transparent.

(c) Increasing the number and proportion of underserved students who enroll in and complete postsecondary education programs, which may include strategies related to college preparation, awareness, application, selection, advising, counseling and enrollment.

(d) Reducing the net price or debt-to-earnings ratio for underserved students who enroll in or complete college, other postsecondary education, or career and technical education programs.

(e) Establishing a system of high-quality data, such as data on persistence, retention, and completion, for transparency, accountability, and institutional improvement.

(f) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic advising, structured/guided pathways, career services, programs to meet basic needs, such as housing, childcare and transportation, student financial aid, and access to technological devices.

(g) Increasing the number of individuals who return to the educational system to obtain a regular high school diploma, or its recognized equivalent for adult learners; enroll in and complete community college, college, or career and technical training; or obtain basic and academic skills that they need to succeed in community college, college, career and technical education, and/or the workforce.

(h) Supporting the development and implementation of high-quality and accessible learning opportunities, including learning opportunities that are accelerated or hybrid online; credit-bearing; work-based; and flexible for working students.

(i) Supporting evidence-based practices in career and technical education and ensuring equitable access to and successful completion of high-quality programs, credentials, or degrees.

(j) Supporting the development or implementation of evidence-based strategies to promote students' development of the necessary knowledge and skills necessary for success in the workforce and civic life.

(k) Connecting children or students with disabilities, adults with disabilities, and disconnected youth to resources designed to improve independent living and the achievement of employment outcomes, which may include the provision of pre-employment transition services, transition and other vocational rehabilitation services under the Vocational Rehabilitation program, and transition and related services under IDEA.

(l) Providing students access to international education, education in cultural and global competencies, and foreign language training in preparation for global competitiveness.

Proposed Priority 6—Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change.

Background:

Schools and campuses are often the center of the community for students and their families, providing students with the resources and referrals they need to meet their full potential. Ensuring that students and families have access to nutritious food, housing, health services, employment/financial services, and other community resources is pivotal to ensuring success in the classroom, which in turn uplifts community vitality. These needs are best met through cross-agency coordination and partnerships between schools, campuses, and other organizations in the community. In this way, effective partnerships can make it easier for families to have various needs

[34] *https://nces.ed.gov/programs/coe/indicator_cua.asp.*

met by the school and support systemic, long-term change. Numerous programs require or emphasize the importance of such partnerships in improving outcomes for students and their families. This proposed priority would encourage partnerships with other agencies or entities and support cross-agency, and cross-community partnerships at the State and local levels.

Proposed Priority:

Projects that are designed to take a systemic approach to improving outcomes for underserved students in one or more of the following priority areas:

(a) Coordinating efforts with Federal, State, or local agencies, or community-based organizations that support students, to address one or more of the following:

(1) Food assistance.
(2) Energy.
(3) Climate change.
(4) Housing.
(5) Homelessness.
(6) Transportation.
(7) Health.
(8) Childcare.
(9) School diversity.
(10) Justice policy.
(11) Workforce development.
(12) Technology.
(13) Public safety.
(13) Community violence.
(14) Social services.
(15) Voting access and registration.
(16) Another key field-initiated focus area.

(b) Conducting community needs and asset mapping to identify existing programs that can be leveraged to advance systemic change and programs or initiatives that need to be implemented.

(c) Establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

(d) Identifying, documenting, and disseminating policies, strategies, and best practices on effective approaches to creating systemic change through cross-agency, or community-based coordination and collaboration.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definitions

Background:

We propose specific definitions to promote a shared understanding of the scope of activities that could be supported by these priorities. Under the proposed definition of ''underserved students,'' the Secretary may include the entire definition within a grant program or one or more of the subparts of the definition that are most relevant for the grant program.

Proposed Definitions:

We propose the following definitions for use with the proposed priorities:

Children or students with disabilities means children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) or students with disabilities, as defined at section 7(37) of the Rehabilitation Act of 1973 (29 U.S.C. 705(37)) 705(37)).

Community college means ''junior or community college'' as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA).

Competency-based education (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Culturally and linguistically inclusive means pedagogical practices that address inequities in access to and success in school by recognizing and valuing all students' identities, cultures, and potential.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based has the meaning ascribed to it in 34 CFR 77.1 or the ESEA, as applicable.

High-quality assessments means diagnostic, formative, or summative assessments that are valid and reliable for the purposes for which they are used and that provide relevant and timely information to help educators and parents or caregivers support students.

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101, in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Minority-serving institution (MSI) means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A migrant student.

(h) A student experiencing homelessness or housing insecurity.

(i) A lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQ+) student.

(j) A student who is in foster care.

(k) A student without documentation of immigration status.

(l) A pregnant, parenting, or caregiving student.

(m) A student impacted by the justice system, including a formerly incarcerated student.

(n) A student who is the first in their family to attend postsecondary education.

(o) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(p) A student who is working full-time while enrolled in postsecondary education.

(q) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(r) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

(s) A student performing significantly below grade level.

Universal design for learning has the meaning ascribed it in section 103(24) of the HEA.

Final Priorities and Definitions:

We will announce the final priorities and definitions in a document published in the **Federal Register**. We will determine the final priorities and definitions after considering responses to the proposed priorities and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use these priorities and definitions, we invite applications through a notice inviting applications in the **Federal Register**.

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, therefore, 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 proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory 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 on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

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

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

We are issuing these proposed priorities and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed priorities and definitions are consistent with the principles in Executive Order 13563.

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

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for

administering the Department's programs and activities.

Potential Costs and Benefits

The proposed priorities and definitions would impose minimal costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the proposed priorities and definitions outweigh any associated costs because it would result in the Department's discretionary grant programs encouraging the submission of a greater number of high-quality applications and supporting activities that reflect the Administration's educational priorities.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities and definitions would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using a priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

To send any comments that concern how the Department could make the proposed priorities and definitions easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are early learning providers, school districts, IHEs, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed priorities and definitions would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

The proposed priority and definitions do not contain any information collection requirements.

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

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 the 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.

Miguel Cardona,

Secretary of Education.

[FR Doc. 2021–14003 Filed 6–29–21; 8:45 am]

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Copyright Royalty Board

37 CFR Part 381

[Docket No. 21–CRB–0002–PBR (2023–2027)]

Determination of Rates and Terms for Public Broadcasting (PB IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms for the use of certain copyrighted works by certain public broadcasting entities for the period beginning January 1, 2023, and ending December 31, 2027.

DATES: Comments and objections, if any, are due no later than July 30, 2021.

ADDRESSES: You may send comments, identified by docket number 21–CRB–0002–PBR (2023–2027), online through eCRB at *https://app.crb.gov.*

Instructions: To send your comment through eCRB, if you do not have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at *https://app.crb.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0002–PBR (2023–2027).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (''Judges'') to conduct proceedings every five years to determine the rates and terms for the section 118 license. 17 U.S.C. 801(b)(1), 804(b)(6). Accordingly, the Judges commenced a proceeding in January 2021, by publishing notice of the commencement of the proceeding and a request that interested parties submit petitions to participate. 86 FR 325 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from The American Society of Authors, Composers and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Church Music Publishers' Association, Inc. (CMPA); Educational Media Foundation (EMF); Global Music Rights, LLC; National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); David Powell; Public Broadcasting Entities (Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and Public Broadcasting Service (PBS)); SESAC Performing Rights, LLC (SESAC); and The Harry Fox Agency LLC (HFA).

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Feb. 9, 2021).

There are two ways copyright owners and public broadcasting entities [1] may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements ''shall be given effect in lieu of any determination by the . . . Copyright Royalty Judges,'' provided that copies of the agreement are submitted to the Judges ''within 30 days of execution.'' 17 U.S.C. 118(b)(2).

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval.

This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

On May 17, 2021, the Judges received a proposal from participant BMI regarding ''statutory license fees to be paid to BMI by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with [NPR] for the performance of copyrighted musical works in BMI's repertory'' for the years 2023 through 2027. Proposal of Broadcast Music, Inc. of Rates and Terms for Colleges and Universities at 1 (May 17, 2021) (Proposal). No college radio station or related entity filed a petition to participate in the proceeding, but the National Association of College and University Business Officers (NACUBO) and the American Council on Education (ACE) support BMI's proposal. Proposal at 4.

The Proposal states that the fees in § 381.5(c)(2)(i) should be modified. *See Id.* at 3–4. The modified fees reflect ''an annual cost-of-living increase based on CPI, reflecting how increases were calculated in the joint proposals submitted by BMI and ACE . . . and by BMI and NACUBO'' in prior proceedings. *Id.* at 4.

The Judges solicit comments on whether they should adopt the proposed regulations as statutory license fees to be paid by certain public broadcasting entities, namely, noncommercial educational radio stations licensed to colleges or universities that are not members of NPR, for their performances of copyrighted musical works in BMI's repertory, pursuant to 17 U.S.C. 118.

Comments and objections regarding the proposed changes must be submitted no later than July 30, 2021.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 381 as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1), 803.

■ 2. Revise § 381.5(c)(2)(i) to read as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) *Music fees.*

	Number of full-time students	2023	2024	2025	2026	2027
Level 1 ...	<1,000	$390	$400	$410	$421	$432
Level 2 ...	1,000–4,999	451	463	475	487	500
Level 3 ...	5,000–9,999	619	635	652	669	686
Level 4 ...	10,000–19,999	801	822	843	865	887

[1] A ''public broadcasting entity'' is defined as a ''noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)'' of section 118. 17 U.S.C. 118(f).

	Number of full-time students	2023	2024	2025	2026	2027
Level 5 ...	20,000+	1,009	1,035	1,062	1,090	1,118

* * * * *

Dated June 24, 2021.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2021–13922 Filed 6–29–21; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 21–CRB–0002–PBR (2023–2027)]

Determination of Rates and Terms for Public Broadcasting (PB IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms for the use of certain copyrighted works by public broadcasting entities for the period beginning January 1, 2023, and ending December 31, 2027.

DATES: Comments and objections, if any, are due no later than July 30, 2021.

ADDRESSES: You may send comments, identified by docket number 21–CRB–0002–PBR (2023–2027), online through eCRB at *https://app.crb.gov.*

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at *https://app.crb.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0002–PBR (2023–2027).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (''Judges'') to conduct proceedings every five years to determine the rates and terms for the section 118 license. 17 U.S.C. 801(b)(1), 804(b)(6). Accordingly, the Judges commenced a proceeding in January 2021, by publishing notice of the commencement of the proceeding and a request that interested parties submit petitions to participate. 86 FR 325 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from The American Society of Authors, Composers and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Church Music Publishers' Association, Inc. (CMPA); Educational Media Foundation (EMF); Global Music Rights, LLC; National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); David Powell; Public Broadcasting Entities (Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and Public Broadcasting Service (PBS)); SESAC Performing Rights, LLC (SESAC); and The Harry Fox Agency LLC (HFA).

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Feb. 9, 2021).

There are two ways copyright owners and public broadcasting entities [1] may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements ''shall be given effect in lieu of any determination by the . . . Copyright Royalty Judges,'' provided that copies of the agreement are submitted to the Judges ''within 30 days of execution.'' 17 U.S.C. 118(b)(2).

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval.

This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

On June 21, 2021, the Judges received a joint proposal from participants HFA and NRBNMLC regarding fees for recording rights under 37 CFR 381.7(b)(4) for the period 2023–2027. Joint Proposal . . . Regarding Fees for Recording Rights Under 37 CFR 381.7(B)(4) (June 21, 2021) (Proposal). The fees in § 381.7(b)(4) apply to the ''recording of nondramatic performances and displays of musical works for the types of uses described in 17 U.S.C. 118(c)(2)–(3) by noncommercial radio stations other than uses in a radio program produced by [NPR] and other than uses subject to voluntary license agreements.'' Proposal at 2. HFA and NRBNMLC filed a proposal instead of a notice of settlement because NRBNMLC does not represent all radio stations subject to the fees. *Id.* Participant EMF joins in the proposal. *Id.* at 3 n.2.

The Proposal states that the fees in § 381.7(b)(4) should be modified. *See id.* at 2–3. It also proposes carrying forward

[1] A ''public broadcasting entity'' is defined as a ''noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)'' of section 118. 17 U.S.C. 118(f).

unchanged (except to replace ''January 1, 2018'' with ''January 1, 2023'' and ''December 31, 2022'' with ''December 31, 2027'') current provisions set forth in §§ 381.1, 381.2, 381.9, and 381.11. *Id.*

The Judges solicit comments on whether they should adopt the proposed regulations as statutory rates and terms relating to the reproduction, distribution, performance or display of certain works by public broadcasting entities (as defined in 17 U.S.C. 118(f)) in the course of the activities described in 17 U.S.C. 118(c).

Comments and objections regarding the proposed changes must be submitted no later than July 30, 2021.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 381 as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1), 803.

■ 2. Revise § 381.1 to read as follows:

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2023, and ending on December 31, 2027. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

■ 3. Revise § 381.7(b)(4) to read as follows:

§ 381.7 Recording rights, rates and terms.

* * * * *

(b) * * *

(4) For such uses other than in an NPR-produced radio program:

	2023–2027
(i) Feature	$ .83
(ii) Feature (concert) (per half hour)	1.72
(iii) Background	.42

* * * * *

Dated June 24, 2021.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2021–13923 Filed 6–29–21; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2021–0416; FRL–10025–54–Region 7]

Air Plan Approval; Missouri; Revision to Emission Data, Emission Fees and Process Information Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) and Operating Permits Program revision submitted by the State of Missouri on May 25, 2021. These revisions update the listed emission reporting years and update the emissions fee for permitted sources as set by Missouri Statute from $48 per ton of air pollution emitted annually to $53 in calendar year 2021 and $55 per ton of air pollution emitted annually for emissions in calendar year 2022 and beyond; effective March 30, 2021.

DATES: Comments must be received on or before July 30, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0416 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: Jason Heitman, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7664; email address: *heitman.jason@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Written Comments
II. Background
III. What is being addressed in this document?
IV. Have the requirements for approval of a SIP and part 70 revision been met?
V. What action is the EPA proposing to take?
VI. Incorporation by reference
VII. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0416, 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. Background

The EPA granted full approval of the Missouri Operating Permit Program effective June 13, 1997 (*see* 62 FR 26405). Under title 40 Code of Federal Regulations (CFR) 70.9(a) and (b), an approved state's title V operating permits program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs.

Missouri has determined that fee adjustments are needed to offset the effect of declining revenues and to maintain the solvency of the Missouri Air Pollution Control Program.

III. What is being addressed in this document?

The EPA is proposing to approve revisions to the Missouri State Implementation Plan (SIP) and title V Operating Permits Program, 10–6.110 ''Reporting Emission Data, Emission Fees, and Process Information,'' submitted to the EPA on May 25, 2021. Revisions to the program include updating emission reporting years and

increasing the annual emission fee. The annual emission fee will increase from $48 per ton of air pollution emitted annually to $53 in calendar year 2021 and increase again to $55 per ton of air pollution emitted annually for emissions in calendar year 2022 and beyond; effective March 30, 2021.

IV. Have the requirements for approval of a SIP and part 70 revision been met?

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 a public comment period for this Operating Permits Program and SIP revision from August 17, 2020, to October 1, 2020, and received one comment in support of the revison. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and is consistent with applicable EPA requirements in title V of the CAA and 40 CFR part 70.

V. What action is the EPA proposing to take?

The EPA is proposing to approve the state's revision to 10 C.S.R. 10–6.110 ''Reporting Emission Data, Emission Fees, and Process Information'', submitted by the state of Missouri on May 25, 2021. This revision updates the emissions fee for permitted sources in section (3)(A) and the emission reporting years in Table 4 of section (4)(B), as set by Missouri Statute. Specifically, section (3)(A) revises the emission fees section, which is approved under the Operating Permits Program only, and updates the emissions fee for permitted sources as set by Missouri Statute from $48 per ton of air pollution emitted annually to $53 in calendar year 2021 and $55 per ton of air pollution emitted annually for emissions in calendar year 2022 and beyond; effective March 30, 2021. Additional information on the EPA's analysis can be found in the Technical Support Document (TSD) included in this docket.

We are processing this as a proposed action because we are soliciting comments. Final rulemaking will occur after consideration of any comments.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulation described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act (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, 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 24,2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR parts 52 and 70 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 revising the entry ''10–6.110'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Reporting Emission Data, Emission Fees, and Process Information.	3/30/2021	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Section (3)(A), Emission Fees, has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. In appendix A to part 70 the entry for ''Missouri'' is amended by adding paragraph (jj) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(jj) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Reporting Emission Data, Emission Fees, and Process Information'' on May 25, 2021. The state effective date is March 30, 2021. This revision is effective [date 60 days after date of publication of the final rule in the **Federal Register**].

* * * * *

[FR Doc. 2021–13992 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 4 and 9

[PS Docket No. 15–80, PS Docket No. 13–75, ET Docket No. 04–35; FCC 21–45; FR ID 28761]

Disruptions to Communications; Improving 911 Reliability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Through this Third Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (FCC or Commission) proposes several rules to promote public safety by ensuring that 911 call centers and the public receive timely and useful notifications of network disruptions that affect 911 service. The NPRM seeks comment on whether to harmonize the Commission's public safety answering point (PSAP) outage notification requirements so that both originating and covered 911 service providers notify PSAPs about outages that potentially affect 911 within the same timeframe, by the same means, and with the same frequency. The NPRM proposes standardizing the information that is conveyed via outage notifications to PSAPs by service providers. This NPRM also proposes to require that service providers develop and implement procedures to gather, maintain, and update PSAP contact information annually. In addition, the NPRM proposes to require service providers to notify their customers when there is a reportable outage that affects 911 availability within 60 minutes of determining there is an outage. This NPRM also proposes to codify specific exemptions to certain reporting requirements adopted by the Commission in 2016.

DATES: Written comments to the Commission must be submitted on or before July 30, 2021 and reply comments to the Commission must be submitted on or before August 30, 2021.

Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public-and other interested parties on or before August 30, 2021.

ADDRESSES: You may submit comments, identified by docket numbers PS Docket No. 15–80, PS Docket No. 13–75, and ET Docket No. 04–35, by any of the following methods:

- Federal Communications Commission's website: *http://apps.fcc.gov/ecfs/*. Follow the instructions for submitting comments.
- By commercial overnight courier or first-class or overnight U.S. Postal Service mail. See the **SUPPLEMENTARY INFORMATION** section for more instructions.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Beau Finley, Public Safety and Homeland Security Bureau, at 202–418–7835 or at *Robert.Finley@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at 202–418–2991 or at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of*

Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*

The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. Introduction

1. In this NPRM, the Commission proposes to enhance its regulatory framework governing notifications of disruptions to 911 service by harmonizing the Commission's notification requirements, improving the usefulness of outage notification content, requiring service providers to keep the public informed during periods of 911 unavailability, and ensuring the accuracy of PSAP contact information. The Commission also seeks comment on whether modifications to the associated reporting requirements would enhance public safety while reducing burdens on regulated entities. Section 1 of the Communications Act, as amended (Act), charges the Commission with ''promoting safety of life and property through the use of wire and radio communications.'' 47 U.S.C. 151. This statutory objective and statutory authorities, also cited below, support the Commission's network outage reporting and 911 reliability rules, including the proposals here. 47 U.S.C. 151, 154(i), 154(j) 154(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c. In adopting this NPRM, the Commission continues its commitment to ensuring that the Commission's rules, including those governing covered 911 service providers, are sufficient, necessary, and technologically appropriate. 79 FR 3123 (*911 Reliability Report and Order*).

II. Background

2. The Commission oversees the integrity of 911 communications infrastructure primarily through three complementary mechanisms: 911 call transmission requirements; network outage reporting by service providers to both the Commission and potentially affected 911 special facilities, which also include PSAPs when there is a loss of communications to PSAP(s), subject to specific conditions; and 911 reliability and certification requirements. 47 CFR 4.5(a), (c), and (e) through (h), 9.4, 9.10(b), 9.11(a)(2), 9.18(a), 9.19.

3. *Outage Reporting Rules.* The Commission requires originating service providers—*i.e.,* cable, satellite, wireless, wireline, and interconnected VoIP providers that provide the capability for consumers to originate 911 calls—as well as covered 911 service providers—*i.e.,* providers that aggregate 911 traffic from originating service providers and deliver it to PSAPs—to notify both the Commission and PSAPs when they experience an outage that potentially affects 911. 47 CFR 4.3(a), (d), and (f) through (h), 4.9(a), (c), and (e) through (h), 9.19(a)(4).

4. The Commission has adopted four threshold criteria for reporting outages that potentially affect 911, any of which would trigger a notification requirement:

(1) There is a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and: The failure is neither at the PSAP(s) nor on the premises of the PSAP(s); no reroute for all end users was available; and the outage lasts 30 minutes or more; or

(2) There is a loss of 911 call processing capabilities in one or more E–911 tandems/selective routers for at least 30 minutes duration; or

(3) One or more end-office or [Mobile Switching Center (MSC)] . . . switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or

(4) There is a loss of [Automatic Number Identification (ANI)/Automatic Location Information (ALI)] . . . and/or a failure of location determination equipment, including Phase II equipment, for at least 30 minutes and potentially affecting at least 900,000 user-minutes (provided that the ANI/ALI or location determination equipment was then currently deployed and in use, and the failure is neither at the PSAP(s) or on the premises of the PSAP(s)). 47 CFR 4.5(e), 9.3.

5. The Commission currently has two different sets of requirements for the timing, content, means, and frequency of PSAP notification, depending on the nature of the provider. The first set of rules was originally adopted for common carriers in 1994, and was subsequently expanded to govern a broader set of communications

providers called originating service providers. The second set of rules, adopted in 2013, governs covered 911 service providers, the entities that, as the Commission reasoned at the time, are the ''most likely to experience reportable outages affecting 911 service.'' 47 CFR 4.9(h); *911 Reliability Report and Order.* Covered 911 service providers must notify PSAPs of outages that potentially affect them ''as soon as possible, but no later than 30 minutes after discovering the outage,'' whereas originating service providers are only required to notify PSAPs ''as soon as possible.'' 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h). Covered 911 service providers must convey to PSAPs ''all available information that may be useful in mitigating the effects of the outage, as well as the name, telephone number, and email address at which the service provider can be reached,'' whereas originating service providers are only required to provide ''all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility.'' 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h). Covered 911 service providers must notify PSAPs ''by telephone and in writing via electronic means in the absence of another method mutually agreed upon in advance by the 911 special facility and the covered 911 service provider,'' whereas originating service providers are only required to notify PSAPs ''by telephone or another electronic means.'' 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h). Finally, covered 911 service providers must follow up with the PSAPs within two hours of making the initial outage notification, providing ''additional material information'' that includes ''the nature of the outage, its best-known cause, the geographic scope of the outage, the estimated time for repairs, and any other information that may be useful to the management of the affected facility,'' whereas originating service providers are not required to follow up with PSAPs at all. 47 CFR 4.9(h). In adopting these broader requirements for covered 911 service providers in 2013, the Commission did ''not seek to replace the existing [PSAP outage notification] scheme with a new, more onerous one, but rather, to clarify the timing and notification content with which certain service providers subject to section 4.9 must already comply.'' *911 Reliability Report and Order* at para. 146.

6. *911 Reliability and Certification Rules.* In the wake of the devastating derecho that affected the Midwest and Mid-Atlantic states in 2012, the Commission adopted a series of 911 certification rules to improve 911 network reliability. *911 Reliability Report and Order* at paras. 48 through 65. These rules require covered 911 service providers to take reasonable measures to provide reliable 911 service with respect to 911 circuit diversity, central office backup power, and diverse network monitoring. 47 CFR 9.19(c). To ensure that covered 911 service providers have taken these measures, covered 911 service providers must certify as to their compliance with each of these three requirements or to their implementation of reasonable alternative measures. 47 CFR 9.19.

7. When the Commission adopted rules for covered 911 service providers in 2013, it committed to reexamining the rules after five years to consider whether the rules were still ''technologically appropriate and both adequate and necessary.'' *911 Reliability Report and Order* at para. 159. The Commission stated that review of the rules would consider, among other things, whether the rules should be revised to cover new best practices, including outage reporting trends, whether to adopt Next Generation 9–1–1 (NG911) capabilities on a nationwide basis, and whether the certification approach has yielded the necessary level of compliance, noting that a ''persistence of preventable 911 outages could indicate a need for broader or more rigorous rules.'' *911 Reliability Report and Order* at para. 159. Thus, in 2018, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice seeking comment on the rules' effectiveness, as well as on reducing affected parties' regulatory burdens. *Public Safety and Homeland Security Bureau Seeks Comment on 911 Network Reliability Rules,* PS Docket No. 13–75, Public Notice, 33 FCC Rcd 5987, 5988–90 (*Public Safety and Homeland Security Bureau* (PSHSB) 2018) (*2018 911 Reliability Public Notice*). The Bureau received ten comments and six reply comments from entities representing industry, local government, and the public safety community, and it also hosted meetings with stakeholders to obtain additional information.

III. Discussion

8. In times of emergency, dialing 9–1–1 serves as a crucial life link for those in need of immediate help. In 2019 alone, those in crisis placed over 200 million emergency calls to 911. *911 Reliability Report and Order* at para. 159. More than 70% of these emergency calls originate from wireless phones. *911 Reliability Report and Order* at para. 11. Call takers in the nation's approximately 5,700 PSAPs answer these calls and connect callers to emergency services that regularly save lives and safeguard property. 911 systems, however, are susceptible to outages that can occur in the underlying communications network. Ensuring that 911 services are restored quickly following network outages is a top public safety priority for the Commission. Commission rules, among other things, specify 911-related outage notification and 911 reliability certification requirements for providers. 47 CFR part 4, appendix A. In this document, the Commission proposes specific rules to ensure that its 911 notification framework remains robust, reliable, and responsive. These proposals, discussed below, will enhance public safety by ensuring that PSAPs and the public are provided with timely notification of disruptions to 911.

A. Improving PSAP Outage Notification

1. Harmonizing PSAP Outage Notification Requirements

9. When the Commission adopted the more specific notification requirements for covered 911 service providers in 2013, it stated that it would ''defer for future consideration'' whether originating service providers should be subject to those requirements, reasoning that covered 911 service providers are the entities most likely to experience reportable outages affecting 911 service. *911 Reliability Report and Order* at para. 147. While the Commission's outage reporting rules already require both originating service providers and covered 911 service providers to notify PSAPs of outages that potentially affect 911, the Commission's experiences since adoption of the PSAP notification rules for covered 911 service providers in 2013 demonstrate that having different reporting obligations for originating service providers and covered 911 service providers is neither practicable nor in the public interest. For example, in at least two instances following a nationwide 911 outage, the Commission (through its Enforcement Bureau) found that the affected originating service providers had not taken adequate steps to notify PSAPs in a manner that would have allowed the affected PSAPs to ensure the public's access to critical emergency services. *T-Mobile USA, Inc.,* File No. EB–SED–15–00018025, Order, 30 FCC Rcd 7247, para. 2 (EB 2015) (*T-Mobile Order*); AT&T Mobility, LLC, File No. EB–SED–17–00024532, Order, 33 FCC Rcd 6144, 6145, para. 2 (EB 2018) (*AT&T Mobility Order*).

10. In August 2014, T-Mobile experienced two network outages that, taken together, resulted in 50,000,000 subscribers nationwide being unable to reach 911 call takers for a three-hour period. *T-Mobile Order.* During that time, PSAPs were not informed of the outage and consequently could not promptly notify the public of alternative means to reach emergency services. *T-Mobile Order.* And, in March 2017, AT&T Mobility experienced a network outage that resulted in 135,000,000 subscribers nationwide being unable to reach 911 call takers for a five-hour period. PSHSB, March 8, 2017 AT&T VoLTE 911 Outage Report and Recommendations, PS Docket No, 17–68, at 3, n.1 (2017), *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344941A1.pdf* (*AT&T VoLTE 911 Outage Report*). PSAPs did not receive information about the AT&T Mobility outage until ''approximately three and a half hours after the outage began and approximately two and a half hours after AT&T Mobility sent internal mass notifications to company executives and senior staff about the event.'' *AT&T Mobility Order; AT&T VoLTE 911 Outage Report;* Letter from Karima Holmes, Director, District of Columbia Office of Unified Communications, to PSHSB, PS Docket No. 17–68, at 1–2 (Mar. 31, 2017).

11. The Commission now proposes to require that originating service providers and covered 911 service providers notify PSAPs about all such outages within the same timeframe, by the same means, and with the same frequency. The Commission specifically proposes to require originating service providers to notify potentially affected 911 special facilities of an outage within the same time frame required for covered 911 service providers. As noted above, that time frame is as soon as possible but no later than 30 minutes after discovering the outage. The Commission also seeks comment on whether this timeframe is adequate for PSAPs. The Commission seeks comment on whether and how to improve this proposal to shorten this timeframe for either or both sets of providers and/or adjust the reporting criteria to ensure more rapid and effective notification to PSAPs. For example, would automatic PSAP notification, triggered upon detection of an outage, be possible, provide value to PSAPs, and be in the public interest? The Commission also proposes that originating service providers transmit such notification, as presently required for covered 911 service providers, by telephone and in writing via electronic means and that they communicate additional material information as that information becomes available, but no later than two hours after the initial notification. The Commission seeks comment on its proposed means for PSAP notification. Are these means—by telephone and in writing via electronic means—adequate for notifications from originating service providers? Are they adequate for notifications from covered 911 service providers? Are there alternative methods of notification that PSAPs would prefer? The Commission also seeks comment on the proposed frequency of updating PSAPs with material outage information. Is this proposed frequency sufficient for PSAPs? During an extended outage, when material information may not change for many hours, how should the Commission require originating and covered 911 service providers keep PSAPs informed?

12. The Commission anticipates that such changes will enhance PSAP situational awareness of outages generally and will ensure that PSAPs receive critical information in a timely manner by providing a uniform set of expectations for those providers with whom they interface. This in turn will enhance PSAPs' abilities to direct scarce resources toward mitigating outages rather than seeking out information and will further streamline the ability of the Commission to administer the rules and the ability of providers to fulfill their obligations. This view was underscored by the Association of Public-Safety Communications Officials (APCO), and comments from other public safety stakeholders during the Bureau's 2017 workshop on best practices and recommendations to improve situational awareness during 911 outages. Public safety officials stated that the critical information contained in these notifications enables them to be more efficient. One participant, Dave Mulholland of Arlington County 9–1–1, stated that prompt communication of this critical information would save ''a lot of time, energy, and effort'' by preventing PSAPs from needing to reach out to neighboring PSAPs to determine the breadth of an outage. Evelyn Bailey of the National Association of State 911 Administrators (NASNA) continued, stating that ''[PSAPs] need to know as much specific [outage] information as possible.'' Public safety representatives requested that PSAPs receive equivalent outage notifications regardless of where in the network an outage occurs. In other words, according to the public safety representatives speaking during the webcast, PSAP notifications should not differ depending on whether the outage is caused by a disruption in an originating service provider's network versus a covered 911 service provider's network. As discussed below, PSAPs that receive actionable 911 outage notifications use the information in these notifications to facilitate reliable and timely public access to emergency services.

13. The Commission seeks comment on its proposal to harmonize the timing, means, and frequency of PSAP notification for originating service providers and covered 911 service providers. While the Commission observes that the AT&T Mobility and T-Mobile outages referenced above provide examples of inadequate PSAP notifications by originating service providers in the context of outages that only affect 911 calls, the Commission notes that both originating and covered 911 service providers have notice obligations. Both must include any required information in a notification to a PSAP only to the extent that it is available, both at the time of the initial notification and at the time of subsequent updates, regardless of whether the outage is a 911 outage or a general network outage that prevents all calls, insofar as either the outage disrupts or prevents communications to a PSAP or has the potential to do so. 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h). The Commission seeks comment on any alternative requirements that the Commission should consider to minimize potential burdens, if any, on PSAPs and service providers.

14. Under the Commission's proposed rules, if adopted, originating service providers would be under greater time pressure to notify PSAPs; would need to provide contact information so that the PSAP can reach them for follow up; would need to provide notification by two means (*e.g.,* phone call and email) instead of one; and would need to provide follow-up notification. The Commission seeks comment on the extent to which these changes would increase the burden of PSAP notification for originating service providers. For example, the Commission seeks comment on whether originating service providers would need to transmit multiple, regional PSAP notifications under the proposed rules when 911 outages affect areas monitored by more than one Network Operations Center (NOC) and the local NOC is the best point of contact for PSAPs' outage-related inquiries, whereas the Commission's current rules would only require them to transmit one.

15. The Commission notes that in certain circumstances, PSAPs may find that there are benefits to learning of outages or network disruptions that potentially affect 911 but do not meet the current reporting thresholds. Are the Commission's thresholds for PSAP notification too high? Should the Commission modify these notification requirements so that originating and covered 911 service providers are required to notify PSAPs of network disruptions that potentially affect 911 service but do not meet the thresholds necessary to report to the Commission? What would be the appropriate outage reporting threshold requiring PSAP notification? The Commission seeks comment on the utility to PSAPs and benefits to public safety of any consequent increased situational awareness of network outages potentially affecting 911. The Commission also seeks comment on the costs of lowering these thresholds in light of the expected increase in notifications to PSAPs. The Commission seeks comment on how many additional outages beyond the estimated 37,000 outages that potentially affect 911 each year would be reportable to PSAPs.

16. The Commission seeks comment on the cost and benefits of originating service providers notifying PSAPs about 911 outages within the same timeframe, by the same means, and with the same frequency that covered 911 service providers currently do. The cost estimates below are incremental to the costs that originating service providers already incur to notify PSAPs of outages that potentially affect them pursuant to the Commission's rules. The Commission seeks comment on those estimates. Additionally, the actual cost that originating service providers would incur to comply with this requirement may be substantially lower than estimated. 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i). For example, Verizon suggests that some service providers may have automated their PSAP outage notification processes. For originating service providers that have automated PSAP notification, the Commission anticipates that the proposed changes to the notification process would not result in recurring costs. The Commission seeks comment on this premise, as well as on the extent to which service providers have set up automated triggers for PSAP notification. The Commission expects that the costs of PSAP outage notifications will fall as service providers transition to an automated PSAP outage notification process. The Commission seeks comment on the extent to which service providers expect to transition to an automated notification process and the timeframe for any such transition.

2. Ensuring PSAPs Receive Actionable Information About 911 Outages

17. Since the adoption of the PSAP notification rules, PSAPs have reported that notifications they receive often are confusing or uninformative, and have emphasized the need for clear and actionable information regarding 911 outages so 911 authorities can inform the public about alternative means to contact emergency services. Commenters representing public safety and industry agree that uniform information elements in PSAP notifications can help minimize confusion at PSAPs. The Commission also has observed that when PSAPs receive actionable 911 outage notifications, they are empowered to use reverse 911, post on social media platforms, work with local media to run on-screen text crawls, and use other tools at their disposal to notify the public of alternative means to reach their emergency services. During AT&T Mobility's nationwide 911 outage, for example, when AT&T notified PSAPs in Orange County, Florida several hours after it discovered the outage, Orange County PSAPs were able to take measures to notify the public of their alternative 10-digit phone numbers as a means to reach their emergency services. *AT&T VoLTE 911 Outage Report.* Once Orange County PSAPs provided their alternative 10-digit phone numbers to the public, they received 172 calls to those numbers during the one and a half hours until AT&T Mobility resolved the outage. *AT&T VoLTE 911 Outage Report.* The Bureau has credited these measures as being critical to maintaining the public's continued access to emergency services during several widespread 911 outages. *AT&T VoLTE 911 Outage Report*; T-Mobile Order; PSHSB, December 27, 2018 CenturyLink Network Outage Report (2019), *https://www.fcc.gov/document/fcc-report-centurylink-network-outage/; Verizon,* File Nos. EB–SED–14–00017189, EB–SED–14–00017676, EB–SED–14–00017373, Order, 30 FCC Rcd 2185 (EB 2015).

18. The Commission thus proposes to require originating service providers and covered 911 service providers to include ''all available material information'' in their PSAP outage notifications. The Commission believes this proposal will help ensure that PSAPs receive relevant, actionable information to better understand 911 outages and to promote continuity of 911 service, while minimizing superfluous or vague information. In addition to the specific information elements articulated for covered 911 service providers in the current rules, the Commission proposes that material information should also include the following for both originating service providers and covered 911 service providers, where available:

- The name of the service provider offering the notification;
- The name of the service provider(s) experiencing the outage;
- The date and time when the incident began (including a notation of the relevant time zone);
- The type of communications service(s) affected;
- The geographic area affected by the outage;
- A statement of the notifying service provider's expectations for how the outage will affect the PSAP (*e.g.,* dropped calls or missing metadata);
- The expected date and time of restoration, including a notation of the relevant time zone;
- The best-known cause of the outage; and
- A statement of whether the message is the notifying service provider's initial notification to the PSAP, an update to an initial notification, or a message intended to be the notifying service provider's final assessment of the outage.

19. These proposed outage notifications elements follow the template developed by the Alliance for Telecommunications Industry Solutions' (ATIS) Network Reliability Steering Committee (NRSC) Situational Awareness for 9–1–1 Outages Task Force Subcommittee (NRSC Task Force), working together with public safety stakeholders, minus the NRSC Task Force's inclusion of an incident identifier. In the *2018 911 Reliability Public Notice,* the Bureau sought comment on whether the NRSC Task Force's template should serve as a model for standardization, and commenters support the NRSC Task Force's work. For example, the National Emergency Number Association (NENA) suggests that the elements of the NRSC Task Force's template ''will aid PSAPs and 9–1–1 authorities in quickly understanding the nature of a service degradation or network downtime.''

20. The Commission seeks comment on whether these baseline elements would provide useful and actionable information to PSAPs. Will ensuring that PSAPs receive the same information regardless of where a 911 outage originates promote situational awareness for PSAPs in a manner that

aids in emergency response? Are there additional informational elements that should be added, or should any elements listed be removed or revised? The Commission notes that the NRSC Task Force's template recommends the inclusion of a unique identifier associated with the outage. Would this help PSAPs organize and access information related to a particular outage? APCO suggests covered 911 service providers should also offer PSAPs graphical interface data describing the geographic area potentially affected by outages, such as ''coordinate boundaries for the outage area, GIS files, or text information from the covered [911] service providers' internal reporting systems,'' because such information could help first responders understand which areas could be affected by an outage. To what extent do originating and covered 911 service providers have this information available within the timeframe that they would be required to notify PSAPs? The Commission seeks comment on what steps service providers would need to take to include graphical information in providing actionable information to PSAPs. The Commission asks commenters to describe in detail how PSAPs would use such data to benefit the public, including how such data could be used to reduce first responder response times. Would requiring them to provide this information to PSAPs impose a significant burden or divert resources, thereby delaying service restoration? To the extent service providers are unable to provide data for visualizing outages and disruptions, what are the costs of developing this capability, especially for smaller providers?

21. The Commission notes that, under both the existing and proposed rules, service providers must include any outage information in their PSAP notifications only to the extent that it is available, both at the time that they transmit the initial notification and at the time that they transmit any subsequent notifications. The Commission seeks comment on how this approach has worked in practice. The Commission further seeks comment on whether requiring service providers to include additional, specific information elements in their PSAP notifications would allow PSAP personnel to comprehend outage information more quickly and whether such information would improve PSAPs' ability to respond when the public cannot reach 911 or when 911 services otherwise do not work as intended. Conversely, the Commission seeks comment on whether this additional information could have negative consequences for emergency response, such as overburdening PSAPs with too much information, thereby, potentially delaying response times. If so, how could the Commission revise the proposal to minimize the possibility of notification fatigue?

22. The Commission does not propose to require information to be provided in a particular format (*e.g.,* by mandating use of the NRSC Task Force's template). Instead, the Commission proposes an approach that establishes a baseline expectation of shared information while otherwise preserving flexibility for originating service providers and covered 911 service providers. *PSHSB Shares Recommended Practices from September 11, 2017 911 Workshop,* DA 18–6, Public Notice, 33 FCC Rcd 11 (PSHSB 2018). The Commission seeks comment on this approach, or on whether the Commission should prescribe such a format, and if so the terms thereof. Considering the diverse, localized nature of 911 networks in the United States, and the extent to which notifications already may be informed by originating service providers' and covered 911 service providers' agreements with state and local 911 authorities, the Commission specifically seeks comment on whether this approach would allow originating service providers and covered 911 service providers to better meet individual PSAPs' distinct needs. The Commission would anticipate that service providers' notification processes may go beyond those proposed in this NPRM in some circumstances, such as by mutual agreement of the parties.

23. In March, the Commission adopted a Report and Order that established an outage information sharing framework to provide state and Federal agencies with access to outage information to improve their situational awareness, enhance their ability to respond more quickly to outages impacting their communities, and help save lives, while safeguarding the confidentiality of this data. *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications,* PS Docket No. 15–80, Second Report and Order, 86 FR 22796 (April 29, 2021), FCC 21–34 (rel. Mar. 18, 2021) (*Network Outage Reporting System (NORS) Information Sharing Report and Order*). The Commission acknowledges that disclosing specific outage information to PSAPs may make that information available to other parties and therefore seek comment on whether the Commission should supply similar safeguards as adopted in the *NORS Information Sharing Report and Order.* The Commission seeks to balance PSAPs' need for actionable information with providers' need for confidentiality. The Commission seeks comment on how the Commission might address this balance. For example, is there a subset of information that would prove as useful for PSAPs that could be disclosed without overly burdening the presumption of confidentiality afforded reported outage information? Could PSAPs obtain access to this same outage information from state or other agencies more rapidly and efficiently than directly from service providers?

24. The Commission seeks comment on the cost and benefits of originating service providers and covered 911 service providers to report the same specific, actionable content in their PSAP outage notifications. The Commission anticipates the actual cost may be substantially lower than the estimate below because the estimated number of service providers that would be required to comply is conservatively broad. Further, the Commission expects that the additional information that the Commission proposes to require originating service providers and covered 911 service providers to report to PSAPs already is available to them at the time of notification, and that the example of the NRSC Task Force's template would help to streamline compliance timelines and reduce costs. The Commission seeks comment on whether standardization and streamlining could reduce the compliance costs for originating service providers that also act as covered 911 service providers in other contexts, or for originating service providers that are already offering notifications to PSAPs, but doing so with limited guidance on what information to provide. The Commission also notes that the NRSC has already created and shared a tutorial for PSAPs to facilitate the sharing of PSAP contact information with originating service providers and covered 911 service providers. The NRSC stated that it ''expects that both service providers and PSAPs can benefit from this tutorial.'' To the extent that commenters advocate a different approach, the Commission asks for costs and benefits of such alternatives.

3. Updating and Maintaining Accurate Contact Information for Officials Designated To Receive Outage Notifications at Each PSAP

25. The Commission's current outage reporting rules require originating service providers and covered 911 service providers to transmit PSAP

outage notifications to any official who has been designated by the management of the affected PSAP as the provider's contact person for communications outages at that facility. 47 CFR 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h). To ensure that PSAPs receive the information they need about 911 outages, the Commission proposes to require originating service providers and covered 911 service providers to develop and implement procedures for gathering, maintaining, and updating PSAP contact information. Because time is of the essence when a 911 outage occurs, originating service providers and covered 911 service providers must notify the right contacts at PSAPs so that the PSAPs can take prompt measures to help the public continue to reach emergency services.

26. The Commission proposes to amend § 4.9(h) of its rules to require both originating service providers and covered 911 service providers to identify the PSAPs they serve and to maintain up-to-date contact information for those PSAPs. In particular, the Commission proposes to require that originating and covered 911 service providers develop and implement standard procedures to: (1) Maintain current contact information for officials designated to receive outage notifications at each PSAP in areas that they serve; and (2) on a routine basis, at least annually, review and update their PSAP contact information to ensure it remains current. The Commission seeks comment on this proposal. The Commission also seeks comment on whether to require originating service providers and covered 911 service providers to offer contact information reciprocally to PSAPs. The Commission does not, however, propose to specify the procedures that service providers must develop or follow to elicit PSAP contact information to retain flexibility in this regard. The Commission seeks comment on this approach.

27. The Commission seeks comment on the cost and benefits of originating service providers and covered 911 service providers to maintain up-to-date contact information for PSAPs in areas they serve. The Commission anticipates that the actual costs that originating service providers and covered 911 service providers would incur to comply with this requirement may be substantially lower than the estimate below because the Commission's rules already require these service providers to notify PSAPs of 911 outages and, as such, they should already have accurate PSAP outage contact information on hand. Insofar as service providers already have up to date PSAP contact information, the Commission does not anticipate that compliance with this proposed requirement would present an incremental cost.

28. The Commission also notes that in November 2019, the NRSC Task Force approved standard operating procedures for updating PSAP contact information in a centralized PSAP contact database. In that document, the Task Force suggested that a centralized database would potentially relieve service providers of the need to maintain their own internal processes and responsibilities to work independently with each 911 authority. Subsequently, in October 2020, the NRSC noted efforts by public safety organizations such as NENA to develop a PSAP contact database. The NRSC stated that to encourage broad use of a PSAP contact information database, it ''would need to be made available at little or no cost'' for service providers. The NRSC also expressed concerns regarding data integrity and who would be responsible for updating contact information. As such, the NRSC argued that industry adoption of such a database could prove challenging due to ''the potential for liability associated with reliance on the database.''

29. The Bureau sought comment on the NRSC letter in December 2020. 86 FR 4074. In response, USTelecom called a PSAP contact information database ''critically important for industry and PSAP coordination during emergencies.'' NENA, which operates a voluntary PSAP registry service, stated that there is an ''immediate need for an authoritative service that can provide contact information for PSAPs during emergencies.'' APCO continued its support of a PSAP contact information database and urged the Commission to require service providers to establish and maintain a secure two-way contact information database. These comments indicate strong interest in a PSAP contact information database to facilitate reliable and rapid communication between service providers and PSAPs in an emergency.

30. Therefore, the Commission seeks comment on whether a mandatory PSAP contact information database accessible to and updated by originating and covered 911 service providers, as well as PSAPs, would warrant the Commission adopting alternative requirements other than those proposed above. The Commission seeks comment on the contours of such a database.

31. As a threshold question, the Commission asks how such a database would be administered. Should the Commission, as APCO International suggests, require service providers to host and operate the database? Are originating service providers and covered 911 service providers already participating in the development of a centralized PSAP contact database? The Commission notes the efforts of wireless carriers previously to establish the National Emergency Address Database (NEAD) to facilitate provision of 911 dispatchable location information for wireless callers. 80 FR 45897. However, wireless carriers notified the Commission that they had abandoned the NEAD after failing to secure necessary agreements with other entities. The Commission notes further the commitment of several wireless provider signatories to the Wireless Resiliency Cooperative Framework (Framework) to ''establish[] a provider/PSAP contact database'' to enhance coordination during an emergency, the existence of which may mitigate the costs of creating a PSAP contact information database, particularly for those wireless provider signatories. 78 FR 69018. What particular lessons learned may be relevant for a similar service provider-operated PSAP contact information database? The Commission seeks comment on the utility of a database developed, owned, and operated by both originating and covered 911 service providers.

32. The Commission also seeks comment on how such a database would be funded and how such a funding mechanism would impact smaller service providers. As noted below, charging PSAPs and public safety entities for access to the database could inhibit PSAP participation in the database, which would be inconsistent with the Commission's stated goal of enhancing public safety. What funding mechanisms would work for such a database? How much would the creation and maintenance of such a PSAP contact information database cost for initial setup? Given that many service providers already maintain updated PSAP contact information, the Commission seeks comment on the ease and costs of transitioning from many independent databases to a unified database. What would the recurring costs of maintaining and updating a PSAP contact information database be? While such a database would appear to provide certain informational benefits, how significant would these benefits be in practice? The Commission also asks commenters to describe these (or any other) potential benefits with specificity.

33. The Commission is especially interested in how a PSAP contact information database would best be kept current and accurate, as well as where

the responsibility for updating and maintaining the database would lie. The Commission notes that the utility of a PSAP contact information database is dependent upon the accuracy of the information it contains. The Commission consequently seeks comment on how best to ensure the reliability and integrity of the data contained therein. For example, NENA's PSAP registry is free of charge for PSAPs. The Commission seeks comment on whether allowing PSAPs to participate free of charge will enhance the accuracy of PSAP contact information in the database. Furthermore, the Commission seeks comment on whether users and creators of a PSAP contact information database should be prohibited from using that information for any other purpose not related to public safety or maintenance of the database. The Commission seeks comment on whether and how frequently service providers and PSAPs would update their own information in the database. Would the operator of the database need to regularly validate this information on a monthly or annual basis? The Commission seeks comment on the frequency of data validation necessary to ensure the integrity and accuracy of the database.

34. If service providers elect to have a third party operate the PSAP contact information database, the Commission seeks comment on what possible liability issues could arise from such a third-party database. If the failure of a service provider to notify a PSAP of an outage were due to inaccurate information in the database, who would the potential liable parties be? Several commenters argue that service providers should be shielded from liability for reliance upon information provided by the PSAP contact information database. The Commission seeks comment on whether such a safe harbor would encourage or inhibit use of the PSAP contact information database. Would such an effort help to reduce the costs of compliance with this proposal? Further, rather than establishing a safe harbor rule, would service provider liability concerns be more appropriately addressed through a requirement that service providers contracting with third party database operators require those operators to implement measures to ensure the accuracy of the third-party database that are at least as stringent as the measures that the service providers employ for their internal databases?

B. Customer Notification of 911 Outages

35. When an outage affects 911 service, dialing ''9–1–1'' may not always connect someone in need of emergency services with a PSAP, which may lead to devastating effects. However, those in need of emergency services often do not know when 911 services are down, only that their emergency calls remain unanswered. Therefore, to increase public awareness of 911 availability and to help protect the public's safety when 911 services are disrupted, the Commission proposes to require service providers to notify their customers of 911 outages within 60 minutes of determining there is an outage by providing material information on their websites and internet-related applications.

36. *Notification Breadth.* The Commission proposes that cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers notify their customers when there is an outage that affects the availability of 911 voice or text-to-911 services for their customers. This includes both originating service providers and covered services providers, as they each provide an essential link in the chain to ensure completion of a 911 call. Because 911 unavailability due to an outage on a covered 911 service provider's network affects originating service providers as well, the Commission proposes to require both originating service providers and covered 911 service providers supply public notification of 911 unavailability to their customers. The Commission seeks comment on this proposal.

37. *Notification Threshold.* The Commission proposes that service providers notify their customers of a 911 outage that meets the NORS reporting thresholds and also prevents emergency callers on their networks from reaching a PSAP by dialing or texting 9–1–1. The Commission believes that such a threshold would minimize potential confusion about 911 availability and ensure that the public is only notified of outages that materially affect emergency callers. The Commission seeks comment on this public notification threshold. For example, if 911 calls are delivered but without audio for one of the parties (either caller or 911 call taker), should this be considered 911 unavailability? If callers cannot reach emergency services by dialing 9–1–1 but text-to-911 still operates, should this constitute 911 unavailability? And should a situation where text-to-911 is unavailable due to a network disruption but traditional voice calls to 911 are possible constitute 911 unavailability? As consumers with disabilities may be more likely to text rather than call 911, are there additional considerations in determining 911 unavailability? The Commission seeks comment on whether this threshold is too narrow, and if so, which additional types of disruptions to 911 services should trigger public notification. For example, should a loss of transmission of ALI or ANI prompt public notification? The Commission also seeks comment on whether this threshold is too broad.

38. *Notification Timing and Frequency.* The utility of notifications is inextricably tied to the service provider's ability to deliver timely and accurate notifications. The Commission proposes a similar arrangement for public notifications as presented in § 4.9(h) of the Commission's rules for PSAPs: The Commission proposes that customer notifications commence within 60 minutes of the service provider discovering that the outage has resulted in the unavailability of 911 service. 47 CFR 4.9(h). With this proposal, the Commission seeks to balance the import of providing the public with the timely ability to access emergency services with the necessity of providing accurate outage information. The Commission understands that when 9–1–1 is unavailable, both service providers and PSAPs are working diligently to make sure the public can reach emergency services. The Commission seeks comment on this proposal. The Commission maintains that such an initial notification of 911 unavailability will increase the likelihood that those in need will understand that 9–1–1 is unavailable and attempt other methods to receive necessary emergency assistance. In addition, similar to the proposal regarding PSAP notification timing discussed above, the Commission proposes that service providers update public notices with material information regarding the estimated time of 911 restoration as soon as possible. The provision of updates to the public will help redirect emergency callers back to 9–1–1 and ensure that PSAPs may return to normal call-taking status. The Commission seeks comment on this proposal. Is 60 minutes the appropriate threshold? Will this timing obligation interfere with service providers' ability to provide notice and support to PSAPs? Are there other burdens that this timing proposal creates? How can they be mitigated? Conversely, is this timeframe too lengthy to provide meaningful information to the public?

39. *Notification Content.* The Commission proposes to require that service providers create public notifications that include the following: (1) A statement that there is an outage affecting 911 availability, (2) a description of the geographic area where

911 callers may face 911 unavailability, (3) an estimated time that 911 service became unavailable, and (4) an estimate of when 911 services will be restored. The Commission further proposes that service providers be required to include alternative means to reach emergency services, such as alternative contact information, at the request of the PSAP, on a per outage basis. The Commission proposes that a service provider should contact the PSAP(s) affected by 911 unavailability as soon as possible after discovery of an outage, but no later than 30 minutes after discovery to determine what, if any, alternative means of contact the PSAP would like made publicly available for the duration of the incident. The Commission proposes these elements to ensure that public notifications are accurate and easily understood by end-users and are accessible for individuals with disabilities. The Commission believes these elements also will reduce potential confusion and avoid inadvertently increasing burdens on PSAPs. In this respect, a description of the geographic scope of 911 unavailability, for example, will ensure that only those affected by 911 unavailability use alternate means other than 911 to contact emergency services. For the same reasons, including the time at which 911 first became unavailable and the estimated time of restoration in notices will ensure end-users know when they should seek alternatives, updating consumers regarding restoration time will help redirect emergency callers back to 9–1–1, which in turn will help PSAPs return to normal operations. The Commission seeks comment on this proposal. Is the Commission including the right elements for effective public notification? Will those seeking emergency services find this information pertinent in their time of need? The Commission also seeks comment on best practices for describing geographic boundaries of affected areas. For example, a state's borders are frequently known but an outage affecting a smaller area, or an area spanning state borders, may be more difficult to accurately describe. At what fidelity and how should this information be conveyed? The Commission also seeks comment on the potential costs and benefits of this proposal.

40. The Commission also seeks comment on this proposal in light of the currently presumptively confidential treatment of outage reports and the recent adoption of a Report and Order that provides direct access to NORS and Disaster Information Reporting System filings by certain public safety and emergency management agencies of the 50 states, the District of Columbia, Tribal nations, territories, and Federal Government, provided that they follow safeguards adopted by the Commission. *NORS Information Sharing Report and Order.* Information reported to the Commission under its part 4 reporting rules is presumed confidential due to its sensitive nature to both national security and commercial competitiveness. The Commission proposes that a subset of this outage report information be made publicly available, and at a less granular level than what it provided to the Commission on a confidential basis, in order to advise PSAPs and consumers when 911 service is unavailable and to arrange for alternate methods for consumers to contact PSAPs. The Commission believes that this approach would save lives and improve emergency outcomes involving, for example, illness and injury, and that the benefits of disclosure far outweigh the increase in the risk of national security or commercial competitiveness harms. The Commission seeks comment on the relationship between the need for the confidentiality afforded reported part 4 outage information and the public's interest in 911 availability in times of critical need. Is there specific information that would be conveyed under this public notification proposal that could implicate national security or commercial competitiveness? How might the Commission modify the parameters of the proposed customer notification to address such concerns?

41. Given that network disruptions sometimes vary in duration, geographic scope, and intensity, the Commission seeks comment on whether and to what extent service providers can develop public notification content in partnership with PSAPs in advance of unplanned outages. The Commission also notes that PSAPs are best positioned to determine what contact information to disseminate to the public during a 911 outage and that PSAPs may wish to coordinate the message delivered by service providers with their own outreach via social media or other avenues. The Commission understands that in an outage affecting multiple PSAPs, any public notification will also need to include a geographic description of where callers may not be able to reach emergency services by dialing 9–1–1 to prevent possible caller confusion and misdirected emergency calls. As such, the Commission seeks comment on how PSAPs and service providers collectively can best develop public notification information in advance of 911 unavailability.

42. *Notification Medium.* The Commission proposes to require service providers to post public notification of 911 outages prominently on their websites and internet-based applications, such as provider-specific apps for mobile devices. This information should be quickly accessible, with one click, from the main page of a service provider's website (*e.g., T-Mobile.com* or *Verizon.com*), and be accessible for individuals with disabilities. The Commission believes that this will allow those seeking critical information on 911 unavailability during an emergency to obtain the information necessary to determine their next steps in procuring emergency services quickly without being inundated with information regarding 911 unavailability. Public notification in this manner may also avoid creating competing messaging with PSAPs that may choose to use affirmative outreach methods such as reverse 911 or other public notification systems to notify the public of a 911 outage. Because these require the consumer to take action, public notifications conveyed over websites and through mobile device apps do not actively alert the consumer like wireless emergency alerts and thus do not contribute to alerting fatigue, and may complement those active measures that may be utilized by local PSAPs.

43. The Commission acknowledges that there are many other methods to effectuate public notifications of disruptions to 911 availability: Text messages, emails, phone calls, social media, and posting on service provider websites and applications all provide near-real-time opportunities to update the public on how best to reach emergency services. Each has its pluses and minuses. For example, while they do not require affirmative action by the consumer, text messages are undeliverable to traditional wireline numbers and service providers may not have email addresses for customers. In addition, the Commission is concerned that methods of public notification requiring broadcasting 911 unavailability broadly may engender a lack of confidence in the ability to reach emergency services by dialing 9–1–1. The Commission believes that public confidence in 911 is critical; indeed, the Commission has long sought to buttress the public's confidence in 911. 80 FR 3191. Consequently, the Commission believes that this proposal will best allow those seeking emergency assistance to determine alternative

means to reach emergency services. The Commission seeks comment on this assessment. Would public confidence in 911 decrease in the face of too many alerts regarding 911 unavailability? Conversely, would greater transparency alleviate concerns that 911 services may be unavailable without the public's knowledge? Are there benefits to other means of notification, such as text messaging, automated phone calls, or email, that the Commission has overlooked and that merit their inclusion? Would other means of notification more effectively reach communities where there is limited internet connectivity, for example, on some Tribal lands? Further, in areas where a significant portion of the population does not speak English as a primary language, should the Commission require service providers to include multiple language options for the public notification?

44. In addition to accessible public notification on originating and covered 911 service provider websites, the Commission envisions that those seeking additional information would be able to input their location by address into their provider's website (or similar mobile app) and in turn receive more specific information on the geographic scope of the outage. The Commission notes that Verizon already provides ''Network Notifications'' in the My Verizon App, which provide Verizon Wireless customers with information on network disruptions and when restoration is expected. The Commission seeks comment on this proposal for how customers might obtain additional information and how it might be implemented in a way that preserves confidence in 9–1–1, provides value to those in need, and is minimally burdensome on originating and covered 911 service providers.

45. Finally, the Commission seeks comment on the costs and benefits of this proposal. Is there an affordable alternative method of public notification that balances the needs of the public to know whether dialing 9–1–1 will reach emergency services with the Commission's commitment to preserving public confidence in 911? To what extent have service providers already implemented a notification framework for other alerts and important announcements that would reduce any website development costs associated with this proposal? Alternatively, are there other methods of public notifications, such as using text messages or automated phone calls, which would be likely to reach a larger proportion of service providers' customers and those customers who may have limited internet connectivity? The Commission seeks comment on the benefits and costs of implementing these alternatives.

C. Updating the Commission's 911 Network Reliability Framework

46. Covered 911 service providers must certify annually to the Commission that they perform three reasonable measures to promote the reliability of their networks: Ensure circuit diversity, maintain backup power at central offices, and diversify network monitoring. 47 CFR 9.19(b). In 2018, the Bureau asked commenters to address these 911 reliability rules' effectiveness and whether they ''remain technologically appropriate, and both adequate and necessary to ensure the reliability and resiliency of 911 networks.'' *2018 911 Reliability Public Notice.* The record contains widespread support for the 911 reliability rules, with commenters stating that the Commission's three reasonable measures are appropriate and strengthen 911 network reliability and resiliency. Accordingly, the Commission finds that its 911 reliability rules continue to be technologically appropriate and both adequate and necessary, and the Commission does not intend in this proceeding to revisit or reopen those requirements, except as to the timing of the certification as noted herein.

47. On this point, commenters differ regarding the appropriate frequency for filing the required certification. Some commenters state that the current, annual certification remains necessary to promote awareness of 911 reliability issues for covered 911 service providers' senior management and employees. Others state that less frequent certification could make the provision of reliable 911 service more cost-effective by decreasing the burden on providers without affecting 911 network resiliency. The Commission seeks comment on whether, as some commenters suggest, less frequent certification would be an effective means of reducing compliance burdens, without sacrificing its benefits. The Commission emphasizes that it would not be making any changes to the fundamental obligations underlying network reliability certifications—namely, the requirements to ensure circuit diversity, maintain backup power at central offices, and diversify network monitoring. Would increasing the time between 911 network reliability certifications—such as requiring only biennial certifications—affect public safety outcomes? If so, could the Commission offset any potential risk that less frequent certification would affect public safety by requiring covered 911 service providers to submit certifications when they perform a ''material network change'' during the preceding year? If so, how should the Commission define a ''material network change?'' For those advocating less frequent certifications, what would the cost savings be? The Commission also asks for costs and benefits of any offered alternatives.

48. The Commission also proposes to require covered 911 service providers that have ceased to operate as such—*i.e.,* they no longer provide covered 911 services, or no longer operate one or more central offices that directly serve a PSAP—to notify the Commission via an affidavit in which the service provider would explain the basis for its change in status. 47 CFR 9.19(a)(4)(i). The Commission proposes that, should a service provider no longer provide covered 911 services, the service provider file an affidavit through the Commission's online portal during the timeframe when the portal is open for annual reliability certifications. The Commission notes that, in 2020, the Commission opened the 911 reliability portal for certification filing from July 30 through October 15. *Public Safety and Homeland Security Bureau Announces Availability of 911 Reliability Certification System for Annual Reliability Certifications,* PS Docket Nos. 13–75 and 11–60, Public Notice, 35 FCC Rcd 8082 (PSHSB 2020). The Commission seeks comment on the appropriateness of linking the timeframe to file such an affidavit with the period that the portal is open. Is the 911 Reliability System the correct place for filing? The Commission proposes these measures to ensure that the Commission does not expend time and resources to investigate why a covered 911 service provider has failed to file its 911 certification in a timely manner, when the reason is simply because the provider is no longer a covered 911 service provider and is therefore no longer required to file the required certifications. The Commission expects few companies to end their covered 911 service operations from year to year and expect such filing costs would be minimal. The Commission believes that the benefits, however, will be much greater. First, the Commission will be able to more quickly determine whether a service provider is a covered 911 service provider before engaging in an investigation. Second, any service provider that has ceased its qualifying covered 911 operations and filed with the Commission that it has done so will not have to encounter an investigation

into whether the service provider failed to file its 911 reliability certifications. The Commission seeks comment on these proposals, their costs and benefits, as well as on potential alternatives for service providers to supply this information to the Commission.

D. Administrative Line Definition

49. The Commission defines a covered 911 service provider in part as an entity that ''operates one or more central offices that directly serve a PSAP. For purposes of this section, a central office directly serves a PSAP if it . . . is the last service-provider facility through which a 911 trunk or administrative line passes before coming to a PSAP.'' 47 CFR 9.19(a)(4)(i)(B). Under the current rules, a service provider that provides phone service to a PSAP but does not provide specific 911-related services to the PSAP is considered a covered 911 service provider due to its provision of an ''administrative line.'' Neither the Commission's rules nor its precedent presently define the term ''administrative line'' for purposes of the Commission's 911 reliability rules. The Commission proposes to define ''administrative line'' for the purpose of its 911 reliability framework as a business line or line group that connects to a PSAP but is not used as the default or primary route over which 911 calls are transmitted to the PSAP. The Commission seeks comment on this proposed definition. The Commission anticipates that this clarification will simplify service providers' determination of whether they are an originating service provider or a covered 911 service provider. The Commission believes that this, in turn, will reduce the potential that a service provider fails to file required 911 reliability certifications. This proposal appears to only accrue benefits, but the Commission nevertheless seeks comment on its potential benefits and costs. The Commission seeks comment on this analysis and asks whether there are any potential ramifications from this proposal of which the Commission is not aware. Commenters suggesting alternatives to this proposal should also include comment on anticipated costs and benefits.

E. Codifying Adopted Rules

50. In 2016, the Commission adopted a Report and Order that modernized the Commission's network outage reporting rules. 81 FR 45055 (*2016 Part 4 Order*). One of those requirements, however, was not at the time codified in the Code of Federal Regulations. The part 4 rules exempt satellite and terrestrial wireless providers from reporting outages that potentially affect airports, and the *2016 Part 4 Order* ''extend[ed] that exemption to all special offices and facilities,'' and ''extend[ed] the wireless exemption for satellite and terrestrial wireless carriers to all special offices and facilities.'' 47 CFR 4.9(c)(2)(iii), (e)(1)(iv); *2016 Part 4 Order.* The Commission proposes to codify these changes to its rules in the Code of Federal Regulations, and seeks comment on this proposal.

F. Compliance Timeframes

51. The Commission proposes to require originating service providers and covered 911 service providers to comply with any adopted rules that it has proposed to harmonize PSAP outage notification requirements and ensure the receipt by PSAPs of more actionable 911 outage information by April 1, 2022. The Commission believes that the revisions proposed in this document constitute only minor changes to existing procedures and therefore believe that the time between adoption of the rules, as well as subsequent Office of Management and Budget (OMB) approval, and the compliance date would be sufficient. The Commission seeks comment on this assessment. The Commission seeks comment on whether allowing additional time for small- and medium-sized businesses to comply with the requirements the Commission proposes in this document would serve the public interest.

52. The Commission proposes to require originating service providers and covered 911 service providers to update and maintain accurate contact information for officials designated to receive outage notifications at each PSAP in areas they serve no later than April 1, 2022. While the Commission expects that many originating service providers and covered 911 service providers will already have accurate contact information on hand for most if not all of the PSAPs in their service areas, the Commission seeks to allow sufficient time for them to further develop and implement those procedures pursuant to the requirements that the Commission proposes in this document (for example, by developing and transmitting an email survey to their the best-known PSAP email address(es), following up as appropriate, and identifying and remedying any gaps in their PSAP contact lists). The Commission seeks comment on this approach.

53. In addition, the Commission proposes that its 911 unavailability public notification framework, which would require originating and covered 911 service providers to provide their customers with notification of certain disruptions to 911 service that result in the unavailability of 911 to reach emergency services, take effect no later than June 1, 2022. The proposal regarding contact information, discussed above, will give service providers the opportunity to further coordinate with PSAPs to determine, in advance of disruptions to 911 availability, any alternative contact information that the PSAPs wish to convey to the public. The Commission anticipates that service providers may need more time to develop a location-based web page to provide public notification of 911 unavailability than in developing systems to update and maintain accurate contact information for official designated to receive outage notifications. The Commission seeks comment on this proposal.

G. Benefits and Costs

54. For all foregoing proposals, the Commission estimates the costs that its proposed rules would impose on all service providers of approximately a $2,398,000 one-time cost and a $4,557,000 annually recurring cost. The Commission tentatively concludes that the benefits of PSAP outage notification will be well in excess of these costs. Public safety benefits, however, are difficult to quantify. This difficulty in quantification, however, does not diminish in any way the benefits of providing outage information to PSAPs. The Commission finds that the benefits attributable to outage notification are substantial and may have significant positive effects on the abilities of PSAPs to safeguard the health and safety of residents during outages that threaten residents' ability to reach 911. In particular, the Commission expects that both the PSAP notification proposals and the customer notification proposals will provide the information necessary to allow consumers to reach emergency services more quickly during an outage potentially affecting 911, thus reducing first responder times and improving public health and safety. The Commission urges commenters to supply detailed examples of likely benefits and estimates of their value where possible.

55. The Commission's one-time cost estimate of $2,398,000 consists of $50,000 to create an email survey to biannually solicit PSAP contact information, $99,000 to update PSAP outage notification templates, and $2,249,000 to implement a website-based framework that companies can use to notify their customers about outages. The Commission's estimate that annually recurring costs of $4,557,000

consist of $1,258,000 for notifying PSAPs of outages that potentially affect them pursuant to the standards that the Commission proposes in this document, $197,000 for identifying PSAPs that could potentially be affected by a service outage, $197,000 for soliciting from PSAPs appropriate contact information for outage notification, and $2,905,000 to publicly notify customers of 911 unavailability on company websites. The Commission seeks comment on all these estimates. At this time, the Commission is unaware of alternative approaches with lower costs that would still ensure that PSAPs receive timely information about outages that impact their service areas and ask commenters to provide detailed cost estimates. The Commission is interested in possible alternatives from commenters, however, and seeks comment. Any suggestions of alternative approaches should include both cost and benefit estimates.

IV. Procedural Matters

56. *Ex Parte Presentations.* The proceedings shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.* .doc, .xml, .ppt, searchable .pdf). Participants in the proceeding should familiarize themselves with the Commission's *ex parte* rules.

57. *Comment Filing Procedures.* Pursuant to the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on this notice of proposed rulemaking. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). 47 CFR 1.415, 1.419; 63 FR 24121.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS. *http://apps.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 45 L St. NE, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St. NE, Washington, DC 20554.

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

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 601 through 12, as amended by Public Law 104–121. Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the polices and rules contained in this NPRM. 5 U.S.C. 603(b)(3).

60. *Initial Paperwork Reduction Act Analysis.* This NPRM may contain proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA). Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

61. *Further Information.* For further information, contact Beau Finley, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at 202–418–7835, or via email at *Robert.Finley@fcc.gov.*

V. Initial Regulatory Flexibility Analysis

62. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. 5 U.S.C. 603. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM.

A. Need for, and Objectives of, the Proposed Rules

63. In this proceeding, the Commission takes steps to improve the reliability and resiliency of telecommunications networks nationwide and 911 networks specifically so that the American public can continue to reach emergency

services without undue delay or disruption. In particular, the NPRM proposes and seeks comment on measures to harmonize the Commission's Public Safety Answering Points (PSAP) outage notification rules such that all service providers must notify all potentially affected PSAPs of outages in the same manner and with more specific information. Furthermore, the NPRM seeks comments on requirements that originating service providers and covered 911 service providers inform their customers when 911 is unavailable to them due to disruptions to provider networks. These proposals would apply to all originating cable, satellite, wireless, wireline, interconnected VoIP service providers (''originating service providers'') as well as to all covered 911 service providers and should make the nation's 911 service more reliable and the public safer, while striking an appropriate balance between costs and benefits of such regulation. The NPRM also proposes to codify rules adopted in 2016 extending the exemption of satellite and terrestrial wireless providers from reporting outages potentially affecting special offices and facilities. *2016 Part 4 Order.*

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

64. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.'' 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632. Below is a list of such entities.

- Interconnected VoIP services;
- Wireline providers;
- Wireless providers—fixed and mobile;
- Satellite Service Providers; and
- Cable Service Providers.

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

65. The NPRM primarily proposes revisions to PSAP outage notification requirements that may impose new or additional reporting, recordkeeping, and/or other compliance requirements on small entities and entities of all sizes that provide 911 services. Specifically, the NPRM proposes (1) to harmonize the rules under which originating service providers and covered 911 service providers notify PSAPs of outages; (2) to require originating service providers and covered 911 service providers to provide more specific and uniform material information to PSAPs in outage notifications as defined in § 4.9(h)(6) of the Commission's rules, as the Commission proposes to revise them; (3) to require originating service and covered 911 service providers to annually identify the PSAPs that they serve and to elicit outage contact information from them; (4) to require said providers to supply the public with timely notification of 911 unavailability; and (5) to require covered 911 service providers notify the Commission within an announced timeframe that they no longer provide covered 911 services to PSAPs. The NPRM also proposes the codification of an amendment to a rule that the Commission adopted in 2016. Specifically, the NPRM proposes to codify the extension of the exemption of satellite and terrestrial wireless providers from reporting outages potentially affecting special offices and facilities. *2016 Part 4 Order.*

66. The Commission is not currently in a position to determine whether, if adopted, the proposed rules in the NPRM will require small entities to hire attorneys, engineers, consultants, or other professionals. The Commission notes, however, that service providers already perform measures that contribute to their ability to comply with these requirements, and thus would likely ease the burden of compliance with these proposals, if adopted. For example, some service providers may already offer PSAPs follow-up notifications if additional material information becomes available. In addition, many service providers are likely to already have documented procedures for notifying PSAPs of outages that potentially affect them, and for those that do not, Alliance for Telecommunications Industry Solutions (ATIS) Network Reliability Steering Committee (NRSC) Task Force documents can serve as a useful guide. Furthermore, many service providers already regularly elicit PSAP outage contact information.

67. As discussed in the NPRM, the Commission estimates the timeframe and incremental cost for originating service providers to notify potentially affected PSAPs about 911 outages within the same timeframe, by the same means, and with the same frequency that covered 911 service providers would be 30 minutes at a rate of $34 per hour per notification (initial and follow-up) per outage. The actual cost that originating service providers would incur to comply with this requirement may be substantially lower than the Commission's estimate because, among other things, some originating service providers service providers may have automated their PSAP outage notification processes. Similarly, the Commission estimates the one-time cost for originating service providers and covered 911 service providers to report the same specific, actionable content in their PSAP outage notifications as requiring 60 minutes at a one-time cost of $34 per hour per provider. This activity would allow a provider to incorporate additional informational elements into their existing mechanisms for gathering, approving, and transmitting information about 911 outages to PSAPs. Likewise, the Commission anticipates the actual cost that originating service providers and covered 911 service providers would incur to comply with this proposal, if adopted, may be substantially lower than the Commission's estimate because the estimated number of service providers that would be required to comply is conservatively broad. In the NPRM, the Commission considers whether originating and covered 911 service providers also should offer PSAPs graphical interface data describing the geographic area potentially affected by outages. In addition, the Commission considers whether to require originating and covered 911 service providers to notify PSAPs of outages that do not meet the Commission's reporting thresholds but could potentially affect 911 service. The Commission anticipates that the record will reflect variation in geographical interface capabilities and proposed PSAP notification thresholds, and thus anticipate that the estimated costs to service providers will also vary.

68. In the NPRM, the Commission also discusses the timeframe and costs for originating service providers and covered 911 service providers to develop and implement procedures for gathering, maintaining, and updating PSAP contact information. The Commission estimates that the cost for originating service providers and covered 911 service providers to maintain up-to-date contact information for PSAPs in areas they serve would take 30 minutes with a one-time cost of $34 per hour per provider to develop a mechanism to elicit PSAP contact

information. Working internally and with other network operators to identify PSAPs that could potentially be affected by an outage would take an estimated 120 minutes with an annual recurring rate of $34 per hour per provider. Likewise, eliciting the appropriate contact information for outage notification using the service provider's chosen PSAP contact information collection mechanism would take an estimated 120 minutes with an annual recurring cost of $34 per provider. Compliance with this proposed requirement may be substantially lower than the Commission's estimates because the Commission's rules already require these service providers to notify PSAPs of 911 outages and, as such, they should already have accurate PSAP outage contact information. As discussed in the NPRM, standard operating procedures for updating PSAP contact information in a centralized PSAP contact database was approved by the NRSC Task Force in November 2019. To the extent that service providers already have up to date PSAP contact information, the Commission does not anticipate that compliance with this proposed requirement would impose any incremental costs.

69. The estimated costs for service providers to notify their customers about 911 outages by providing material information on their websites consist of a one-time cost of $778 per provider to implement a website-based outage notification framework and an annually recurring expected cost of $1,005 per provider to notify customers of outages that materially affect 911 using that framework. The one-time cost consists of the sum of a web developer's hourly rate ($60) multiplied by 10 hours to set up an outage notification framework and a general and operations manager's hourly rate ($89) multiplied by 2 hours for project oversight. In calculating the one-time cost, the Commission is aware that certain nationwide or large regional service providers may have more sophisticated websites with multiple brands that would require more time to implement an outage notification framework. The Commission also notes however that most of these providers will have already implemented a notification framework for other alerts and important announcements that would reduce website development costs.

70. Small entities are also likely to already have an alert notification framework in place and would likewise have lower costs than estimated herein. Similarly, the Commission believes that small entities' annual recurring costs to notify customers of outages that materially affect 911 will likely be less than the Commission's estimates since affected service providers need only report outages that materially affect 911. Additionally, small entities will also incur lower costs where the hourly rates for web developers, and general and operations managers are lower than those used in Commission estimates. In the NPRM, the Commission seeks comments on its estimates and on alternative affordable methods of public notification that balance the needs of the public to know whether dialing 9–1–1 will reach emergency services with the Commission's commitment to preserving public confidence in 911.

71. Based on the above discussion, the Commission does not believe that the costs and/or administrative burdens associated with any of the proposal rule changes will unduly burden small entities. Furthermore, the Commission believes the value of the public safety benefits generated by the Commission's PSAP notification proposals outweigh the estimated costs. The Commission anticipates that the proposed rule changes will enable PSAPs to accelerate the public's ability to reach 911 call takers during an outage, reducing the probability of lives lost during any such outage. The Commission also believes that these proposals could generate an additional, incremental benefit by helping people reach 911 call takers more quickly and by reducing first responder response times.

72. Notwithstanding the foregoing, to the extent that service providers do not already elicit and refresh contact information for individuals designated by the PSAP to receive outage notifications, the Commission seeks to allow sufficient time for them to develop procedures for doing so, including, for example, by developing an email survey to transmit to their the best-known PSAP email address(es) or a secure web portal. In the discussion of the proposals in the NPRM, the Commission has also sought comments from the parties in the proceeding and requested cost and benefit information which may help the Commission identify and evaluate relevant matters for small entities.

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

73. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. 5 U.S.C. 603(c)(1) through (4).

74. In the NPRM, the Commission continues to facilitate the reliability of the 911 system and meet its public safety obligations for oversight of the integrity of the 911 communications infrastructure by proposing measures to ensure that PSAPs can expect consistent and timely outage notifications whenever there is an outage that potentially affects 911 service. While doing so, the Commission is mindful that small entities and other 911 service providers may incur costs should the proposals the Commission makes, and the alternatives upon which the Commission seeks comment in the NPRM, be adopted.

75. The Commission has taken several steps that could reduce the economic impact for small entities. First, the elements for the proposed PSAP outage notifications largely track the NRSC Task Force's template. Therefore, to the extent small entities have or will implement the ATIS NRSC Task Force's template, compliance with these proposals should not impose significant additional costs. Next, the Commission proposes an approach that establishes a baseline expectation of shared information while otherwise preserving flexibility for service providers to determine the means by which they present this information to PSAPs and seek comment on the cost this flexible approach. Similarly, the Commission does not specify the particular procedures that service providers must develop or follow to elicit PSAP contact information. The Commission seeks comment on the costs and benefit of implementing and maintaining these procedures.

76. To increase public awareness of 911 availability and to help protect the public's safety when 911 services are disrupted, the Commission proposes to require service providers to notify their customers of 911 outages at the request of affected PSAPs within 60 minutes of determining there is an outage by prominently posting notification of material information on the main page of their websites and internet-related applications. While the Commission recognizes that other alternatives such as text messages, email messages, and

phone calls, can all provide near-real-time methods to update the public on how best to reach emergency services, the Commission believes requiring posting of notification via websites and internet-related applications will minimize the potential for consumer confusion and alerting fatigue and is therefore in the public interest. The Commission also believes this means of communication will not be a very resource intensive or costly method for small entities and other service providers to provide notice to its customers as compared to for example, text messages which are not deliverable to traditional wireline numbers, and email addresses which service providers may not have for their customers. The Commission seeks comment in the NPRM on this approach and requiring other methods of notification.

77. To strike an appropriate balance between maintaining 911 network reliability and public awareness of 911 unavailability as well as associated paperwork burdens, the Commission seeks comment on whether it should change the frequency with which covered 911 service providers are required to file 911 reliability certifications. The Commission also seeks comment on any steps that it has not already proposed that it can take to prevent the costs of these proposals from becoming unduly burdensome for small and medium-sized businesses. Specifically, the NPRM seeks comment on whether it would serve the public interest to allow additional time for small and medium-sized businesses to comply with the requirements the Commission proposes in this document.

78. In response to the Commission's request for comments in the NPRM, the Commission invites parties to propose alternatives to the extent that these proposals will impose new obligations on small entities. Specifically, the Commission would like to see comments address whether small entities would benefit from different reporting requirements or timetables that take into account their limited resources; simplification or consolidation of reporting requirements for small entities; or an exemption from a requirement. the Commission invites commenters to (1) identify which proposed requirements are particularly difficult or costly for small entities and how different, simplified, or consolidated requirements would address those difficulties, and (2) if any modifications or exemptions from requirements are sought, discuss what would be the effect on public safety and the reliability of 911 operations.

79. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the NPRM, including the costs and benefits information. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

80. None.

F. Legal Basis

The proposed action is authorized pursuant sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j) 154(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

List of Subjects

47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 9

Communications, Communications common carriers, Communications equipment, Internet, Radio, Reporting and recordkeeping requirements, Satellites, Security measures, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 4 and 9 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. In § 4.9:
■ a. Revise paragraph (a)(4);
■ b. Add the word ''or'' at the end of paragraph (c)(2)(ii);
■ c. Remove paragraph (c)(2)(iii);
■ d. Redesignate paragraph (c)(2)(iv) as paragraph (c)(2)(iii) and revise newly redesignated paragraph (c)(2)(iii);
■ e. Add the word ''or'' at the end of paragraph (e)(1)(iii);
■ f. Remove paragraph (e)(1)(iv);
■ g. Redesignate paragraph (e)(1)(v) as paragraph (e)(1)(iv) and revise newly redesignated paragraph (e)(1)(iv); and
■ h. Revise paragraphs (f)(4), (g)(1)(i), and (h).

The revisions read as follows:

§ 4.9 Outage reporting requirements—threshold criteria.

(a) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(c) * * *

(2) * * *

(iii) Potentially affecting a 911 special facility (as defined in § 4.5(e)) the affected 911 facility in the manner described in paragraph (h) of this section.

* * * * *

(e)(1) * * *

(iv) That potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section.

* * * * *

(f) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify-the affected 911 facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(g) * * *

(1) * * *

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section; or

* * * * *

(h) *911 Special facility outage notification.* All cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers (as defined in 47 CFR 9.19(a)(4)) shall notify a 911 special facility any official who has been designated by the affected 911 special facility as the provider's contact person(s) for communications outages at the facility of any outage that potentially affects that 911 special facility (as defined in § 4.5(e)) in the following manner.

(1) *Appropriate contact information.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall annually identify and maintain up-to-date contact information appropriate for 911 outage notification for each 911 special facility that serves areas that the service providers serve.

(2) *Timing of notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall provide a 911 outage notification to a potentially affected 911 special facility as soon as possible, but no later than within 30 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 911 special facility, as defined in § 4.5(e).

(3) *Means of notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers' 911 outage notifications must be transmitted by telephone and in writing via electronic means in the absence of another method mutually agreed upon in advance by the 911 special facility and the covered 911 service provider.

(4) *Content of notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers' 911 outage notifications must convey all available material information about the outage. For the purpose of this paragraph (h), ''material information'' includes the following, where available:

(i) The name of the cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider offering the notification;

(ii) The name of the cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider(s) experiencing the outage;

(iii) The date and time when the incident began (including a notation of the relevant time zone);

(iv) The types of communications service(s) affected;

(v) Geographic area affected by the outage;

(vi) A statement of the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider's expectations for how the outage may affect the 911 special facility (*e.g.,* dropped calls or missing metadata);

(vii) Expected date and time of restoration, including a notation of the relevant time zone;

(viii) The best-known cause of the outage;

(ix) A name, telephone number, and email address at which the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider can be reached for follow-up; and

(x) A statement of whether the message is the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider's initial notification to the 911 special facility, an update to an initial notification, or a message intended to be the service provider's final assessment of the outage.

(5) *Follow-up notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall communicate additional material information to potentially affected 911 special facilities in notifications subsequent to the initial notification as that information becomes available, but cable, satellite, wireless, wireline and interconnected VoIP providers shall send the first follow-up notification to potentially affected 911 special facilities no later than two hours after the initial contact.

■ 3. Add § 4.10 to read as follows:

§ 4.10 Public notification of 911 outages.

(a) *Notification breadth.* All cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers (as defined in 47 CFR 9.19(a)(4)) shall notify potentially affected customers of 911 unavailability (as defined in paragraph (b) of this section).

(b) *Notification threshold.* For the purposes of this section, 911 unavailability shall be defined as the continuous or intermittent inability of a customer to reach emergency services by dialing or texting 9–1–1 due to an outage that potentially affects a 911 special facility as defined by § 4.5(e)(1).

(c) *Notification timing and frequency.* (1) Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service provider shall contact the PSAP(s) affected by 911 unavailability (as defined in paragraph (b) of this section) as soon as possible after discovery of an outage but no later than 30 minutes after discovery to determine what, if any, alternative means of contact the PSAP would like made publicly available for the duration of the incident. (2) Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service provider with customers experiencing 911 unavailability (as defined in paragraph (b) of this section) shall provide notification to potentially affected customers as soon as possible, but no later than within 60 minutes of discovering that 911 is unavailable. The provider shall provide any subsequent material updates regarding the estimated time of 911 restoration to its potentially affected customers as soon as possible.

(d) *Notification content.* Notifications of 911 unavailability shall include:

(1) A statement that there is an outage affecting 911 availability;

(2) Alternative contact information to reach emergency services at the request of the affected PSAP(s), should such information be available;

(3) The time 911 service became unavailable;

(4) The time the affected service provider estimates that 911 service will become available; and

(5) The locations where customers are or are expected to be experiencing 911 unavailability.

(e) *Notification medium.* Each affected cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers (as defined in 47 CFR 9.19(a)(4)) shall prominently post the notification of 911 unavailability on the main page of its website and on any internet- or web-based applications.

PART 9—911 REQUIREMENTS

■ 4. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

■ 5. In § 9.19, revise paragraph (a)(4)(i)(B) to read as follows:

§ 9.19 Reliability of covered 911 service providers.

(a) * * *

(4) * * *

(i) * * *

(B) Operates one or more central offices that directly serve a PSAP. For purposes of this section, a central office directly serves a PSAP if it hosts a selective router or ALI/ANI database, provides equivalent NG911 capabilities, or is the last service-provider facility through which a 911 trunk or administrative line (*i.e.,* a business line or line group that connects to a PSAP but is not used as the default or primary route over which 911 calls are transmitted to the PSAP) passes before connecting to a PSAP.

* * * * *

[FR Doc. 2021–13974 Filed 6–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–248; RM–11910; DA 21–694; FR ID 34410]

Television Broadcasting Services Staunton, Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by VPM Media Corporation (Petitioner), the licensee of noncommercial educational television station WVPT (PBS), channel *11, Staunton, Virginia. The Petitioner requests the substitution of channel *15 for channel *11 at Staunton in the DTV Table of Allotments.

DATES: Comments must be filed on or before July 30, 2021 and reply comments on or before August 16, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Ari Meltzer, Esq., Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the proposed channel substitution would resolve significant over the air reception problems in the WVPT service area. The Petitioner states that the challenges of digital reception are well-documented, and that the Commission has recognized the deleterious effects of manmade noise on the reception of digital VHF signals. The Petitioner also believes that the channel substitution will allow for more efficient construction of WVPT's post-incentive auction facilities. The Petitioner explains that it initially planned to retune WVPT's existing Distributed Transmission System (DTS) transmitters from channel *11 to channel *12, its repacked channel. The transmitter and antenna manufacturers, however, were unable to support the planned retuning effort. Meanwhile, a structural analysis of WVPT's existing tower revealed that it could not support a replacement antenna for VHF channel 12. According to the Petitioner, the tower can support a lighter weight UHF antenna, and thus, allowing WVPT to move to channel *15 will obviate the need to construct a new tower, saving both time and money. It further states that the proposed channel *15 facility will result in a net gain of 56,814 people, and while there is a loss area of 27,033 people, only seven people would lose their only PBS noncommercial educational service, a number the Commission considers *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–248; RM–11910; DA 21–694, adopted June 15, 2021, and released June 15, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

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

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

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

PART 73—RADIO BROADCAST SERVICES

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

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

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

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
Virginia	
* * * * *	
Staunton	*15
* * * * *	

[FR Doc. 2021–13564 Filed 6–29–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0060; FF09E22000 FXES11130900000 201]

RIN 1018–BE72

Endangered and Threatened Wildlife and Plants; Removing Golden Paintbrush From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the golden paintbrush (*Castilleja levisecta*) from the Federal List of Endangered and Threatened Plants as it no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). The golden paintbrush is a flowering plant native to southwestern British Columbia, western Washington, and western Oregon. Our review of the best available scientific and commercial data indicates threats to the golden paintbrush have been eliminated or reduced to the point that the species is not in danger of extinction or likely to become so in the foreseeable future. We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plan for the golden paintbrush.

DATES: We will accept comments received or postmarked on or August 30, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below), must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 16, 2021.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R1–ES–2020–0060, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2020–0060, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more details).

Document availability: This proposed rule and supporting documents, including the species biological report and the draft post-delisting monitoring plan, are available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0060.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to: GOLDEN PAINTBRUSH QUESTIONS, Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503; telephone: 360–753–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine a plant species is no longer an endangered or threatened species, we remove it from the Federal List of Endangered and Threatened Plants (*i.e.,* we ''delist'' it). A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The golden paintbrush is listed as a threatened species. We are proposing to remove this species from the Federal List of Endangered and Threatened Plants (List), because we have determined that it no longer meets the definition of a threatened species, nor does it meet the definition of an endangered species. Delisting a species can only be completed by issuing a rule.

What this document does. This rule proposes to remove (delist) the golden paintbrush from the Federal List of Endangered and Threatened Plants under the Act because it no longer meets the definition of either a threatened species or an endangered species.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any one or more of the following five factors or the cumulative effects thereof: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Based on an assessment of the best available information regarding the status of and threats to the golden paintbrush, we have determined that the species no longer meets the definition of an endangered or threatened species under the Act.

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as threatened instead of being delisted, or we may conclude that the species should remain listed and be reclassified as an endangered species.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons why we should, or should not, remove the golden paintbrush from the List;

(2) New biological or other relevant data concerning any threat (or lack thereof) to the golden paintbrush, including threats related to its pollinators;

(3) New information on any existing regulations addressing threats or any of the other stressors to the golden paintbrush;

(4) New information on any efforts by States, tribes, or other entities to protect or otherwise conserve the species;

(5) New information concerning the range, distribution, population size, or population trends of this species;

(6) New information on the current or planned activities in the habitat or range of the golden paintbrush that may have adverse or beneficial impacts on the species; and

(7) Information pertaining to post-delisting monitoring of the golden paintbrush.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information provided.

Please note that submissions merely stating support for, or opposition to, the

action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as, supporting documentation we used in preparing this proposed rule and the draft post-delisting monitoring (PDM) plan, will be available for public inspection on *http://www.regulations.gov.*

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**, above. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Supporting Documents

Staff at the Washington Fish and Wildlife Office (WFWO), in consultation with other species experts, prepared a species biological report for golden paintbrush. The report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past and present factors (both negative and beneficial) affecting the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the golden paintbrush species biological report (Service 2019). We sent the report to four appropriate and independent specialists with knowledge of the biology and ecology of the golden paintbrush and received three responses. The report forms the scientific basis for our 5-year status review and this proposed rule. The purpose of peer review is to ensure that our determination regarding the status of the species under the Act is based on scientifically sound data, assumptions, and analyses. The comments and recommendations of the peer reviewers have been incorporated into the species biological report, as appropriate. In addition, we have posted the peer reviews on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0060.

Previous Federal Actions

On May 10, 1994, we proposed to list the golden paintbrush as a threatened species (59 FR 24106). On June 11, 1997, we finalized the listing (62 FR 31740). The final rule included a determination that the designation of critical habitat for the golden paintbrush was not prudent.

In August 2000, we finalized a recovery plan for the species (Service 2000, entire), which we supplemented in May 2010 with the final recovery plan for the prairie species of western Oregon and southwestern Washington (Service 2010, entire).

On July 6, 2005, we initiated 5-year reviews for 33 plant and animal species, including the golden paintbrush, under section 4(c)(2) of the Act (70 FR 38972). The 5-year status review, completed in September 2007 (Service 2007, entire), resulted in a recommendation to maintain the status of the golden paintbrush as threatened. The 2007 5-year status review is available on the Service's website at *https://ecos.fws.gov/docs/five_year_review/doc1764.pdf.*

On January 22, 2018, we initiated 5-year status reviews for 18 plant and animal species, including the golden paintbrush, and requested information on the species' status (83 FR 3014). This proposed rule follows from the recommendation of that 5-year review for the golden paintbrush, as well as the data and analysis contained in the species biological report (Service 2019).

Proposed Delisting Determination

Background

Below, we summarize information for the golden paintbrush directly relevant to this proposed rule. For more information on the description, biology, ecology, and habitat of the golden paintbrush, please refer to the species biological report for golden paintbrush (*Castilleja levisecta*), completed in June 2019 (Service 2019, entire). The species biological report is available under Supporting Documents on *http://www.regulations.gov* in Docket No. FWS–R1–ES–2020–0060. Other relevant supporting documents are available on the golden paintbrush's species profile page on the Environmental Conservation Online System (ECOS) at *https://ecos.fws.gov/ecp0/profile/speciesProfile?sId=7706.*

Species Description and Habitat Information

The golden paintbrush is native to the northwestern United States and southwest British Columbia. It has been historically reported from more than 30 sites from Vancouver Island, British Columbia, to the Willamette Valley of Oregon (Hitchcock *et al.,* 1959; Sheehan and Sprague 1984; Gamon 1995). The taxonomy of the golden paintbrush as a full species is widely accepted as valid by the scientific community (ITIS 2020).

The golden paintbrush is a short-lived perennial herb formerly included in the figwort or snapdragon family (Scrophulariaceae), with current classification in the Orobanchaceae family. The genus *Castilleja* is hemiparasitic, with roots of paintbrushes capable of forming parasitic connections to roots of other plants; however, paintbrush plants are probably not host-specific (Mills and Kummerow 1988, entire) and can grow successfully, though not as well, even without a host. Golden paintbrush has superior performance (survival, height, number of flowering stems, number of fruiting stems, number of seed capsules) where it co-occurs with certain prairie species, including several perennial native forbs (*e.g.,* common woolly sunflower or Oregon sunshine (*Eriophyllum lanatum*) and common yarrow (*Achillea millefolium*)), as well as species in other functional groups, including grasses (*e.g.,* Roemer's fescue (*Festuca roemeri*) and California oatgrass (*Danthonia californica*)) and shrubs (*e.g.,* snowberry (*Symphoricarpos albus*)) (Schmidt 2016,

pp. 10–17). Anecdotal observations suggest that it grows poorly when associated with annual grasses (Gamon 1995, p. 17).

Individual golden paintbrush plants have a median survival of 1 to 5 years, but some plants can survive for more than a decade (Service 2019, p. 7). Plants are up to 30 centimeters (cm) (12 inches (in)) tall and are covered with soft, somewhat sticky hairs. Stems may be erect or spreading, in the latter case giving the appearance of being several plants, especially when in tall grass. The lower leaves are broader, with one to three pairs of short lateral lobes. The bracts are softly hairy and sticky, golden yellow, and about the same width as the upper leaves.

Golden paintbrush plants typically emerge in early March, with flowering generally beginning the last week in April and continuing until early June. Most plants complete flowering by early to mid-June, although occasionally plants flower throughout the summer and into October. Based on historical collections and observations, flowering seems to occur at about the same time throughout the species' range. Individual plants of golden paintbrush typically need pollinators to set seed. Bumble bee species (*Bombus*) appear to be the most common pollinators visiting golden paintbrush (Wentworth 1994, p. 5; Kolar and Fessler 2006, *in litt.;* Waters 2018, *in litt,;* Kaye 2019, *in litt.*), although sweat bees (Halictidea), miner bee (*Andrena chlorogaster*), syrphid fly (*Eristalis hirta*), and bee fly (*Bombylius major*) have also been observed visiting golden paintbrush plants (Kolar and Fessler 2006, *in litt.;* Waters 2018, *in litt,*).

Fruits typically mature from late June through July, with seed capsules beginning to open and disperse seed in August. By mid-July, plants at most sites are in senescence (the process of deterioration with age), although this can vary considerably depending on available moisture. Capsules persist on the plants well into the winter, and often retain seed into the following spring. Seeds are likely shaken from the seed capsules by wind, with most falling a short distance from the parent plant (Godt *et al.* 2005, p. 88). The seeds are light (approximately 8,000 seeds/gram) and could possibly be dispersed short distances by wind (Kaye *et al.* 2012, p. 7). Additionally, there is at least one reported instance of short-distance movement of seeds via vole activity (Kolar and Fessler 2006, *in litt.*). Therefore, natural colonization of new sites would likely occur only over short distances as plants disperse from established sites. Germination tests in different years with seed from various wild populations suggests that germination rates can vary extremely widely both between sites and between years (Wentworth 1994, entire). Germination tests also revealed that seeds likely remain viable in the wild for several years (Wentworth 1994, p. 17).

Individuals of the golden paintbrush require open prairie soils, near-bedrock soils, or clayey alluvial soils with suitable host plants. These suitable habitats occur from zero to 100 meters (330 feet) above sea level (Service 2000, p. 5). The golden paintbrush may have historically grown in deeper soils, but nearly all of these soils within the known range of the species have been converted to agriculture (Lawrence and Kaye 2006, p. 150; Dunwiddie and Martin 2016, p. 1).

Populations currently occur on the mainland in Washington and Oregon, and on islands in Washington and British Columbia. Mainland and island populations form two broad categories of populations that can vary slightly in habitat setting. Individuals in mainland populations are found in open, undulating remnant prairies dominated by Roemer's fescue and red fescue (*Festuca rubra*) on gravelly or clayey glacial outwash. Individuals in island populations are often on the upper slopes or rims of steep, southwest- or west-facing sandy bluffs that are exposed to salt spray. Individuals in island populations may also occur on remnant coastal prairie flats on glacial deposits of sandy loam. Island prairies may have historically been dominated by forbs and foothill sedge (*Carex tumulicola*) rather than grasses (WDNR 2004b, pp. 11, 17); however, many island sites are now dominated by red fescue or weedy forbs. All golden paintbrush sites are subject to encroachment by woody vegetation if not managed.

Historically, fire was significant in maintaining open prairie conditions in parts of the range of the golden paintbrush (Boyd 1986, p. 82; Gamon 1995, p. 14; Dunwiddie *et al.* 2001, p. 162). The golden paintbrush is a poor competitor, intolerant of shade cast by encroaching tall nonnatives and litter duff in fire-suppressed prairies. Native perennial communities are likely to support more host species appropriate for the golden paintbrush than those dominated by nonnative annuals (Lawrence and Kaye 2011, p. 173). Thus, habitats with low presence of nonnative annuals and high presence of a diverse assemblage of perennial, native prairie species are more likely to provide the best conditions for survival of golden paintbrush plants year-to-year (Dunwiddie and Martin 2016, p. 1).

Range, Distribution, Abundance, and Trends of Golden Paintbrush

The golden paintbrush is endemic to the Pacific Northwest, historically occurring from southeastern Vancouver Island and adjacent islands in British Columbia, Canada, to the San Juan Islands and Puget Trough in western Washington and into the Willamette Valley of western Oregon (Fertig 2019, p. 23).

Currently, the species occurs within British Columbia, Washington, and Oregon, representing, generally, four distinct geographic areas (British Columbia, North Puget Sound, South Puget Sound, and the Willamette Valley). The species' historical distribution—before European settlement and modern development in the Pacific Northwest—is unknown. However, the species' current distribution is generally representative of the areas where we suspect the species occurred historically.

Since its Federal listing in 1997, only one new wild population of golden paintbrush has been discovered across the species' range (Service 2007, p. 6). All other new populations (referred to as sites or populations established since the time of listing) across the range are the result of reintroductions through outplanting or direct seeding. Seeds used to grow plugs for outplanting, and plant stock for seed production, were derived from occurrences that remained at the time of listing (wild sites) (Service 2019, p. 5).

At the time of listing (see 62 FR 31740; June 11, 1997), there were 10 known golden paintbrush populations: 8 in Washington and 2 in British Columbia. No golden paintbrush populations were known from Oregon at the time of listing (Sheehan and Sprague 1984, pp. 8–9; WDNR 2004b). Despite its limited geographic range and isolation of populations, the golden paintbrush retained exceptionally high levels of genetic diversity, possibly because there were several large populations that remained (Godt *et al.* 2005, p. 87).

Since its Federal listing, the distribution and abundance of golden paintbrush have increased significantly as a result of outplanting (seeding or plugging). In 2018, a minimum of 48 sites were documented (Service 2019, pp. 11–14). In Washington, there are 19 sites: 5 in the South Puget Sound prairie landscape, 6 in the San Juan Islands, 7 on Whidbey Island, and 1 near Dungeness Bay in the Strait of Juan de Fuca. In Oregon, there are 26 extant

sites within the Willamette Valley. In British Columbia, there are three extant sites, each located on a separate island. Of these 48 sites, only three are on private property (Service 2019, p. 12). The remaining 45 golden paintbrush sites are in either public ownership, are owned by a conservation-oriented, nongovernmental organization, or are under conservation easement.

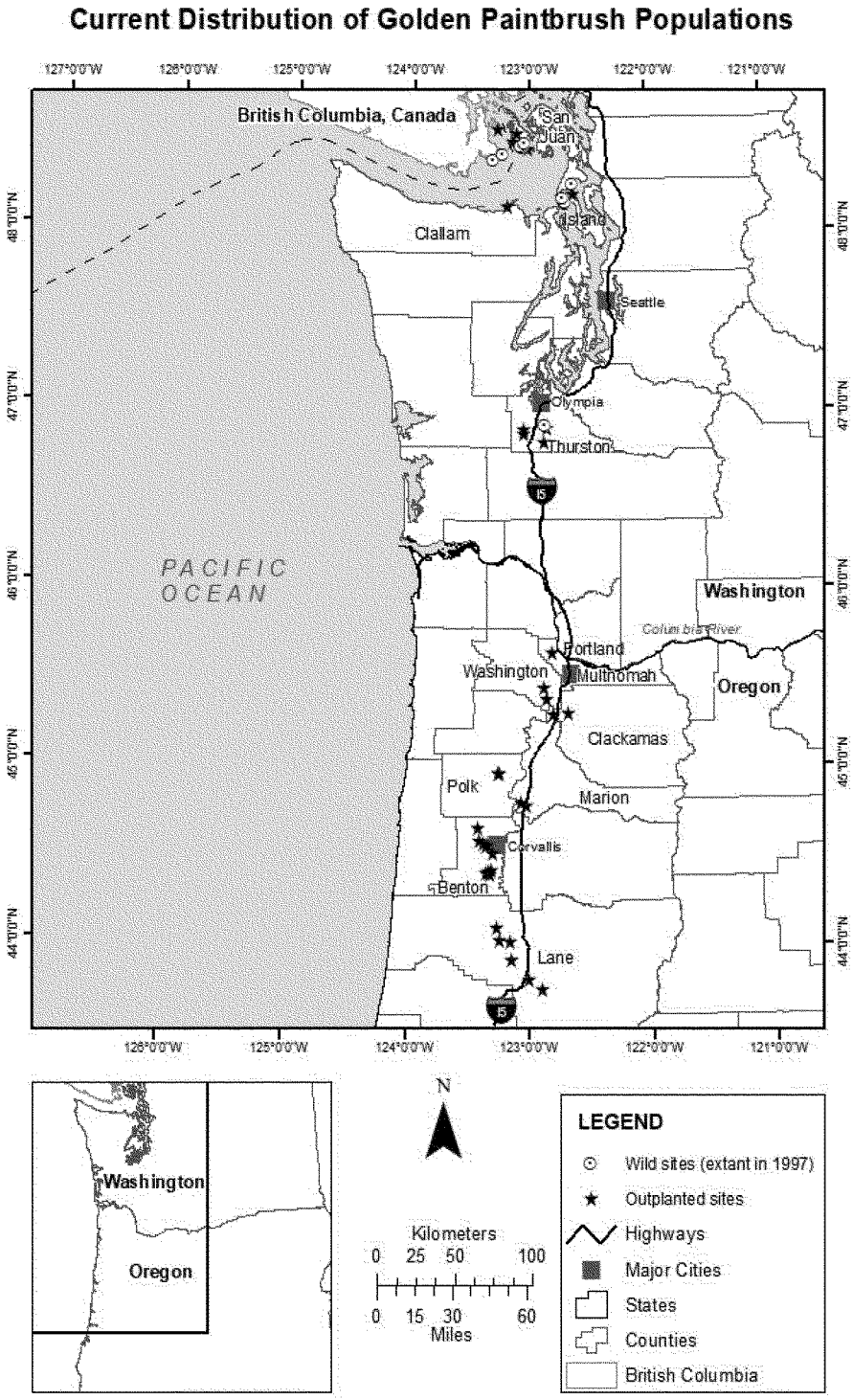

Figure 1. Extant sites ("populations") of golden paintbrush across the species' known range.

Trends in abundance for the golden paintbrush have been consistently monitored since 2004 (Fertig 2019, p. 14), with refinements to monitoring protocols made in 2008 and 2011 (Arnett 2011, entire). As a whole, abundance has substantially increased from approximately 11,500 flowering plants in 2011, to over 560,000 flowering plants counted in 2018 (Fertig 2019, pp. 9–12). We attribute this rapid increase in abundance to the development of direct seeding techniques for establishing new populations, as opposed to outplanting individual plants (or plugs) grown in greenhouses. Most of the sites in Washington and Oregon's Willamette Valley were established by incorporating direct seeding. The current population abundance is not necessarily reflective of the eventual long-term population level at a site; however, as a number of reestablished sites are going through a period of prairie development/progression and species succession. For example, at some reestablished sites, abundance initially increased over several years then dropped to about 15–20 percent of the peak abundance (Fertig 2019, pp. 10–11, 15–21). Drops in abundance are somewhat expected as the populations stabilize after direct seeding, and we anticipate that the long-term population level at these re-established sites will meet recovery criteria.

In contrast to the newly-established golden paintbrush sites, there has been a steady decline in overall abundance at the original wild sites (golden paintbrush occurrences that were extant at the time of listing) since about 2012. Abundance at these sites dropped from just over 15,500 flowering plants in 2012, to just over 5,600 flowering plants in 2018 (Fertig 2019, p. 11).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

Here, we provide a summary of progress made toward achieving the recovery criteria for the golden paintbrush. More detailed information related to conservation efforts can be found below under Summary of Biological Status and Threats. We completed a final recovery plan for the golden paintbrush in 2000 (Service 2000, entire), and later supplemented the plan for part of the species' range in 2010 (Service 2010, entire). The 2000 plan includes objective, measurable criteria for delisting; however, the plan has not been updated for 20 years, so some aspects of the plan may no longer reflect the best scientific information available for the golden paintbrush. For example, we did not anticipate the ability to rapidly establish large golden paintbrush populations through direct seeding at the time the recovery plan was developed.

Since about 2012, a significant increase in the number of new populations has occurred, because of direct seeding within the historical range in Washington and Oregon, with perhaps the most significant being the reestablishment of the golden paintbrush at a number of sites in Oregon's Willamette Valley, where the species was once extirpated. In addition to improved propagation techniques, substantial research has been conducted on the population biology, fire ecology, and restoration of the golden paintbrush (Dunwiddie *et al.* 2001, entire; Gamon 2001, entire; Kaye 2001, entire; Kaye and Lawrence 2003, entire; Swenerton 2003, entire; Wayne 2004, entire; WDNR 2004b, entire; Lawrence 2005, entire; Dunwiddie and Martin 2016, entire; Lawrence 2015, entire; Schmidt 2016, entire).

The results of these studies have been used to guide management of the species at sites being managed for native prairie and grassland ecosystems. Active management to promote the golden paintbrush is being done to varying degrees (from targeted to infrequent) across prairie and grassland sites. An active seed production program has been maintained to provide golden paintbrush seeds and other native prairie plant seeds to land managers for population augmentation and restoration projects across the species' range in Washington and Oregon. Additionally, as recommended by the recovery plan for the golden paintbrush (Service 2000, p. 31), the State of Washington prepared a reintroduction plan for the Service as both internal and external guidance (WDNR 2004a, entire).

Below are the delisting criteria described in the 2000 golden paintbrush recovery plan (Service 2000, p. 24), as supplemented in 2010, and the progress made to date in achieving each criterion.

Criterion 1 for Delisting

There are at least 20 stable populations distributed throughout the historical range of the species. To be deemed stable, a population must maintain a 5-year 'running' average population size of at least 1,000 individuals, where the actual count never falls below 1,000 individuals in any year. The golden paintbrush technical team recommended in the 2007 5-year status review that this criterion should be modified. Because it is impractical to count individual vegetative plants, the team recommended that the criterion should be modified to specifically account for a recovered population as equal to 1,000 flowering individuals and known to be stable or increasing as evidenced by population trends (Service 2007, p. 3).

While we did not officially amend or make an addendum to the recovery plan to incorporate this recommendation, we accepted that this is the best way to count population abundance and more recent surveys (starting about 2007) for the species counted only flowering plants.

The Service supplemented this criterion in its 2010 recovery plan for the prairie species of western Oregon and southwestern Washington by identifying locations for golden paintbrush reintroductions, specifically to establish five additional populations distributed across at least three of the following recovery zones: Southwest Washington, Portland, Salem East, Salem West, Corvallis East, Corvallis West, Eugene East, and Eugene West. Priority was given to reestablishing populations in zones with historical records of golden paintbrush (Southwest Washington, Portland, Salem East, Corvallis East) (Service 2010, p. IV–37).

Progress: As of 2018, 23 populations averaged at least 1,000 individual plant per year over the 5-year period from 2013 to 2018. Of these 23 populations, 8 had a 5-year running average of at least 1,000 individuals, and an additional 5 populations had a 3-year running average of at least 1,000 individuals between 2016 and 2018 (Hanson 2019, *in litt.*). While this does not meet the recovery criteria (of 20 such populations), we find that many of the species' populations are sufficiently resilient to make up for the smaller number of populations based on the following analysis. As noted above, we only count flowering plants during monitoring, so in most years a proportion of individual plants may not be represented in annual counts, because they are not flowering during surveys.

Six populations currently number in the tens of thousands of individuals, the largest totaling just over 224,000 flowering plants (Pigeon Butte on Finley National Wildlife Refuge) (Service 2019, pp. 28–29). Prior to listing, the largest known population totaled just over 15,000 individuals (Rocky Prairie Natural Area Preserve) (62 FR 31740; June 11, 1997). Although it is likely that a number of the more recently established populations are still undergoing some level of stabilization, population abundance at eight sites is significantly greater (approximately 10,000 or more flowering plants) than the 1,000 individual threshold established at the time of the drafting of the recovery plan for this species (Service 2019, pp. 12–13). Populations numbering in the tens of thousands of individuals have a significantly higher level of viability and significantly lower risk of extirpation than populations near 1,000 individuals.

Finally, there are now a minimum of 26 golden paintbrush populations in western Oregon's Willamette Valley, and these populations are distributed across at least three (Corvallis West, Salem West, Portland, Eugene West) of the recovery zones (Kaye 2019, pp. 11–23) identified in the 2010 supplement to the species' recovery plan (Service 2010, pp. IV–4, IV–37). Therefore, significant progress has been made toward achieving this criterion, and at some sites, the progress is well beyond numerical levels that were anticipated at the time of recovery criteria development. Although we acknowledge annual variability of abundance across sites, at least six sites across Washington and Oregon number in the tens of thousands of individuals (Service 2019, pp. 12–13), which significantly surpasses the minimum 1,000 individual threshold. This increases our confidence that the overall viability of the species is secured, despite having fewer than 20 populations with a 5-year running average of at least 1,000 individuals. In addition, we now have the ability to rapidly create new populations through direct seeding, which is something that was not considered when we developed this recovery criterion.

Criterion 2 for Delisting

At least 15 populations over 1,000 individuals are located on protected sites. In order for a site to be deemed protected, it must be either owned and/or managed by a government agency or private conservation organization that identifies maintenance of the species as the primary management objective for the site, or the site must be protected by a permanent conservation easement or covenant that commits present and future landowners to the conservation of the species.

Progress: This recovery criterion has not been met as phrased in the recovery plan, because the primary management objective of the protected sites is not always to protect only golden paintbrush. However, we find that the goal of the criterion, a significant number of populations under conservation ownership protective of the species that are likely to be self-sustaining over time, has been greatly exceeded. Forty-five of the 48 golden paintbrush sites are in either public ownership, are owned by a conservation-oriented, nongovernmental organization, or are under conservation easement (Service 2019, p. 62). Such ownership is expected to protect sites from development and land use that would have long-term, wide-ranging deleterious effects on this species. Additionally, 37 sites currently have management practices that at least preserve essential characteristics of golden paintbrush habitat, and 24 sites have management plans and resources for their implementation for at least the next year (Service 2019, pp. 40, 42–44). Additionally, two of the five conservation easement sites are also enrolled in the Service's Partners for Fish and Wildlife Program, which provides technical and financial assistance to private landowners to restore, enhance, and manage private land to improve native habitat. At least three sites in Washington and 14 sites in Oregon also support other prairie-dependent species currently listed as endangered or threatened, and another five are part of designated critical habitat for one of these species. Therefore, we anticipate prairie management or maintenance will be ongoing at these golden paintbrush sites for the foreseeable future. Two of the three extant sites in British Columbia that are managed by Parks Canada are also located within designated ''ecological reserves'' (Service 2019, p. 14). The level of management specific to golden paintbrush varies at each site, but all sites are generally being managed to conserve and/or restore native prairie or grassland habitats (for additional detail on species management status at sites, see discussion under Summary of Biological Status and Threats, Factor A, below).

Criterion 3 for Delisting

Genetic material, in the form of seeds adequately representing the geographic distribution or genetic diversity within the species, is stored in a facility approved by the Center for Plant Conservation.

Progress: This recovery criterion is met. Seeds are being stored at two approved facilities, the Rae Selling Berry Seed Bank at Portland State University and the Miller Seed Vault at the University of Washington Botanic Garden. In addition, the active seed production programs at Center for Natural Lands Management and the Institute for Applied Ecology continue to provide golden paintbrush seeds to land managers for population augmentation and prairie restoration projects. Production programs were started using seeds from nearly all the extant populations at the time of listing to maintain existing genetic diversity across the historical range and to allow for the greatest opportunity for local adaptation at reintroduction sites.

Criterion 4 for Delisting

Post-delisting monitoring of the condition of the species and the status of all individual populations is ready to begin.

Progress: We have developed a draft post-delisting monitoring plan in cooperation with our lead State partner in Washington, Washington Department of Natural Resources (WDNR) and in Oregon, Oregon Department of Agriculture. The draft post-delisting monitoring plan is available for public review on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0060. We anticipate that the WDNR's Natural Heritage Program would coordinate future monitoring of the golden paintbrush if the species is delisted. In the post-delisting monitoring plan, we propose to monitor, at a minimum, all populations established and counted in 2018 that were identified in the species biological report (Service 2019, pp. 12–13). These populations would be monitored every other year after final delisting for a 5-year period (*i.e.,* years 1, 3, and 5). Several key prairie conservation partners may choose to monitor these golden paintbrush sites more frequently and may also choose to monitor additional golden paintbrush sites as more become established across the range in Oregon and Washington. Parks Canada oversees periodic monitoring of the three extant populations within British Columbia, Canada. Therefore, this recovery criterion is met.

Criterion 5 for Delisting

Post-delisting procedures for the ecological management of habitats for all populations have been initiated.

Progress: This criterion has not been met as phrased in the recovery plan, because procedures for ecological management for *all* populations are not in place. However, we find that the intent of this criterion has been met because a substantial proportion of known golden paintbrush sites—more than the 20 populations originally envisioned for these recovery criteria—meet this criterion. As described earlier, significant strides have been made in the ecological management techniques for restoration and maintenance of prairie landscapes and the reintroduction and management of golden paintbrush at these and other sites. The current level of management varies across extant sites, influenced by need, conservation partner capacity, and funding availability. We anticipate ongoing management at a minimum of 37 of these sites, but note that the level of management will continue to vary across sites based on these same factors (Service 2019, pp. 40, 42–44) (see additional discussion regarding ongoing site management under Summary of Biological Status and Threats, Factor A, below). The most actively managed sites may include plantings, fencing, prescribed fire, herbicide use for weed control, mowing, and controlled public use. As described above under ''*Criterion 2 for Delisting,*'' at least 17 sites currently contain multiple, prairie-dependent species and an additional 5 sites are designated critical habitat for another prairie-dependent species. Those golden paintbrush sites that support multiple, prairie-dependent species listed under the Act are anticipated to receive the most consistent ecological management into the future. While this recovery criterion has not been fully achieved (*i.e.,* not *all* populations have post-delisting management procedures in place), ecological management of habitat is expected to occur on the vast majority of the known sites and management will occur on far more than the originally projected 15 sites identified above under ''*Criterion 2 for Delisting.*''

With the more recently identified threat of hybridization from harsh paintbrush (*Castilleja hispida*), additional measures are being implemented and refined to address the impacts to golden paintbrush on contaminated sites and prevent the spread of harsh paintbrush to uncontaminated golden paintbrush sites. The Service has developed a strategy and guidance document for securing golden paintbrush sites and has signed a memorandum of understanding (MOU) with prairie conservation partners to ensure hybridization is contained and the conservation strategy is followed to benefit golden paintbrush while supporting recovery of other sympatric (occurring within the same geographical area) prairie species listed under the Act (Service *et al.* 2020) (for more on the conservation strategy, see discussion under Summary of Biological Status and Threats, Factor E, below).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered

species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

For species that are already listed as endangered or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal of the Act's protections. A recovered species is one that no longer meets the Act's definition of an endangered species or a threatened species. For the golden paintbrush, we consider 30 years to be a reasonable period of time within which reliable predictions can be made for stressors and species' response. This time period includes multiple generations of the golden paintbrush, generally includes the term of and likely period of response to many of the management plans for the species and/or its habitat, and encompasses planning horizons for prairie habitat conservation efforts (*e.g.,* Dunwiddie and Bakker 2011, pp. 86–88; Service 2011, entire; Altman *et al.* 2017, pp. 6, 20); additionally, various global climate models and emission scenarios provide consistent predictions within that timeframe (IPCC 2014, p. 11). We consider 30 years a relatively conservative timeframe in view of the long-term protection afforded to 93 percent of the species' occupied sites (45 of 48), which occur on conserved/protected lands (Service 2019, p. 62).

Analytical Framework

The species biological report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species. The report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the report, which can be found at Docket FWS–R1–ES–2020–0060 on *http://www.regulations.gov.*

To assess golden paintbrush viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and the threats that influence the species' condition in order to assess the species' overall viability and the risks to that viability. The following potential threats were identified for this species at the time of listing: (1) Succession of prairie and grassland habitats to shrub and forest lands (due to fire suppression, interspecific competition, and invasive species); (2) development of property for commercial, residential, and agricultural use; (3) low potential for expansion and refugia due to constriction of habitat (from surrounding development or land use); (4) recreational picking (including associated trampling); and (5) herbivory (on plants and seeds) (62 FR 31740; June 11, 1997). For our analysis, we assessed their influence on the current status of the species, as well as the influence of two potential threats not considered at the time of listing, hybridization of golden paintbrush with harsh paintbrush, and the impacts of climate change. We also assessed current voluntary and regulatory conservation mechanisms relative to how they reduce or ameliorate existing threats to golden paintbrush.

Habitat Loss

At the time of listing, the principal cause of ongoing habitat loss was succession of prairie and grassland habitats to shrub and forest due to fire suppression, interspecific competition, and invasive species (62 FR 31740; June 11, 1997). The potential for development at, or surrounding, extant sites for commercial, residential, and agricultural purposes also posed a threat to the golden paintbrush at the time of listing. Both of these threat factors were preventing or limiting extant populations from expanding and recruiting into new or adjacent areas and afforded no refugia for the species in the case of catastrophic events.

Currently, ongoing prairie or grassland management or maintenance occurs at the majority of extant golden paintbrush sites. This management includes removal or suppression of trees and both native and nonnative woody shrubs, as well as control of nonnative, invasive grassland plant species through a number of different approaches according to species (*e.g.,* mowing, prescribed fire, mechanical removal, selective-herbicide application, restoration reseeding, etc.). At least 24 of the 48 sites have prairie or grassland management plans in place for the next 3 or more years. An additional 13 sites that lack a long-term management plan for the golden paintbrush receive basic maintenance to preserve the prairie characteristics of golden paintbrush habitat (Service 2019, pp. 42–44). Three golden paintbrush sites in Washington also currently support other prairie- or grassland-dependent species listed under the Act—the endangered Taylor's

checkerspot butterfly (*Euphydryas editha taylori*) and three subspecies of Mazama pocket gopher (*Thomomys mazama* spp.) (Olympia pocket gopher (*Thomomys mazama pugetensis*), Tenino pocket gopher (*Thomomys mazama tumuli*), and Yelm pocket gopher (*Thomomys mazama yelmensis*))—while an additional five sites are included in designated critical habitat for the Taylor's checkerspot butterfly.

Although these five critical habitat sites are currently unoccupied by the butterfly, they were designated because they were found to be essential to the conservation of Taylor's checkerspot butterfly (78 FR 61452; October 3, 2013). Specifically, these areas will be managed in a way that is conducive for eventual reintroduction of Taylor's checkerspot butterflies, which will maintain the prairie ecosystem characteristics that are supportive of long-term conservation of the golden paintbrush. In addition, at least 14 golden paintbrush sites in Oregon's Willamette Valley currently support one or more other prairie- or grassland-dependent species listed under the Act—the endangered Fender's blue butterfly (*Icaricia icarioides fenderi*), endangered Willamette daisy (*Erigeron decumbens*), threatened Kincaid's lupine (*Lupinus oreganus* var. *kincaidii,* listed as *Lupinus sulphureus* ssp. *kincaidii*), and threatened Nelson's checker-mallow (*Sidalcea nelsoniana*) (Institute for Applied Ecology 2019, *in litt.*).

We expect a number of these golden paintbrush sites in both Washington and Oregon to continue to be managed in a way that supports the recovery of other prairie- or grassland-dependent species in addition to the long-term conservation of the golden paintbrush. As long as periodic management or maintenance continues to occur at golden paintbrush sites across the species' range, the threat of prairie or grassland succession is expected to remain adequately addressed into the foreseeable future. State and Federal management plans include specific objectives to continue to protect and conserve the golden paintbrush at a number of sites (see Factor D discussion, below). States, Federal agencies, and conservation organizations have invested significant resources into golden paintbrush recovery, as well as general prairie and grassland restoration and conservation for a variety of at-risk prairie-dependent species. We do not anticipate habitat for these prairie-dependent species to contract further given the limited amount of remaining prairie habitat and the long-term investments conservation partners have made, and continue to make, to restore, rebuild, maintain, and conserve these relatively rare regional ecosystems (Dunwiddie and Bakker 2011, entire; Center of Natural Lands Management 2012, *in litt.,* entire; The News Tribune 2014, *in litt.;* Altman *et al.* 2017, entire; The Nature Conservancy 2019, *in litt.,* entire).

Golden paintbrush now occurs at 48 separate sites, as a result of the numerous reintroduction efforts implemented to recover this species. Only three of these sites are on lands possibly subject to future development. The remaining 45 sites are all under some type of public or conservation ownership (Service 2019, pp. 11–14). Of the 48 extant sites, at least 81 percent (n=39) are on land with some known level of protected status (at a minimum, formally protected as a natural area or other such designation, although not all of these designations are permanent) (Service 2019, pp. 42–44). In addition, of the 39 sites with some protected land status, 19 also include stipulations for, or statements of specific protection of, perpetual management of the golden paintbrush.

Although the total area occupied by the golden paintbrush at 19 sites is relatively small (less than 0.4 hectare (ha) (1 acre (ac)), 14 sites have from between 2 to 18.6 occupied ha (5 to 46 ac) (Service 2019, pp. 37–38). All but four sites have available land for future golden paintbrush population expansion or shifts in distribution. Of the 34 sites with less than 2 ha (5 ac) of occupied habitat, 10 have an estimated range of 0.8 to 2 ha (2 to 5 ac) of additional habitat for expansion, and at least 13 have an estimated range of 2 to 6 ha (5 to 15 ac) of additional habitat for future expansion (Service 2019, pp. 37–38). In addition, the species is much less reliant on expanding site-use and refugia than at the time of listing, when only 10 extant sites of the golden paintbrush remained. The reintroduction and seed production techniques developed for golden paintbrush recovery have provided the means to more easily establish or reestablish populations at prairie restoration sites. Many of these sites have been specifically acquired for their potential overall size, conservation value, and conservation status. The golden paintbrush has been reintroduced and established at prairie restoration sites that are well distributed across the species' historical range, well beyond the 10 extant sites at the time of listing. As a result of these conditions, we do not anticipate development in or around these sites to become a threat to the golden paintbrush in the foreseeable future.

Recreational Picking and Trampling

At the time of listing, we considered overutilization from recreational picking (flowers) to be a threat (62 FR 31740; June 11, 1997). Our concern with recreational picking or collection of flowers was that it would reduce overall potential seed-set at a site. Concern has also been noted regarding the direct harvesting of seed capsules (Dunwiddie in litt. 2018). Although there is evidence of occasional recreational or possible commercial collection of capsules that reduced the amount of seed available on a site, collection is no longer considered a significant stressor to the species across its range (Service 2019, p. 47). In addition, the current number of established and protected golden paintbrush sites, many with limited or restricted access, largely ameliorates this previously identified threat. We acknowledge that the golden paintbrush is likely a desirable species for some gardeners or plant collectors. However, if delisted, golden paintbrush seeds or plants are likely to become available through controlled sale to the public from regional prairie conservation partners and/or regional native plant nurseries, similar to what occurs with other non-listed prairie plant species. For these reasons, we do not expect the possible collection of golden paintbrush flowers or seeds to become a threat to the species in the foreseeable future.

At the time of listing, we identified trampling of golden paintbrush plants by recreationalists as impacting the species at some sites with high levels of public use, especially where and when associated with recreational picking of golden paintbrush flowers. Although some risk of trampling to plants will always be present across public sites (*e.g.,* State parks, national wildlife refuges), most sites often have some level of restricted access when golden paintbrush plants are in bloom (*e.g.,* fenced from deer or inaccessible to the public) or there are defined walking or viewing areas. Therefore, when compared with the potential impact of trampling at the time of listing, the current impact is likely insignificant, due to the number of reestablished golden paintbrush sites, the large size of many of these sites, and considerable abundance of golden paintbrush plants at some of these sites. For the above reasons, we also do not anticipate that trampling will become a threat in the foreseeable future.

Herbivory

At the time of listing, we considered predation (herbivory) on the golden paintbrush by native (voles and deer) and introduced (rabbits) species to be a threat to the plant (62 FR 31740; June 11, 1997). Deer continue to exhibit significant herbivory on the golden paintbrush at some sites; however, there is annual and site-specific variability in the overall level of herbivory (Service 2019, p. 48). Herbivory impacts from voles on the golden paintbrush have not been broadly or consistently observed and also appear to be variable across sites and years. Where herbivory by deer and/or rabbits has been significant, control with fencing has been successfully implemented, but controlling herbivory through fencing over large areas is limited by cost (Service 2019, p. 48). In addition, encouraging localized reduction of deer populations through lethal removal near some sites (Washington Department of Fish and Wildlife 2019, *in litt.;* Pelant 2019, *in litt.*) and installing raptor perch poles to control rodents and rabbits at some sites are also being implemented to reduce impacts of herbivory on the golden paintbrush (Service 2019, p. 48). As a consequence of the significant increase in the number of golden paintbrush sites that have been successfully established since the species was listed, and because the impact of herbivory is being successfully managed in at least a portion of those sites where noted as significant (potential site/population level effect), we conclude predation (herbivory) no longer has a significant impact across the majority of the golden paintbrush's 48 sites/populations, nor at the species level, and is unlikely to become a threat to the species in the foreseeable future.

Hybridization

A potential threat to the golden paintbrush identified after the species was listed in 1997 was the impact of hybridization with the harsh paintbrush (*Castilleja hispida*). The harsh paintbrush is one of the host plants introduced to prairie sites targeted for endangered Taylor's checkerspot butterfly recovery efforts. Our 2007 5-year status review recommended ''the evaluation of the potential for genetic contamination of golden paintbrush populations by hybridization with other species of *Castilleja*'' (Service 2007, p. 15). After initial evaluation, the potential risk of hybridization was considered relatively low and manageable (Kaye and Blakeley-Smith 2008, p. 13). However, after further evaluation and additional observations in the field, hybridization with the harsh paintbrush has now been identified as a significant potential threat to golden paintbrush populations where the two species occur together or in close proximity (Clark 2015, entire; Sandlin 2018, entire). Three former golden paintbrush recovery sites have now been discounted by the Service for the purposes of recovery due to the level of hybridization at these sites (Service 2019, p. 15). At least one other site is currently vulnerable to the effects of hybridization, but management efforts to date (removal of plants that exhibit hybrid characteristics and creation of a zone of separation between harsh paintbrush and golden paintbrush areas at the site) have seemingly preserved this golden paintbrush population. Currently, hybridization appears to be confined to those areas located in the south Puget Sound prairie region where both species of *Castilleja* were used at some of the same habitat restoration sites. The only known incident of hybridization outside of this region was at Steigerwald Lake National Wildlife Refuge in southwestern Washington, where we unknowingly used a seed mix that included the harsh paintbrush. This site has since been eradicated of both *Castilleja* species, but we anticipate reintroducing the golden paintbrush to the site in the future (Ridgefield National Wildlife Refuge Complex 2019, *in litt.,* entire).

As a response to this emerging threat, efforts were implemented, and are ongoing, to reduce or eliminate the risk of hybridization to the golden paintbrush. These include efforts such as maintaining isolated growing areas for the golden paintbrush and harsh paintbrush at native seed production facilities used in prairie restoration efforts, maintaining buffers between golden paintbrush and harsh paintbrush patches at sites where both species are currently present, and delineating which of the two species will be used at current and future prairie conservation or restoration sites. We recently developed a strategy and guidance document for securing golden paintbrush sites to address containment of hybridization at existing contaminated sites and prevention of unintentional spread of hybridization to other regions within the golden paintbrush's range, specifically north Puget Sound and the Willamette Valley (Service *et al.* 2020). We have also entered into an associated MOU with the Washington Department of Fish and Wildlife and WDNR to ensure the strategy is implemented as agreed to by all prairie conservation partners in the range of the golden paintbrush. The three agencies have authority over these species and will oversee most prairie restoration efforts in Washington, particularly in south Puget Sound. This MOU is expected to facilitate awareness and compliance with the hybridization strategy and guidance by our prairie conservation partners. The formal adoption and implementation of the hybridization strategy and guidance is expected to prevent hybridization from becoming a threat to the golden paintbrush in the foreseeable future.

Climate Change

At the time of listing, the potential impacts of climate change on the golden paintbrush was not discussed. The term ''climate'' refers to the mean and variability of relevant quantities (*i.e.,* temperature, precipitation, wind) over time (IPCC 2014, pp. 119–120). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to internal processes or anthropogenic changes (IPCC 2014, p. 120).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring. In particular, warming of the climate system is unequivocal, and many of the observed changes in the last 60 years are unprecedented over decades to millennia (IPCC 2014, p. 2). The current rate of climate change may be as fast as any extended warming period over the past 65 million years and is projected to accelerate in the next 30 to 80 years (National Research Council 2013, p. 5). Thus, rapid climate change is adding to other sources of extinction pressures, such as land use and invasive species, which will likely place extinction rates in this era among just a handful of the severe biodiversity crises observed in Earth's geological record (AAAS 2014, p. 7).

Global climate projections are informative, and in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (*e.g.,* IPCC 2013, 2014; entire) and within the United States (Melillo *et al.* 2014, entire). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information

that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

Climate change trends predicted for the Pacific Northwest (Oregon, Washington, Idaho, and Montana) broadly consist of an increase in annual average temperature; an increase in extreme precipitation events; and, with less certainty, variability in annual precipitation (Dalton *et al.* 2013, pp. 31–38, Figure 1.1; Snover *et al.* 2013, pp. 5–1–5–4).

According to the NatureServe Climate Vulnerability Index, the golden paintbrush has experienced mean annual precipitation variation over the last 50 years ranging from 53 cm to 130 cm (21 to 51 in), resulting in a rating of ''Somewhat Decreased Vulnerability'' to climate change (Young *et al.* 2011, pp. 26–27; Gamon 2014, pp. 1, 5; Climate Change Sensitivity Database 2014, *in litt.,* p. 4). Prolonged or more intense summer droughts are likely to increase in the Pacific Northwest due to climate change (Snover *et al.* 2013, p. 2–1). Even though the golden paintbrush senesces as the prairies dry out in the summer, increased intensity or length of drought conditions will likely stress plants and increase mortality, resulting in reduced numbers of individuals in populations at less-than-optimal sites (Kaye 2018, *in litt.*).

As is the case with all stressors we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. Knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate conservation strategies.

Predicted environmental changes resulting from climate change may have both positive and negative effects on the golden paintbrush, depending on the extent and type of impact and depending on site-specific conditions within each habitat type. The primary predicted negative effect is drought conditions resulting in inconsistent growing seasons. This effect will likely be buffered by the ability of the golden paintbrush to survive in a range of soil conditions, with a number of different host plants, and under a range of precipitation levels. We have not identified any predicted environmental effects from climate change that may be positive for the golden paintbrush at this time. Climate change could result in a decline or change in bumble bee diversity within the range of the golden paintbrush (Soroye *et al.* 2020, entire); the bumble bee is an important pollinator for the golden paintbrush. However, there are limited data at this time to indicate this is a specific and present threat to the golden paintbrush.

In summary, climate change is affecting, and will continue to affect, temperature and precipitation events within the range of the golden paintbrush. The extent, duration, and impact of those changes are unknown, but could potentially increase or decrease precipitation in some areas. The golden paintbrush may experience climate change-related effects in the future, most likely at the individual or local population scale. Regional occurrences may experience some shifts; however, we anticipate the species will remain viable, because: (1) It is more resilient than at the time of listing as a result of increased geographic distribution in a variety of ecological settings; (2) available information indicates the golden paintbrush is somewhat adaptable to some level of future variation in climatic conditions (Service 2019, pp. 22–25, 45); (3) there are ongoing efforts to expand the golden paintbrush to additional suitable sites; and (4) we now have the technical ability to readily establish populations, which could help to mitigate any future population losses. Therefore, based upon the best available scientific and commercial information, we conclude that climate change does not currently pose a significant threat, nor is it likely to become a significant threat in the foreseeable future (next 30 years), to the golden paintbrush.

Voluntary and Regulatory Conservation Mechanisms

Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' We interpret this language to require us to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats or otherwise enhance conservation of the species. We give the strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations; an example would be State governmental actions enforced under a State statute or constitution or Federal action under the statute.

For currently listed species, we consider existing regulatory mechanisms relative to how they reduce or ameliorate threats to the species absent the protections of the Act. Therefore, we examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or eliminated. At the time of listing (62 FR 31740; June 11, 1997), we noted that habitat management for the golden paintbrush was not assured, despite the fact that most populations occurred in areas designated as reserves or parks that typically afforded the golden paintbrush and its habitat some level of protection through those designations. As discussed in our species biological report (Service 2019), the threat of habitat loss from potential residential or commercial development has decreased since the time of listing due to the establishment of new golden paintbrush populations on protected sites. Although a few privately owned sites are still at some potential risk, development is no longer considered a significant threat to the viability of the golden paintbrush due to the number of sites largely provided protection from development (Service 2019, pp. 12–14).

Federal

National Environmental Policy Act—The National Environmental Policy Act requires Federal agencies to consider the environmental effects of their proposed actions (NEPA; 42 U.S.C. 4321 *et seq.*). Federal agency NEPA analyses may identify and disclose potential effects of Federal actions on the golden paintbrush if the species is delisted. However, NEPA does not require that adverse impacts be mitigated, only disclosed. Therefore, it is unclear what level of protection would be conveyed to the golden paintbrush through NEPA, in the absence of protections under the Act.

Sikes Act—One golden paintbrush site currently occurs on a Federal military installation (Forbes Point, Naval Air Station Whidbey Island in Island County, Washington) and is managed under an integrated natural resources management plan (INRMP) (USDOD 2012, pp. 4–6) authorized by the Sikes Act (16 U.S.C. 670 *et seq.*). Special management and protection requirements for golden paintbrush habitat in the INRMP include maintenance of a 10-ac management area for the species, including maintaining and improving a fence around the population to exclude both people and herbivores, posting signs that state the area is accessible to ''authorized personnel only,'' mowing

and hand-cutting competing shrubs from the area, outplanting nursery-grown plants from seeds previously collected on site, and implementing additional habitat management actions that are identified in the future to enhance the golden paintbrush population such as control burns or herbicide control of competing vegetation (USDOD 2012, pp. 3–5). These protections are effective in protecting the golden paintbrush on this site and are expected to continue in the absence of protections under the Act because the Sikes Act mandates the Department of Defense to conserve and rehabilitate wildlife, fish, and game on military reservations.

National Wildlife Refuge System Improvement Act—Ten golden paintbrush sites currently occur on National Wildlife Refuge (NWR) lands (Dungeness NWR in Washington, and Ankeny, William L. Finley, Tualatin River, and Baskett Slough NWRs in Oregon). As directed by the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57), refuge managers have the authority and responsibility to protect native ecosystems, fulfill the purposes for which an individual refuge was founded, and implement strategies to achieve the goals and objectives stated in management plans. For example, William L. Finley NWR (Benton County, Oregon) includes extensive habitat for the golden paintbrush, including four known occupied sites, while a number of additional NWRs in Oregon (Ankeny NWR, Marion County; Tualatin River NWR, Washington County; and Baskett Slough NWR, Polk County) and Washington (Dungeness NWR, Clallam County) each also support at least one golden paintbrush occupied site.

The Willamette Valley comprehensive conservation plan (CCP) for William L. Finley, Ankeny, and Baskett Slough NWRs is a land management plan finalized in 2011 with a 15-year term that directs maintenance, protection, and restoration of the species and its habitat and identifies specific objectives related to establishment of populations and monitoring, as well as related habitat maintenance/management (Service 2011, pp. 2–45—2–46, 2–66—2–70). Given the 15-year timeframe of CCPs, these protections would remain in place until at least 2026, regardless of the golden paintbrush's Federal listing status.

Tualatin River NWR finalized a CCP in 2013, and although it does not have conservation actions specific to the golden paintbrush identified in the plan, it does have maintenance and management activities for oak savanna habitat on the NWR, which supports the golden paintbrush (Service 2013a, pp. 4–9—4–10). These activities include various methods (*e.g.,* mechanical and chemical) for reducing encroachment of woody species, controlling nonnative and invasive plant species, and reestablishing native grasses and forbs. Given the 15-year timeframe of CCPs, protections outlined in the Tualatin River NWR CCP are expected to remain in place until at least 2028, regardless of the golden paintbrush's Federal listing status.

Dungeness NWR also finalized a CCP in 2013 (Service 2013b, entire). The CCP does not have any conservation actions specific to the golden paintbrush identified; however, it does identify general actions taken to control nonnative and invasive plant species that invade habitats on the refuge, including those inhabited by the golden paintbrush (Service 2013b, pp. 4–44—4–45). The golden paintbrush site at this NWR's headquarters continues to be maintained and protected. In addition to specific protections for the golden paintbrush provided under CCPs, the species is permanently protected by the mission of all NWRs to manage their lands and waters for the conservation of fish, wildlife, and plant resources and their habitats.

National Park Service Organic Act—One golden paintbrush site currently occurs on National Park Service (NPS) lands (American Camp, San Juan Island National Historical Park, Washington). The NPS Organic Act of 1916, as amended (39 Stat. 535), states the NPS shall promote and regulate the use of the National Park system ''to conserve the scenery, natural and historic objects, and wild life'' therein, to provide for the enjoyment of the same in such manner and by such means ''as will leave them unimpaired for the enjoyment of future generations'' (54 U.S.C. 100101(a)). Further, in title 36 of the Code of Federal Regulations (CFR) at § 2.1(a)(1)(i) and (a)(1)(ii), NPS regulations specifically prohibit possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state living or dead wildlife, fish, or plants, or parts or products thereof, on lands under NPS jurisdiction. This prohibition extends to the golden paintbrush where it exists on NPS-managed lands. In addition, the General Management Plan for the San Juan Island National Historical Park includes the NPS's goal of restoring a prairie community that support functions and values of native habitat, including habitat for native wildlife and rare species, such as the golden paintbrush (NPS 2008, p. 249).

Endangered Species Act—The golden paintbrush often co-occurs with other plant and animal species that are listed under the Act, such as the endangered Willamette daisy and endangered Taylor's checkerspot butterfly. Therefore, some of the general habitat protections (*e.g.,* section 7 consultation and ongoing recovery implementation efforts, including prairie habitat restoration, maintenance, and protection) for these other prairie-dependent, listed species will indirectly extend to some golden paintbrush sites if we delist the golden paintbrush.

Protections in Canada—The golden paintbrush in Canada is currently federally listed as ''endangered'' under the Species at Risk Act (SARA) (COSEWIC 2007, entire). SARA regulations protect species from harm, possession, collection, buying, selling, or trading (Statutes of Canada 2002, c. 29). SARA also prohibits damage to or destroying the habitat of a species that is listed as an endangered species. The population at Trial Island is on Canadian federal lands protected under SARA (COSEWIC 2011, *in litt.,* p. 5). The golden paintbrush is not currently protected under any provincial legislation in British Columbia. However, the golden paintbrush occurs in the ecological reserves that include Trial Island and Alpha Islet, which are protected under the British Columbia Park Act (COSEWIC 2011, *in litt.,* p. 5). The British Columbia Park Act allows lands identified under the Ecological Reserve Act to be regulated to restrict or prohibit any use, development, or occupation of the land or any use or development of the natural resources in an ecological reserve (Revised Statutes of British Columbia 1996, c. 103). This includes particular areas where rare or endangered native plants and animals in their natural habitat may be preserved.

State

Washington Natural Heritage Plan—Washington State's Natural Heritage Plan identifies priorities for preserving natural diversity in Washington State (WDNR 2018, entire). The plan aids WDNR in conserving key habitats that are currently imperiled, or are expected to be imperiled in the future. The prioritization of conservation efforts provided by this plan is expected to remain in place if we delist the golden paintbrush. The golden paintbrush is currently identified as a priority 2 species (species likely to become endangered across their range or in Washington within the foreseeable future) in the State's 2018 plan (WDNR 2018a, *in litt.* p. 4), which is a recent change from the species' priority 1

designation (species are in danger of extinction across their range, including Washington) in 2011 (WDNR 2018b, *in litt.* p. 2). If we delist the golden paintbrush, WDNR may assign the species a priority 3 designation (species that are vulnerable or declining and could become threatened without active management or removal of threats to their existence) in the next iteration of their plan, which may result in WDNR expending less effort in the continued conservation of the golden paintbrush. However, we anticipate that WDNR will continue to monitor the species where it occurs on their own lands and more broadly as a partner in the post-delisting monitoring plan. We also anticipate that WDNR will continue to actively manage their golden paintbrush sites, because these areas are not only important to the long-term conservation of golden paintbrush, but also to other at-risk prairie species.

Washington State Park Regulations and Management—State park regulations, in general, require an evaluation of any activity conducted on a park that has the potential to damage park resources, and require mitigation as appropriate (Washington Administrative Code 2016, entire). Wildlife, plants, all park buildings, signs, tables, and other structures are protected; removal or damage of any kind is prohibited (Washington State Parks and Recreation Commission 2019, *in litt.,* p. 2). One golden paintbrush site currently exists on Fort Casey Historical State Park. One of the objectives for natural resources on Fort Casey Historical State Park under the Central Whidbey State Parks Management Plan is to protect and participate in the recovery of the golden paintbrush, including protecting native plant communities, managing vegetative succession, and removing weeds through integrated pest management (Washington State Park and Recreation Commission 2008, p. 15). The plan further states that areas where the golden paintbrush occurs will be classified as ''heritage affording a high degree of protection,'' and the Nass Natural Area Preserve (also known as Admiralty Inlet Natural Area Preserve) is included in the long-term park boundary to also assure continued preservation of the golden paintbrush in this area (Washington State Park and Recreation Commission 2008, p. 26).

Oregon Revised Statutes (ORS), Chapter 564—Oregon Revised Statutes, chapter 564, ''Wildflowers; Threatened or Endangered Plants,'' requires State agencies to protect State-listed plant species found on their lands (Oregon Revised Statutes 2017, entire). Any land action on Oregon land owned or leased by the State, for which the State holds a recorded easement, and which results, or might result, in the taking of an endangered or threatened plant species, requires consultation with Oregon Department of Agriculture staff. The golden paintbrush is currently State-listed as endangered in Oregon. At this time, no populations of the golden paintbrush are known to occur on State lands in Oregon. However, should populations of the golden paintbrush occur on Oregon State lands in the future, the removal of Federal protections for the golden paintbrush would not affect State protection of the species under this statute.

In summary, conservation measures and existing regulatory mechanisms have minimized, and are continuing to address, the previously identified threats to the golden paintbrush, including habitat succession of prairie and grassland habitats to shrub and forest lands; development of property for commercial, residential, and agricultural use; recreational picking (including associated trampling); and herbivory (on plants and seeds). As indicated above, we anticipate the majority of these mechanisms will remain in place regardless of the species' Federal listing status.

Cumulative Impacts

When multiple stressors co-occur, one may exacerbate the effects of the other, leading to effects not accounted for when each stressor is analyzed individually. The full impact of these synergistic effects may be observed within a short period of time, or may take many years before it is noticeable. For example, high levels of predation (herbivory) on the golden paintbrush by deer could cause large temporary losses in seed production in a population, but are not generally considered to be a significant threat to long-term viability; populations that are relatively large and well-distributed should be able to withstand such naturally occurring events. However, the relative impact of predation (herbivory) by deer may be intensified when it occurs in conjunction with other factors that may lessen the resiliency of golden paintbrush populations, such as prolonged woody species encroachment (prairie succession); extensive nonnative, invasive plant infestations; or possible increased plant mortality resulting from the effects of climate change (*i.e.,* prolonged drought).

Although the types, magnitude, or extent of potential cumulative impacts are difficult to predict, we are not aware of any combination of factors that is likely to co-occur resulting in significant negative consequences for the species. We anticipate that any negative consequence of co-occurring threats will be successfully addressed through the same active management actions that have contributed to the ongoing recovery of the golden paintbrush and the conservation of regional prairie ecosystems that are expected to continue into the future.

Summary of Biological Status

To assess golden paintbrush viability, we evaluated the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). We assessed the current resiliency of golden paintbrush sites (Service 2019, pp. 52–63) by scoring each site's management level, site condition, threats addressed, site abundance of plants, and site protection, resulting in a high, moderate, or low condition ranking. One-third of sites were determined to have a high condition ranking, one-third a moderate condition ranking, and one-third a low condition ranking (Service 2019, p. 63).

Golden paintbrush sites are well-distributed across the species' historical range and provide representation across the four distinct geographic areas within that range (British Columbia, North Puget Sound, South Puget Sound, and the Willamette Valley). Multiple sites or populations exist within each of these geographic areas, providing a relatively secure level of redundancy across the historical range, with the lowest level of redundancy within British Columbia. The resiliency of the golden paintbrush is more variable across the historical range given differences in site or population abundance, level of management at a site, and site condition, but overall most sites appear to be in moderate and high condition. The best scientific and commercial data available indicate that the golden paintbrush is composed of multiple populations, primarily in moderate to high condition (Service 2019, p. 63), which are sufficiently resilient, well-distributed (redundancy and representation), largely protected, and managed such that they will be relatively robust or resilient to any potential cumulative effects to which they may be exposed.

Determination of Golden Paintbrush Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species''

or ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, please see Regulatory and Analytical Framework.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find, based on the best available information, and as described in our analysis above, stressors identified at the time of listing and several additional potential stressors analyzed for this assessment do not affect golden paintbrush to a degree that causes it to be in danger of extinction either now or in the foreseeable future. Development of property for commercial, residential, and agricultural use (Factor A), has not occurred to the extent anticipated at the time of listing and is adequately managed; existing information indicates this condition is unlikely to change in the future. Potential constriction of habitat for expansion and refugia (Factor A) also has not occurred to the extent anticipated at the time of listing, and existing information indicates this condition is unlikely to change in the future. Habitat modification through succession of prairie and grassland habitats to shrub and forest lands (Factor A) is adequately managed, and existing information indicates this condition is unlikely to change in the future. Recreational picking and associated trampling (Factor B) has not occurred to the extent anticipated at the time of listing; the species appears to tolerate current levels of this activity, and existing information indicates that this condition is unlikely to change in the future. Herbivory on plants and seeds (Factor C) has not occurred to the extent anticipated at the time of listing; the species appears to tolerate current levels of herbivory, and existing information indicates that this condition is unlikely to change in the future. Hybridization with the harsh paintbrush (Factor E) is adequately managed, and existing information indicates this condition is unlikely to change in the future. Finally, golden paintbrush appears to tolerate the effects of climate change (Factor E), and existing information indicates that this condition is unlikely to change in the future. The existing regulatory mechanisms (Factor D) are sufficient to ensure protection of the species at the reduced levels of threat that remain.

Thus, after assessing the best available information, we determine that golden paintbrush is not in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the golden paintbrush is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the golden paintbrush, we choose to evaluate the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

For golden paintbrush, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: (1) Habitat succession of prairie and grassland habitats to shrub and forest due to fire suppression, interspecific competition, and invasive species; (2) development of property for commercial, residential, and agricultural use; (3) low potential for expansion and refugia due to constriction of habitat by surrounding development or land use; (4) recreational picking (including associated trampling); (5) herbivory (on plants and seeds); (6) hybridization with harsh paintbrush; and (7) the effects of climate change, including cumulative effects. Although the impact of hybridization with the harsh paintbrush is most evident in the south Puget Sound region of the species' range, this potential stressor is being addressed throughout the species' range with the hybridization strategy and guidance. We found no concentration of threats in any portion of the golden paintbrush's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now, or likely to become so in the foreseeable future, in a significant portion of its range, and we find the species is not in danger of extinction now, or likely to become so in the foreseeable future, in any significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the golden paintbrush does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we propose to remove the golden paintbrush from the List.

Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.12(h) by removing the golden paintbrush from the List. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the golden paintbrush. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the golden paintbrush. There is no critical habitat designated for this species, so there would be no effect to 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting

monitoring is to verify that a species remains secure from the risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that the protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

We propose to delist the golden paintbrush in light of new information available and recovery actions taken. We prepared a draft post-delisting monitoring plan that describes the methods proposed for monitoring the species, if it is removed from the List. Monitoring of flowering plants at each golden paintbrush site extant in 2018 would take place every other year, over a minimum of 5 years after final delisting. Proposed monitoring efforts would be slightly modified from prior protocols, by only requiring a visual estimation of population size when clearly numbering >1,000 but <10,000, or ≥10,000 flowering individuals, as opposed to an actual count or calculated estimate of flowering plants. This modification should streamline monitoring efforts. It is our intent to work with our partners to maintain the recovered status of golden paintbrush. With publication of this proposed rule, we seek public and peer review comments on the draft post-delisting monitoring plan, including its objectives and methods (see *Public Comments,* above). The draft post-delisting monitoring plan can be found at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0060.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Native American culture, and to make information available to Tribes.

We do not believe that any Tribes would be affected if we adopt this rule as proposed. There are currently no golden paintbrush sites on Tribal lands, although some sites may lie within the usual and accustomed places for Tribal collection and gathering of resources. We welcome input from potentially affected Tribes on our proposal.

References Cited

A complete list of all references cited in this proposed rule is available on the internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2020–0060, or upon request from the State Supervisor, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff of the Washington Fish and Wildlife Office.

Signing Authority

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this document on June 21, 2021, for publication.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry for ''*Castilleja levisecta*'' under

FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Anissa Craghead,

Acting Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2021–13882 Filed 6–29–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–BH65

Pacific Island Fisheries; Amendment 9 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific; Modifications to the American Samoa Longline Fishery Limited Entry Program

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

ACTION: Notification of availability of a fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). If approved, Amendment 9 would reduce regulatory barriers that may be limiting small vessel participation in the American Samoa longline fishery. Specifically, Amendment 9 would consolidate vessel class sizes, modify permit eligibility requirements, and reduce the minimum harvest requirements for small vessels. The Council recommended Amendment 9 to provide for sustained community and indigenous American Samoan participation in the small vessel longline fishery.

DATES: NMFS must receive comments on Amendment 9 by August 30, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0023, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and enter NOAA–NMFS–2018–0023 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them 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).

Amendment 9 includes a draft environmental assessment (EA) that analyzes the potential impacts of the proposed measures and alternatives considered. Copies of Amendment 9, including the draft EA and a Regulatory Impact Review (RIR), and other supporting documents, are available at *https://www.regulations.gov,* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Kate Taylor, Sustainable Fisheries, NMFS PIR, 808–725–5182.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the American Samoa longline fishery under the FEP and implementing regulations. The fishery targets primarily albacore, which are sold frozen to the fish processing industry in Pago Pago, American Samoa. During the 1980s and 1990s, the longline fleet was mainly comprised of alia, locally-built catamarans between 24 and 38 ft in length. In the early 2000s, the longline fishery expanded rapidly with the influx of large (≥50 ft) conventional vessels similar to the type used in the Hawaii-based longline fishery, including some vessels from Hawaii.

To manage capacity in the then-rapidly developing fishery, the Council in 2001 (through Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific, superseded by the FEP) established a limited entry program with vessel size classes and criteria for participation. In 2005, NMFS implemented the limited entry program and issued 60 permits to qualified candidates among four vessel size classes.

Only a few small vessels have been active in the fishery since 2007. Participation by large vessels was somewhat stable from 2001 through 2010, but has declined and remained below 20 active vessels annually. In response, the Council developed Amendment 9 to reduce the programmatic barriers that may be limiting small vessel participation. The purpose of Amendment 9 is to reduce the complexity of the limited entry program and provide for sustained community participation, especially for small vessels. Amendment 9 could allow new entrants to obtain a small vessel permit by removing requirements that previously would have made some new entrants ineligible. If approved, Amendment 9 would do the following:

(a) Replace the four vessel classes with two, where Class A and B vessels would be classified as ''small'' vessels, and Class C and D vessels would be classified as ''large'' vessels;

(b) Restrict permit holders to U.S. citizens and nationals, and eliminate the requirement to have documented history of participation to be eligible for a permit, but maintain the priority ranking system based on earliest documented history of fishing participation in vessel class size, if there is competition between two or more applicants for a permit;

(c) Require that permits can only be transferred among U.S. citizens or nationals, and eliminate the requirement for documented participation in the fishery to receive a transferred permit;

(d) Reduce the small vessel minimum harvest requirement to 500 lb (227 kg) of pelagic management unit species within a 3-year period, but maintain the existing 5,000 lb (2,268 kg) harvest requirement for large vessels;

(e) Require that the entire minimum harvest amounts for the respective vessel classes are to be landed in American Samoa within a three-year permit period, but that the minimum harvests not be required to be caught within the U.S. EEZ around American Samoa;

(f) Specify a fixed three-year permit period that is the same as the three-year period to make a minimum harvest requirement; and

(g) Clarify that the minimum harvest period would not restart in the event of a permit transfer. If the minimum harvest amount has not been caught at the time of transfer, the new permit holder would be required to meet the harvest requirement based on the following formula: The product of percentage of time left within the three-year permit period and the minimum harvest amount.

NMFS invites public comments on the proposed action and specifically invites comments that address the impact of this proposed action on cultural fishing in American Samoa. NMFS must receive comments on Amendment 9, including a draft EA and RIR, by August 30, 2021 for consideration in the decision to approve, partially approve, or disapprove the amendment. Concurrent with NMFS's review of the amendment under the Magnuson-Stevens Act procedures, NMFS may publish for public comment a proposed rule in the **Federal Register** to implement the draft measures described in Amendment 9.

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

Dated: June 24, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–13970 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 123

Wednesday, June 30, 2021

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 30, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Food and Nutrition Service

Title: SNAP-Ed Toolkit Submission Form (FNS–886) and Scoring Tool (FNS–885).

OMB Control Number: 0584–0639.

Summary of Collection: The Food and Nutrition Act of 2008, as amended (The Act) § 28(c)(3)(A) states that State agencies ''may use funds provided under this section for any evidence-based allowable use of funds'' including ''(i) individual and group-based nutrition education, health promotion, and intervention strategies''. 7 CFR 272.2(2)(d) also states ''SNAP-Ed activities must include evidence-based activities using one or more of these approaches: individual or group-based nutrition education, health promotion, and intervention strategies; comprehensive, multi-level interventions at multiple complementary organizational and institutional levels; community and public health approaches to improve nutrition''. The Intervention Submission Form (FNS 886) and Scoring Tool (FNS 885) allows for interventions to be assessed to determine if they are both evidence-based and use one of the approaches described.

Need and Use of the Information: The Intervention Submission Form will be used by intervention developers (submitters) to provide information about the intervention they are submitting for inclusion in the Toolkit. Information requested includes intervention materials, how they have been and will be used, and the evidence base which illustrates their effectiveness.

Description of Respondents: (130) Business-for-profit; (16) Not-for-profit institutions; (44) State, Local or Tribal Government.

Number of Respondents: 190.

Frequency of Responses: Reporting: Once, On occasion.

Total Burden Hours: 550.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–13909 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0027]

Okanagan Specialty Fruits Inc.; Availability of a Request, a Draft Plant Pest Risk Similarity Assessment, and Preliminary Determination for an Extension of Determination of Nonregulated Status for Non-Browning Apple

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a request from Okanagan Specialty Fruits Inc. (OSF) to extend our determination of nonregulated status of GD743 apple and GS784 apple to PG451 apple which has been developed using genetic engineering to resist browning. We are making the OSF extension request, the preliminary determination, and the draft plant pest risk similarity assessment available for public comment.

DATES: We will consider all comments that we receive on or before July 30, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and enter APHIS–2021–0027 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0027, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The OSF extension request, the preliminary determination, and the draft plant pest risk similarity assessment, and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you,

please call (202) 799–7039 before coming.

Supporting documents for this petition are also available on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status.*

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3892; email: *cynthia.a.eck@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The extension for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034),[1] revising 7 CFR part 340; however, the final rule is being implemented in phases. This extension of a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS on July 31, 2020.

On February 18, 2015,[2] APHIS announced its determination of nonregulated status of Okanagan Specialty Fruits Inc.'s (OSF) GD743 and GS784 apple lines which were developed using genetic engineering to resist browning. OSF has submitted a request to extend a determination of nonregulated status of GD743 and GS784 apple lines to PG451 apple (APHIS Petition Number 20–213–01ext) which has been developed using genetic engineering to resist browning.

As described in the extension request, PG451 apple was developed through *Agrobacterium*-mediated transformation of apple leaf tissue using the binary plasmid vector pGEN–03 to suppress genes for polyphenol oxidase, which causes browning. GD743 and GS784 apple lines were developed using the same plasmid vector and the same *Agrobacterium*-mediated transformation method.

Based on the information in the request, we have concluded that PG451 apple is similar to GD743 and GS784 apple lines. PG451 apple is currently regulated under 7 CFR part 340.

As part of our decision-making process regarding the regulatory status of an organism developed using genetic engineering, APHIS prepared a draft plant pest risk similarity assessment (PPRSA) to compare PG451 apple to the antecedents. Based on the similarity of PG451 apple to the antecedents GD743 and GS784 apple lines as described in the PPRSA, APHIS concludes that PG451 apple is unlikely to pose a greater plant pest risk than the unmodified organism from which it was derived and should no longer be regulated under 7 CFR part 340.

APHIS has analyzed information submitted by OSF, references provided in the extension request, peer-reviewed publications, and supporting documentation prepared for the antecedent organism. Based on APHIS' analysis of this information and the similarity of PG451 apple to the antecedents GD743 and GS784 apple lines, APHIS has determined that PG451 apple is unlikely to pose a plant pest risk. We have therefore reached a preliminary decision to approve the request to extend the determination of nonregulated status for PG451 apple line, whereby PG451 apple would no longer be subject to our regulations governing organisms developed using genetic engineering.

We are therefore publishing this notice to make available our evaluation and inform the public of our preliminary decision to extend the determination of nonregulated status of PG451 apple.

APHIS will accept written comments on the request for extension, PPRSA, and our preliminary determination for PG451 apple for 30 days. These documents are available for public review as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. Copies of these documents may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments will be available for public review. After reviewing and evaluating the comments, if APHIS determines that no substantive information has been received that would warrant APHIS altering its preliminary regulatory determination, our preliminary regulatory determination will become final and effective upon notification of the public through an announcement on our website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status.* APHIS will also furnish a response to the petitioner regarding our final regulatory determination. No further **Federal Register** notice will be published announcing the final regulatory determination of PG451 apple.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 24th day of June 2021.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–13901 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] To view the notice, go to *www.regulations.gov* and enter APHIS–2012–0025 in the Search field.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0021]

Bayer; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status for Maize Developed Using Genetic Engineering for Dicamba, Glufosinate, Quizalofop, and 2,4-Dichlorophenoxyacetic Acid Resistance, With Tissue-Specific Glyphosate Resistance Facilitating the Production of Hybrid Maize Seed; Reopening of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; reopening of comment period.

SUMMARY: We are reopening the comment period for our notice of intent to prepare an environmental impact statement regarding a request from Bayer seeking a determination of nonregulated status for maize developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice of intent published on April 28,

2021 (86 FR 22384) is reopened. We will consider all comments that we receive on or before July 30, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and enter APHIS–2020–0021 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; phone (301)851–3892; email: *cynthia.a.eck@usda.gov.*

SUPPLEMENTARY INFORMATION: On April 28, 2021, we published in the **Federal Register** (86 FR 22384–22386, Docket No. APHIS–2020–0021) [1] a notice of intent to prepare an environmental impact statement regarding a request from Bayer seeking a determination of nonregulated status for maize developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed.

Comments on the notice of intent were required to be received on or before May 28, 2021. We are reopening the comment period on Docket No. APHIS–2020–0021 for an additional 30 days from the date of publication of this notice. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between May 29, 2021 (the day after the close of the original comment period) and the date of this notice.

[1] To view the notice, go to *www.regulations.gov.* Enter APHIS–2020–0021 in the Search field.

Done in Washington, DC, this 24th day of June 2021.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–13904 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for a Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request a revision of a currently approved information collection for Sugar Import Licensing Programs.

DATES: Comments should be received on or before August 30, 2021 to be assured of consideration.

ADDRESSES: FAS invites interested persons to submit comments on this notice by any of the following methods:

☐ *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at the site for submitting comments.

☐ *Mail, hand delivery, or courier:* William Janis, International Economist, Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5550, Stop 1070, 1400 Independence Ave. SW, Washington, DC 20250–1070.

☐ *Email: William.Janis@usda.gov.* Include OMB Number 0551–0015 in the subject line of the message.

All comments submitted must include the agency name and OMB Number below. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact Angela Ubrey (Human Resources, 202–772–4836) or Constance Goodwin (Office of Civil Rights, 202–379–6431).

FOR FURTHER INFORMATION CONTACT: William Janis at the address stated above, by telephone at (202) 720–2194 or by email at: *William.Janis@usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Sugar Imported for Export as Refined Sugar or as Sugar-Containing Products or used in the Production of Certain Polyhydric Alcohols.

OMB Number: 0551–0015.

Expiration Date of Approval: August 31, 2021.

Type of Request: Revision of a currently approved information collection.

Abstract: The primary objective of the Sugar Import Licensing Program is to permit entry of raw cane sugar, unrestricted by the quantitative limit established by the sugar tariff-rate quota, for re-export in refined form or in sugar containing products or for production of certain polyhydric alcohols. As many as 250 licensees are currently eligible to participate in these programs.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Sugar Import Licensing Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the USDA Sugar Import Licensing Program is 0.26 hours per response. Under 7 CFR part 1530, the information collected is used by the licensing authority to manage, plan, evaluate, and account for program activities. The reports and records are required to ensure the proper operations of these programs.

Respondents: Sugar refiners, manufacturers of sugar containing products, and producers of polyhydric alcohol.

Estimated Number of Respondents: 146.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 388 hours.

Request for Comments: The public is invited to submit comments and suggestions on all aspects of this information collection to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of FAS's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of FAS's estimate of burden including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection can be obtained from Ronald Croushorn, the Agency Information Collection Coordinator, at (202) 720–3038 or e–mail at *Ron.Croushorn@usda.gov.*

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002 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.

Daniel Whitley,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2021–12736 Filed 6–29–21; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Forest Service Law Enforcement & Investigations Ride-Along Program

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Forest Service Law Enforcement & Investigations Ride-Along Program.

DATES: Comments must be received in writing on or before August 30, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: curtis.davis@usda.gov.*
- *Mail:* Director of Law Enforcement and Investigations, USDA Forest Service, 1400 Independence Avenue SW, Mail Stop 1140, Washington, DC 20250–1140.
- *Hand Delivery/Courier:* Director of Law Enforcement and Investigations, USDA Forest Service, 1400 Independence Avenue SW, Mail Stop 1140, Washington, DC 20250–1140.
- *Facsimile:* 703–605–5114.

The public may inspect comments received at USDA Forest Service Washington Office, Yates Building, 201 14th Street SW, Washington, DC; during normal business hours. Visitors must call ahead to 703–605–4690 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Curtis Davis, Assistant Director Law Enforcement and Investigations, 912–554–4268. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Service Law Enforcement & Investigations Ride-Along Program.

OMB Number: 0596–0170.

Expiration Date of Approval: November 30, 2022.

Type of Request: Extension without revisions of an information collection.

Abstract: This information collection is necessary for Forest Service Law Enforcement and Investigations (LEI) personnel to authorize a rider who applies to participate in the Ride-Along Program. The information collection also provides additional protection for LEI personnel who allow authorized riders to accompany them in boats, cars, trucks, or other vehicles. The purpose of this program is for citizens to learn about and observe Forest Service LEI tasks and activities. The program is intended to enhance Forest Service law enforcement community relationships, improve the quality of Forest Service customer service, and provide LEI personnel a recruitment tool. A rider shall complete two forms in order to participate.

Form FS–5300–33 asks for the participant's name, address, social security number, driver's license number, work address, location of the Ride-Along, and the reason for the Ride-Along. Law enforcement officers use form FS–5300–33 to conduct a minimum background check before authorizing a person to ride along.

Form FS–5300–34 is signed by riders to exempt law enforcement officers and the Forest Service from damage, loss, or injury liability incurred during the rider's participation in the program. If the information is not collected, riders will be denied permission to ride along with Forest Service law enforcement personnel.

Estimate of Annual Burden:

FS–5300–33: 4 minutes

FS–5300–34: 4 minutes

Total: 8 minutes

Type of Respondents: Citizens who want to learn about and observe Forest Service Law Enforcement and Investigation (LEI) tasks and activities.

Estimated Annual Number of Respondents: 101.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for Office of Management and Budget approval.

Tracy Perry,

Director, Law Enforcement and Investigations.

[FR Doc. 2021–13977 Filed 6–29–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on

Wednesday, July 7, 2021, from 1:00 p.m. to 2:00 p.m. Pacific Time. The purpose of the meeting is to review a statement concern regarding state COVID–19 funding to respond to the needs of the education system.

DATES: The meeting will be held on Wednesday, July 7, 2021, from 1:00 p.m. to 2:00 p.m. PT.

WebEx Information: Register online *https://civilrights.webex.com/meet/afortes*.

Audio: (800) 360–9505, ID:199–167–8181.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at *afortes@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681–0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gz1JAAQ*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Statement of Concern
III. Public Comment
IV. Vote on Statement of Concern
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the COVID crisis and DFO availability.

Dated: June 24, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–13936 Filed 6–29–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Corporation for Travel Promotion Board of Directors

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion.

SUMMARY: The Department of Commerce is currently seeking applications from travel and tourism leaders from specific industry sectors for membership on the Board of Directors (Board) of the Corporation for Travel Promotion (doing business as Brand USA). The purpose of the Board is to guide the Corporation for Travel Promotion on matters relating to the promotion of the United States as a travel destination and communication of travel facilitation issues, among other tasks.

DATES: All applications must be received by the National Travel and Tourism Office by close of business on Friday, September 10, 2021.

ADDRESSES: Please submit application information by email to *CTPBoard@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Heizer, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202.482.0140; email: *CTPBoard@trade.gov.*

SUPPLEMENTARY INFORMATION: The Travel Promotion Act of 2009 (TPA) was signed into law on March 4, 2010 and was amended in July 2010, December 2014, and again in December 2019. The TPA established the Corporation for Travel Promotion (the Corporation), as a non-profit corporation charged with the development and execution of a plan to (A) provide useful information to those interested in traveling to the United States; (B) identify and address misperceptions regarding U.S. entry policies; (C) maximize economic and diplomatic benefits of travel to the United States through the use of various promotional activities; (D) ensure that international travel benefits all States, territories of the United States, and the District of Columbia, and identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers; (E) give priority to countries and populations most likely to travel to the United States; and (F) promote tourism to the United States through digital media, online platforms, and other appropriate media.

The Corporation is governed by a Board of Directors, consisting of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States. The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the Board of Directors for the Corporation.

At this time, the Department will be selecting four individuals with the appropriate expertise and experience from *specific sectors of the travel and tourism industry* to serve on the Board as follows:

1. One (1) shall have appropriate expertise and experience as an official of a city convention and visitors' bureau;
2. One (1) shall have appropriate expertise and experience in the hotel accommodations sector;
3. One (1) shall have appropriate expertise and experience in the restaurant or foodservice sector; and
4. One (1) shall have appropriate expertise and experience as an official of a State tourism office.

To be eligible for Board membership, individuals must have knowledge of international travel and tourism promotion or marketing and be a current or former chief executive officer, chief financial officer, or chief marketing officer or have held an equivalent management position. Additional consideration will be given to individuals who have experience working in U.S. multinational entities with marketing budgets, and/or who are audit committee financial experts as defined by the Securities and Exchange Commission (in accordance with *15*

U.S.C. 7265). Individuals must be U.S. citizens, and in addition, cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Those selected for the Board must be able to meet the time and effort commitments of the Board.

Board members serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The term of office of each member of the Board appointed by the Secretary shall be three (3) years. Board members can serve a maximum of two consecutive full three-year terms. Board members are not considered Federal government employees by virtue of their service as members of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events may be paid actual travel expenses and per diem by the Corporation when away from their usual places of residence.

Individuals who want to be considered for appointment to the Board should submit the following information by the Friday, September 10, 2021 deadline to the email address listed in the **ADDRESSES** section above:

1. Name, title, and personal resume of the individual requesting consideration, including address, email address, and phone number.

2. A brief statement of why the person should be considered for appointment to the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and audit committee financial expertise, if any, and indicate clearly the sector or sectors enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed for only one of those sectors. Appointments of members to the Board will be made by the Secretary of Commerce.

3. An affirmative statement that the applicant (1) is a U.S. citizen, (2) is not a federally-registered lobbyist and further, (3) is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

4. A statement of whether the applicant is or is not an audit committee financial expert as defined by the Securities and Exchange Commission (in accordance with 15 U.S.C. 7265).

Dated: June 24, 2021.

Julie Heizer,

Deputy Director, National Travel and Tourism Office.

[FR Doc. 2021–13881 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-To-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain exporters/producers of certain cut-to-length plate from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable June 30, 2021.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, Commerce published in the **Federal Register** the countervailing duty (CVD) order on CTL Plate from Korea.[1] On April 20, 2020, Commerce published in the **Federal Register** its initiation of the CVD administrative review of the *Order* for the period of January 1, 2019, to December 31, 2019.[2] On May 6, 2020, Commerce selected Hyundai Steel Co., Ltd. (Hyundai Steel) as the sole mandatory respondent in this administrative review.[3] On June 10, 2020, Commerce declined to select Dongkuk Steel Mill Co., Ltd. (DSM) as a voluntary respondent in this review.[4] On April 26, 2021, Commerce initiated on new subsidy allegations on two programs.[5]

Commerce tolled all deadlines in administrative reviews by 50 days on April 24, 2020,[6] and by an additional 60 days on July 22, 2020.[7] On January 29, 2021, Commerce extended the deadline for issuance of the preliminary results of this review by 120 days, until June 18, 2021, in accordance with 19 CFR 351.213(h)(2).[8]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[9] A list of topics discussed in the Preliminary Decision Memorandum is included in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Order

The product covered by this order is certain cut-to-length carbon-quality steel

[1] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 20, 2020) (*Initiation Notice*). The *Initiation Notice* lists the company name Hyundai Steel Co., Ltd. (as requested by the petitioners) and Hyundai Steel Company (as requested by the firm itself). For purposes of this notice, we are treating both firms as the same company and hereinafter refer to them as Hyundai Steel.

[3] *See* Memorandum, ''Countervailing Duty Administrative Review of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Selection of Respondents for Individual Examination,'' dated May 6, 2020.

[4] *See* Memorandum, ''Administrative Review of the Countervailing Duty (CVD) Order on Certain Cut-to-Length Carbon-Quality Steel Plate (CTL Plate) from the Republic of Korea (Korea),'' dated June 10, 2020.

[5] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: New Subsidy Allegations,'' dated April 26, 2021.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 22, 2020.

[8] *See* Memorandum, ''Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated January 29, 2021.

[9] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2019: Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

plate. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[10] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

To determine the rate for companies not selected for individual examination, Commerce's practice is to follow the instructions to calculate the all-others rate under section 705(c)(5) of the Act and weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[11] In this review, we preliminarily calculated a *de minimis* subsidy rate for the sole mandatory respondent (*i.e.,* Hyundai Steel) during the POR. In CVD proceedings, where the number of respondents being individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies that were not individually examined when all the rates of selected mandatory respondents are zero or *de minimis* is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available.[12] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to the non-selected respondent, even when that rate is zero or *de minimis.*[13]

In the most recently completed administrative review of this order, we calculated a net subsidy rate of 0.28 percent *ad valorem* for DSM. Therefore, consistent with Commerce's practice, described above, we are assigning the rate of 0.28 percent *ad valorem* to DSM, based on the company's rate calculated in the prior review.[14]

With regard to the two other remaining non-selected companies, for which an individual rate was not calculated, we are assigning the rate of 0.50 percent *ad valorem,* which is the only above *de minimis* rate calculated in the most recently completed administrative review.[15]

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates for the period January 1, 2019, through December 31, 2019:

Company	Net countervailable subsidy rate (percent)
Hyundai Steel Co., Ltd	* 0.45
Dongkuk Steel Mill Co., Ltd	* 0.28
BDP International	0.50
Sung Jin Steel Co., Ltd	0.50

* *de minimis.*

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), Commerce has preliminarily assigned subsidy rates as indicated above. Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of this notice in the **Federal Register**.[16] Commerce intends to issue a post-preliminary analysis memorandum subsequent to the publication of this notice. Commerce will notify the parties to this proceeding of the deadlines for the submission of case and rebuttal briefs after the issuance of the post-preliminary analysis memorandum. Rebuttal briefs, limited to issues raised in case briefs, may be filed within seven days[17] after the time limit for filing case briefs. Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[18] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[19]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS.[20] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to

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

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

[12] *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018,* 85 FR 84296 (December 28, 2020) (*CTL Plate from Korea 2018 Final*).

[13] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review In Part; 2017,* 85 FR 3030 (January 17, 2020) unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017,* 85 FR 42353 (July 14, 2020).

[14] *See CTL Plate from Korea 2018 Final.*

[15] *Id.*

[16] *See* 19 CFR 351.224(b).

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

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

[19] *See Temporary Rule.*

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

those raised in the respective case and rebuttal briefs.[21] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[22] Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by parties in their comments, within 120 days after the date of publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: June 17, 2021.

Christian Marsh,

Acting Assistant Secretary, for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Non-Selected Rate
V. Scope of the Order
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2021–13990 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–DS–P

[21] *Id.*

[22] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876, A–489–822, C–489–823]

Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on welded line pipe from the Republic of Korea (Korea) and the Republic of Turkey (Turkey) would likely lead to continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 30, 2021.

FOR FURTHER INFORMATION CONTACT: Amaris Wade, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2015, Commerce published the AD orders on welded line pipe from Korea and Turkey,[1] and the CVD order on welded line pipe from Turkey.[2] On November 2, 2020, the ITC instituted,[3] and on November 3, 2020, Commerce initiated,[4] the first five-year (sunset) reviews of the *AD Orders* and the *CVD Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping, and revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies. Therefore, Commerce notified the ITC of the magnitude of the margins of dumping and the net subsidy rates likely to prevail should the *AD Orders* and the *CVD Order* be revoked.[5]

On June 24, 2021, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *AD Orders* and the *CVD Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders

The scope of these orders is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of these orders.

The welded line pipe that is subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *AD Orders* and the *CVD Order* would likely lead to a continuation or a recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *AD Orders* and the *CVD Order.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *AD Orders* and the *CVD Order*

[1] *See Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015) (*AD Orders*).

[2] *See Welded Line Pipe From the Republic of Turkey: Countervailing Duty Order,* 80 FR 75054 (December 1, 2015) (*CVD Order).*

[3] *See Welded Line Pipe From Korea and Turkey; Institution of Five-Year Reviews,* 85 FR 69354 (November 2, 2020).

[4] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 69585 (November 3, 2020).

[5] *See Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders,* 86 FR 12172 (March 2, 2021), and accompanying Issues and Decision Memorandum (IDM); *see also Welded Line Pipe From the Republic of Turkey: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 86 FR 13526 (March 9, 2021), and accompanying IDM.

[6] *See Certain Welded Line Pipe from Korea and Turkey USITC Inv. Nos.* 701–TA–525 *and* 731–TA–1260–1261 *(Review),* 86 FR 33356 (June 24, 2021); *see also Certain Welded Line Pipe from Korea and Turkey USITC Inv. Nos.* 701–TA–525 *and* 731–TA–1260–1261 *(Review), USITC Pub. 5202* (June 2021).

will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *AD Orders* and the *CVD Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: June 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–13978 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 22, 2021 (86 FR 15204) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Coral Reef Conservation Program.

OMB Control Number: 0648–0448.

Form Number(s): None.

Type of Request: Regular (Revision and extension of current information collection).

Number of Respondents: 65.

Average Hours per Response: Matching funds waiver request: 2 hours; Reviewer Comments: 3 hours; Semi-Annual Progress Reports: 10 hours.

Total Annual Burden Hours: 1,437 hours.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*) was enacted on December 14, 2000, to preserve, sustain and restore the condition of coral reef ecosystems; to promote the wise management and sustainable use of coral reef ecosystems to benefit local communities and the Nation; to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems; to assist in the preservation of coral reefs by supporting conservation programs, including projects that involve affected local communities and non-governmental organizations; to provide financial resources for those programs and projects; and to establish a formal mechanism for the collecting and allocating of monetary donations from the private sector to be used for coral reef conservation projects. Under section 6403 of the Act, the Secretary, through the NOAA Administrator (Administrator) and subject to the availability of funds, is authorized to provide matching grants of financial assistance for coral reef conservation projects. Section 408(c) of the Act authorizes at least $8,000,000 annually for financial assistance projects under the Program.

Collection activities for this program are outlined below and include: 1. Applicant creation and submission of requests for waivers of the non-Federal matching funds requirement; 2. Review of project proposals by Federal Agencies and non-Federal entities with jurisdiction or management authority over coral reef ecosystems in the area where the project is to be conducted; and 3. Revision of performance reporting methods to include a standard program-specific template and tracking report.

As per section 6403(b) of the Act, NOAA will require that Federal funds for any coral conservation financial assistance project may not exceed 50 percent of the total cost. However, the Administrator may waive all or part of the matching requirement if the Administrator determines that no reasonable means are available through which an applicant can meet the matching requirement and the probable benefit of the project outweighs the public interest in the matching requirement. The suitability for a waiver is determined after the applicant has submitted a written request with the application package and provided the proper justification.

As per section 6403(f) of the Act, NOAA will review eligible coral reef conservation proposals using an external governmental review and merit-based peer review. As part of this review, NOAA will request and consider written comments on the proposal from each Federal agency, state government, or other government jurisdiction, including the relevant regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), or any National Marine Sanctuary, with jurisdiction or management authority over coral reef ecosystems in the area where the project is to be conducted. Pursuant to this requirement of the Act, NOAA will apply the following standard in requesting comments: (A) Proposals for projects in state or territorial waters, including Federal marine protected areas in such waters (*e.g.,* National Marine Sanctuaries), will be submitted to that state or territorial government's designated U.S. Coral Reef Task Force point of contact for comment; (B) proposals for projects in Federal waters will be submitted to the relevant Fishery Management Council for comment; (C) proposals for projects which require Federal permits will be submitted to the Federal agency which issued the permit for comment; (D) proposals for projects in Federal marine protected areas managed by Federal agencies (*e.g.,* National Wildlife Refuges, National Parks, National Marine Sanctuaries, etc.) will be submitted to the respective Federal management authority for comment; and (E) NOAA will seek comments from other government entities, authorities, and/or jurisdictions, including international entities for projects proposed outside of U.S. waters, as necessary based on the nature and scope of the proposed project.

As per 2 CFR part 200.329, all recipients of non-construction federal financial assistance awards are required to provide performance (technical) reports to the agency at intervals no less frequently than annually and no more frequently than quarterly in order for the agency to properly monitor the award and meet oversight responsibilities. The awarding agency must use OMB-approved common forms for this purpose or seek permission for program-specific forms that will collect the required data elements. The Coral Reef Conservation Program seeks OMB approval to revise this information collection to require use of a program-specific form for semi-annual reporting and tracking specific indicators. These indicators align with the new Coral Reef Conservation Program Strategic Plan (2018; *https://www.coris.noaa.gov/activities/strategic_plan2018*) and will be used to track national progress toward these strategic goals through 2040. The program-specific form for semi-annual reporting will be a revised version of what is currently in use for NOAA's Marine Debris Program and will standardize reporting across projects.

The number of respondents, responses, and burden hours have been corrected from the previous submission. The previous submission included federal employees and contractors working on behalf of NOAA as part of the burden for the collection. This burden has been removed and is instead added to the cost to the federal government.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State or Local Government; Federal government.

Frequency: Semi Annual to Annual.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0448.

Sheleen Dumas,

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

[FR Doc. 2021–14002 Filed 6–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Western Pacific Community Development Program Process

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 2, 2021 (86 FR 12178) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: NOAA National Marine Fisheries Service, Commerce.

Title: Western Pacific Community Development Process.

OMB Control Number: 0648–0612.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 5.

Average Hours per Response: 6 hours.

Total Annual Burden Hours: 30 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS) and the Western Pacific Fishery Management Council (Council) established the western Pacific community development program to promote the participation of western Pacific communities in fisheries that they have traditionally depended upon, but in which they may not have the capabilities to support continued and substantial participation, possibly due to economic, regulatory, or other barriers. To be eligible to participate in the western Pacific community development program, a community must meet the criteria set forth in 50 CFR part 665.20, and submit a community development plan that describes the purposes and goals of the plan, the justification for proposed fishing activities, and the degree of involvement by the indigenous community members, including contact information. This collection of information is needed to determine whether communities submitting a proposal are eligible for participation in the community development program, and whether the activities proposed under the plan are consistent with the intent of the program, the Magnuson-Stevens Act, and other applicable laws.

Affected Public: Individuals or households; Business or other for-profit organizations; and Not-for-profit institutions.

Frequency: As required.

Respondent's Obligation: Voluntary.

Legal Authority: 50 CFR 665.

This information collection request may be viewed at *https://www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0612.

Sheleen Dumas,

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

[FR Doc. 2021–13870 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB158]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the NMFS Panama City, FL laboratory. If granted, the EFP would authorize NMFS or NMFS contracted observers and commercial fishers aboard contracted commercial fishing vessels to collect certain deep-water snapper species in waters of the U.S. exclusive economic zone (EEZ) off Puerto Rico. The EFP would exempt this activity from complying with certain seasonal and area closures and from certain bag limits in the U.S. Caribbean EEZ. The purpose of the EFP is to describe benthic habitats for deep-water reef fish species off Puerto Rico and to determine life history information for black, blackfin, cardinal, queen, silk, and wenchman snappers.

DATES: Comments must be received no later than July 30, 2021.

ADDRESSES: You may submit comments on the application, identified by ''NOAA–NMFS–2021–0058'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2021–0058'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah Stephenson, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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), 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 copies of the EFP application and related documents are available from the website at *https://www.fisheries.noaa.gov/southeast/caribbean-exempted-fishing-permits-efps.*

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, 727–824–5305; email: *Sarah.Stephenson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The applicant is currently conducting exempted fishing activities under an EFP for a similar deep-water snapper research project off Puerto Rico that was issued on July 30, 2020, and is valid through August 1, 2021. Notice of receipt of the application for the current EFP, with an opportunity to comment, published in the **Federal Register** on June 16, 2020 (85 FR 36377). No public comments on that EFP were received from that notice or since then.

The applicant requests authorization to collect deep-water reef fish species in the U.S. EEZ off the west coast, northeast coast, and southeast coast of Puerto Rico. The applicant is seeking to gather information that could be used to describe habitats for deep-water reef fish species off Puerto Rico, and to obtain additional life history information about black, blackfin, cardinal, queen, silk, and wenchman snappers. Specimens would be collected by NMFS or NMFS contracted observers and commercial fishers aboard contracted commercial fishing vessels. These activities may be conducted without NMFS staff aboard the contracted commercial vessel. If granted, this permit would exempt project participants from certain seasonal and area closure regulations codified at 50 CFR 622.435 and from certain reef fish bag limit regulations codified at 50 CFR 622.437(b), as identified and described below. Pending issuance, the EFP would be expected to be effective from August 1, 2021, through August 1, 2023. NMFS has approved a Fishery Management Plan for the EEZ off Puerto Rico. Regulations to implement that plan, which maintains the same seasonal and area closures and bag limits applicable to Federal waters off Puerto Rico as under the Fishery Management Plan for the Reef Fish Fishery or Puerto Rico and the U.S. Virgin Islands and codified at 50 CFR 622.435 and 622.437, are likely to be proposed in the near future. If those regulations are finalized, the EFP will be updated to reflect the proper citations for the exempted regulations.

Activities under the EFP would consist of harvesting reef fish during 135 fishing trips per year (45 trips per coast), of which 40 trips would be within the U.S. EEZ off Puerto Rico. The remaining trips would be conducted in Puerto Rico territorial waters. The target depth range for this project is 100 to 650 m, with sampling sites selected in each 50 m depth range throughout the overall depth range.

Project activities would be conducted from August 1, 2021, through August 1, 2023. Sampling off the coast of Puerto Rico would occur along the western coast from Isabela to Puerto Real, including Isla de Desecheo Marine Reserve; along the northeast coast from San Juan to Fajardo, extending out to Isla de Culebra; and along the southeast coast from Santa Isabel to Buena Vista, extending out to Isla de Vieques. Sampling is planned to occur for approximately 7 to 10 days per month year-round over the duration of the EFP.

Sampling would be conducted by hook-and-line drift fishing in deep-water habitats. On each fishing trip, three to six sites would be fished per day based on weather and distance between the sampling sites. Four vertical lines would be deployed per site. The first line would have a small, lightweight, water sampling device, which when impacting the seafloor, would trigger a syringe to collect a water sample (no hooks would be attached to this line). The line would then be immediately retrieved. This line would also test for water current direction before other equipment is deployed to minimize the potential gear loss.

The second line would have an underwater video camera system encased in a lightweight frame with an extended baited arm attached to the bottom portion of the line (no hooks would be attached to this line). Once deployed, the underwater video camera system would soak for 30 minutes at the sampling site.

The third and fourth lines would each have a maximum of 12 (#9) hooks attached to the bottom portion of the line above a 5–10 pound bottom weight. One line would be baited with fish and the other line baited with squid. The baited lines would be fished simultaneously, and include a small blinking LED light attached to the line. Once deployed, the two fishing lines would soak for 20 minutes. All lines would be retrieved via electric reel on the commercial vessel.

The applicant would target black, blackfin, cardinal queen, silk, and wenchman snappers, but also anticipates encountering other deep-water reef fish species during sampling. Each year, a maximum of 1,060 of the targeted species (up to 60 black snapper; up to 200 blackfin snapper; up to 200 cardinal snapper; up to 200 queen snapper; up to 200 silk snapper; and up

to 200 wenchman snapper) would be retained under the EFP. Additionally, each year, a maximum of 350 of the incidental species (up to 100 vermilion snapper; up to 100 red hind; up to 100 black, red, tiger, and yellowfin grouper, combined; and up to 50 misty and yellowedge grouper, combined) would be retained. If the incidental deep-water reef fish species are caught during the applicable seasonal and area closures, they would be possessed onboard the vessel only for the purpose of taking length measurements and tissue samples (fin clips or muscle plugs) prior to being returned to the water.

Length measurements would be recorded for all species caught except for any species for which harvest is prohibited under Federal law (*i.e.,* goliath and Nassau groupers, and midnight, rainbow, and blue parrotfishes). These prohibited species would be returned immediately to the water with a minimum of harm. For the targeted species, the gonads, eyes, fin or muscle tissues, and otoliths would be removed for histological and ageing analyses conducted by NMFS and the contracted observers, Puerto Rico's Department of Natural and Environmental Resources, and the University of South Carolina.

In order to minimize the negative biological effects of bringing these deep-water species to the surface, the commercial fishing vessel would have venting tools onboard to properly vent fish being released back in the water to facilitate their return to depth.

Under the EFP, the applicant would be allowed to fish for and possess deep-water reef fish species in or from the Bajo de Sico closed area during the October 1 through March 31 closure period (50 CFR 622.435(a)(2)(iv)). A maximum of 25 fishing trips would occur per year in the Bajo de Sico area, 50 total during the project. Of those 50 trips, it is estimated that 25 trips would occur during the seasonal closure in the Bajo de Sico area. In addition, the applicant would be allowed to fish for and possess the deep-water reef fish species during species-specific seasonal closures: Black, red, tiger, yellowfin, and yellowedge grouper during the February 1 through April 30 seasonal closure (50 CFR 622.435(a)(1)(i)); red hind during the December 1 through the last day of February seasonal closure from the EEZ west of 67°10′ W longitude (50 CFR 622.435(a)(1)(ii)); and black, blackfin, silk, and vermilion snappers during the October 1 through December 31 seasonal closure (50 CFR 622.435(a)(1)(iii)). The applicant would also be exempt from certain recreational bag limit regulations at 50 CFR 622.437(b)(1), though the EFP would specify retention limits. Specifically, the applicant would be limited to 30 groupers and snappers, combined, per person per day or, if 2 or more persons are aboard, 60 groupers and snappers, combined, per vessel per day. The parrotfish recreational bag limit of 2 parrotfish per person per day or, if 3 or more persons are aboard, 6 parrotfish per vessel per day would still apply.

The applicant intends to retain samples of the targeted species caught during the seasonal or area closures. After samples are taken from the targeted species, the remainder of the fish caught during a seasonal or area closure would be given to the contracted commercial fishermen for personal use and consumption. For incidental species, the EFP would allow the applicant to possess the species during the applicable seasonal and area closures for sufficient time to record length measurements and to collect tissue samples. If the targeted or incidental species are caught outside the closed seasons and closed areas, the commercial fishermen may retain them, consistent with applicable law.

NMFS finds this application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on this permit, if it is granted, include but are not limited to, a prohibition on conducting sampling activities within marine protected areas, marine sanctuaries, or special management zones, without additional authorization, and requiring compliance with best practices in the event of interactions with any protected species. NMFS may also require annual reports summarizing the amount of reef fish species harvested during the seasonal and area closures, as well as during the period of effectiveness of any issued EFP. Additionally, NMFS would require any sea turtles taken incidentally during the course of the activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected state(s), the Caribbean Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable law.

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

Dated: June 24, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–13908 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB116]

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding annual renewals for Colombia, Ecuador, El Salvador, Guatemala, Mexico, Peru, and Spain.

SUMMARY: The NMFS Assistant Administrator (Assistant Administrator) has completed an affirmative finding annual renewal for the Governments of Colombia, Ecuador, El Salvador, Guatemala, Mexico, Peru, and Spain. (referred to hereafter as ''The Nations'') under the Marine Mammal Protection Act (MMPA). These affirmative findings will continue to allow the importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) for 1 year in compliance with the Agreement on the International Dolphin Conservation Program (AIDCP) by purse seine vessels operating under The Nations' jurisdiction or exported from The Nations. NMFS bases the affirmative finding annual renewals on reviews of documentary evidence submitted by the Governments of The Nations and of information obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: These affirmative finding annual renewals are effective for the 1-year period of April 1, 2021, through March 31, 2022.

FOR FURTHER INFORMATION CONTACT: Justin Greenman, West Coast Region, National Marine Fisheries Service, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, (562) 980–3264, *justin.greenman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows for importation into the United States of yellowfin tuna harvested by purse seine vessels in the ETP from a nation with jurisdiction over purse seine vessels with carrying capacity greater than 400

short tons that harvest tuna in the ETP only if the nation has an ''affirmative finding'' issued by the NMFS Assistant Administrator. *See* Section 101(a)(2)(B) of the MMPA, 16 U.S.C. 1371(a)(2)(B); *see also* 50 CFR 216.24(f)(6)(i). If requested by the government of such a nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the AIDCP and its obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request a new affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS must determine whether the harvesting nation continues to meet the requirements of their 5-year affirmative finding. NMFS does this by reviewing the documentary evidence from the last year. A nation may provide information related to compliance with AIDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the AIDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f)(8), for this annual renewal, the Assistant Administrator considered documentary evidence submitted by the Governments of The Nations and obtained from the IATTC and has determined that The Nations have met the MMPA's requirements to receive affirmative finding annual renewals.

After consultation with the Department of State, the Assistant Administrator issued affirmative finding annual renewals to The Nations, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by purse seine vessels operating under The Nations' jurisdiction or exported from The Nations. Issuance of affirmative finding annual renewals for The Nations does not affect implementation of an intermediary nation embargo under 50 CFR 216.24(f)(9), which applies to exports from a nation that exports to the United States yellowfin tuna or yellowfin tuna products that was subject to a ban on importation into the United States under section 101(a)(2)(B) of the MMPA, 16 U.S.C. 1371(a)(2)(B).

These affirmative finding annual renewals for The Nations are for the 1-year period of April 1, 2021, through March 31, 2022. The Nations' individual 5-year affirmative findings, which have varying start and end dates, remain valid. Ecuador, Guatemala, Mexico, and Spain's 5-year affirmative findings will remain valid through March 31, 2025. Colombia's 5-year affirmative finding will remain valid through March 31, 2024, El Salvador's 5-year affirmative finding will remain valid through March 31, 2023, and Peru's 5-year affirmative finding will remain valid through March 31, 2022, subject to subsequent annual reviews by NMFS.

Dated: June 24, 2021.

Paul N. Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2021–13948 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB192]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Stock Identification (ID) Webinar III for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Stock ID Webinar III will be held from 11 a.m. until 1 p.m. Eastern, on July 22, 2021.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Stock ID Webinars are as follows:

- Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on red snapper stock structure.
- Participants will make recommendations on biological stock structure and define the unit stock or

stocks to be addressed through this assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: June 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–13983 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB195]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Wednesday, July 21, 2021, starting at 12:30 p.m. and continue through 12:30 p.m. on Friday, July 23, 2021. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make multi-year acceptable biological catch (ABC) recommendations for Golden Tilefish, Atlantic Mackerel, Summer Flounder, Scup, Black Sea Bass, and Bluefish based on the results of the recently completed management track stock assessment updates. The SSC will review the previously recommended 2022 ABC and recommend new 2023–24 ABC specifications for Golden Tilefish; recommend 2022–23 rebuilding ABC specifications for Atlantic Mackerel and Bluefish; and recommend new 2022–23 ABC specifications for Summer Flounder, Scup, and Black Sea Bass. The SSC Economic Work Group will update the full SSC on the latest developments and current status of Research Set-Aside economic case study. The SSC will also discuss potential topics to be covered during the joint Council-SSC meeting scheduled to take place as part of the August 2021 Council meeting. In addition, the SSC may take up any other business as necessary. Meeting materials will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Collins at the Mid-Atlantic Council Office (302) 526–5253 at least 5 days prior to the meeting date.

Dated: June 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–13984 Filed 6–29–21; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2021–0012]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled, ''State Official Notification Rule—12 CFR 1082.1.''

DATES: Written comments are encouraged and must be received on or before July 30, 2021 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov (this link becomes active on the day following publication of this notice).* Select ''Information Collection Review,'' under ''Currently Under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: State Official Notification Rule—12 CFR. 1082.1.

OMB Control Number: 3170–0019.

Type of Review: Extension without change of an existing information collection.

Affected Public: State and local governments.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden Hours: 1.5.

Abstract: Section 1042 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5552 (Act), gave authority to certain State and U.S.

territorial officials to enforce the Act and regulations prescribed thereunder. Section 1042 also requires that the Bureau issue a rule establishing how states are to provide notice to the Bureau before taking action to enforce the Act (or, in emergency situations, immediately after taking such an action). In accordance with the requirements of the Act, the Bureau issued a final rule (12 CFR 1082.1) establishing that notice should be provided at least 10 days before the filing of an action, with certain exceptions, and setting forth a limited set of information which is to be provided with the notice. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 24, 2021.

Anthony May,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2021–13918 Filed 6–29–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF ENERGY

[Case Number 2020–023, EERE–2017–BT–WAV–0027]

Energy Conservation Program: Extension of Interim Waiver to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. From the Department of Energy Commercial Refrigerator, Freezer, and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of extension of interim waiver.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting an interim waiver extension (Case No. 2020–023) to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. (''AHT'') from specified portions of the DOE Commercial Refrigerators, Freezers, and Refrigerator-Freezers (collectively ''commercial refrigeration equipment'' or ''CRE'') test procedure for determining the energy consumption of the specified AHT CRE basic models. Under this extension, AHT is required to test and rate the specified basic models in accordance with the alternate test procedure specified in the interim waiver.

DATES: The Extension of Interim Waiver is effective on June 30, 2021.

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. Pete Cochran, 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) 586–9496. Email: *peter.cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(g)), DOE gives notice of the issuance of an Extension of Interim Waiver as set forth below. The Extension of Interim Waiver extends the Interim Waiver granted to AHT on May 26, 2017 (82 FR 24330, ''May 2017 Interim Waiver'') to include the AHT basic models specified in this interim waiver extension, as requested by AHT on November 12, 2020.[1] AHT must test and rate the specifically identified CRE basic models in accordance with the alternate test procedure specified in the May 2017 Interim Waiver. AHT's representations concerning the energy consumption 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 May 2017 Interim Waiver, 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 consumption of this equipment. (42 U.S.C. 6314(d))

DOE makes decisions on waiver extensions, including interim waiver extensions, for only those basic models

[1] AHT's request is available at *regulations.gov/docket/EERE–2017–BT–WAV–0027–0014.* The specified basic models are: IBIZA 100 (U) NAM–R, IBIZA 100 (U) NAM–IC, IBIZA 145 (U) NAM–R, IBIZA 145 (U) NAM–IC, IBIZA 210 (U) NAM–R, IBIZA 210 (U) NAM–IC, MALTA 145 (U) NAM–R, MALTA 145 (U) NAM–IC, MALTA, 185 (U) NAM–R, MALTA 185 (U) NAM–IC, MANHATTAN XL 175 (U) NAM–R, MANHATTAN XL 175 (U) NAM–IC, MANHATTAN XL 210 (U) NAM–R, MANHATTAN XL 210 (U) NAM–IC, MIAMI 145 (U) NAM–R, MIAMI 145 (U) NAM–IC, MIAMI XL EC 185 (U) NAM–R, MIAMI XL EC 185 (U) NAM–IC, MIAMI 210 (U) NAM–R, MIAMI 210 (U) NAM–IC, MIAMI 250 (U) NAM–R, MIAMI 250 (U) NAM–IC, PARIS 145 (U) NAM–R, PARIS 145 (U) NAM–IC, PARIS EC 185 (U) NAM–R, PARIS EC 185 (U) NAM–IC, PARIS 210 (U) NAM–R, PARIS 210 (U) NAM–IC, PARIS 250 (U) NAM–R, PARIS 250 (U) NAM–IC, SYDNEY 175 (U) NAM–R, SYDNEY 175 (U) NAM–IC, SYDNEY 210 (U) NAM–R, SYDNEY 210 (U) NAM–IC, SYDNEY EC 213 (U) NAM–R, SYDNEY EC 213 (U) NAM–IC, SYDNEY EC 223 (U) NAM–R, SYDNEY EC 223 (U) NAM–IC, SYDNEY 230 (U) NAM–R, SYDNEY 230 (U) NAM–IC, SYDNEY 250 (U) NAM–R, SYDNEY 250 (U) NAM–IC, SYDNEY XL 175 (U) NAM–R, SYDNEY XL 175 (U) NAM–IC, SYDNEY XL 210 (U) NAM–R, SYDNEY XL 210 (U) NAM–IC, SYDNEY XL 250 (U) NAM–R, SYDNEY XL 250 (U) NAM–IC, MONTREAL SLIM 175 (U) NAM–R, MONTREAL SLIM 175 (U) NAM–IC, MONTREAL SLIM 210 (U) NAM–R, MONTREAL SLIM 210 (U) NAM–IC, MONTREAL SLIM 250 (U) NAM–R, MONTREAL SLIM 250 (U) NAM–IC, MONTREAL SLIM PUSH 175 (U) NAM–R, MONTREAL SLIM PUSH 175 (U) NAM–IC, MONTREAL SLIM PUSH 210 (U) NAM–R, MONTREAL SLIM PUSH 210 (U) NAM–IC, MONTREAL SLIM PUSH 250 (U) NAM–R, MONTREAL SLIM PUSH 250 (U) NAM–IC, MONTREAL XL 175 (U) NAM–R, MONTREAL XL 175 (U) NAM–IC, MONTREAL XL 210 (U) NAM–R, MONTREAL XL 210 (U) NAM–IC, MONTREAL XL 250 (U) NAM–R, MONTREAL XL 250 (U) NAM–IC, MONTREAL XL EC 185 (U) NAM–R, MONTREAL XL EC 185 (U) NAM–IC, MONTREAL XL EC 210 (U) NAM–R, MONTREAL XL EC 210 (U) NAM–IC, MONTREAL XL EC PUSH 185 (U) NAM–R, MONTREAL XL EC PUSH 185 (U) NAM–IC, MONTREAL XL EC PUSH 210 (U) NAM–R, MONTREAL XL EC PUSH 210 (U) NAM–IC, MONTREAL XL PUSH 175 (U) NAM–R, MONTREAL XL PUSH 175 (U) NAM–IC, MONTREAL XL PUSH 210 (U) NAM–R, MONTREAL XL PUSH 210 (U) NAM–IC, MONTREAL XL PUSH 250 (U) NAM–R, MONTREAL XL PUSH 250 (U) NAM–IC (the petition listed basic model IAMI 145 (U) NAM–R, which DOE understands to mean MIAMI 145 (U) NAM–R).

specifically set out in the request, not future models that may be manufactured by the petitioner. AHT may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CRE. Alternatively, if appropriate, AHT may request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 431.401(g).

Case Number 2020–023

Extension of Interim Waiver

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[3] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes Commercial Refrigerators, Freezers, and Refrigerator-Freezers (collectively ''commercial refrigeration equipment'' or ''CRE''), the focus of this document. (42 U.S.C. 6311(1)(E))

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), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

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 equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered equipment 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 CRE is contained in 10 CFR part 431, subpart C, appendix B—*Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers* (''Appendix B'').

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 or water 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.*

A petitioner 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. 10 CFR 431.401(g). DOE will publish any such extension in the **Federal Register**. *Id.*

II. Request for an Extension of Interim Waiver: Assertions and Determinations

On May 26, 2017, DOE issued an Interim Waiver in Case Number CR–006 granting AHT an interim waiver to test its AHT basic models specified in that interim waiver using an alternate test procedure. 82 FR 24330 (''May 2017 Interim Waiver'').[4] AHT stated that their basic models defrost less frequently than once every 24 hours. The DOE test procedure, by reference to ANSI/ASHRAE Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers'' (''ASHRAE 72–2005''), requires beginning the test period at the start of a defrost cycle and recording data for 24 hours. AHT stated that the DOE test procedure would overstate the energy usage from the defrosting function. 82 FR 24330, 24335.

Based on its review, including the information provided by AHT, DOE initially determined that the current test procedure at Appendix B would evaluate the CRE basic models specified in the May 2017 Interim Waiver in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data. *Id.* at 82 FR 24332–24333. The May 2017 Interim Waiver specifies that AHT must test and rate the subject basic models such that the energy consumption be determined using an equation that incorporates the energy consumption of two modified tests. The first modified test would be a 24-hour test without a defrost cycle starting in steady state conditions with eight hours of door openings. The second modified test would include a defrost cycle starting after steady state conditions are established and continuing until the defrost cycle recovery is complete. *Id.* at 82 FR 24333.

On November 12, 2020, AHT submitted a request to extend the scope of the interim waiver, Case Number 2020–023, to the specified additional AHT basic models.[5] AHT stated that

[2] 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).

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

[4] In the May 2017 Interim Waiver DOE declined to grant AHT an interim waiver as it pertained to AHT's petition regarding multi-mode operation. 82 FR 24330, 24332. That denial is not relevant to AHT's request for an extension or this Order extending the interim waiver granted in the May 2017 Interim Waiver.

[5] The specified basic models are: IBIZA 100 (U) NAM–R, IBIZA 100 (U) NAM–IC, IBIZA 145 (U) NAM–R, IBIZA 145 (U) NAM–IC, IBIZA 210 (U) NAM–R, IBIZA 210 (U) NAM–IC, MALTA 145 (U) NAM–R, MALTA 145 (U) NAM–IC, MALTA, 185 (U) NAM–R, MALTA 185 (U) NAM–IC, MANHATTAN XL 175 (U) NAM–R, MANHATTAN XL 175 (U) NAM–IC, MANHATTAN XL 210 (U) NAM–R, MANHATTAN XL 210 (U) NAM–IC, MIAMI 145 (U) NAM–R, MIAMI 145 (U) NAM–IC, MIAMI XL EC 185 (U) NAM–R, MIAMI XL EC 185 (U) NAM–IC, MIAMI 210 (U) NAM–R, MIAMI 210 (U) NAM–IC, MIAMI 250 (U) NAM–R, MIAMI 250 (U) NAM–IC, PARIS 145 (U) NAM–R, PARIS 145 (U) NAM–IC, PARIS EC 185 (U) NAM–R, PARIS EC 185 (U) NAM–IC, PARIS 210 (U) NAM–R, PARIS 210 (U) NAM–IC, PARIS 250 (U) NAM–R, PARIS 250 (U) NAM–IC, SYDNEY 175 (U) NAM–R, SYDNEY 175 (U) NAM–IC, SYDNEY 210 (U) NAM–R, SYDNEY 210 (U) NAM–IC, SYDNEY EC 213 (U) NAM–R, SYDNEY EC 213 (U) NAM–IC, SYDNEY EC 223 (U) NAM–R, SYDNEY EC 223 (U) NAM–IC, SYDNEY 230 (U) NAM–R, SYDNEY 230 (U) NAM–IC, SYDNEY 250 (U) NAM–R, SYDNEY 250 (U) NAM–IC, SYDNEY XL 175 (U) NAM–R, SYDNEY XL 175 (U) NAM–IC, SYDNEY XL 210 (U) NAM–R, SYDNEY XL 210 (U) NAM–IC, SYDNEY XL 250 (U) NAM–R, SYDNEY XL 250 (U) NAM–IC, MONTREAL SLIM 175 (U) NAM–R, MONTREAL SLIM 175 (U) NAM–IC, MONTREAL SLIM 210 (U) NAM–R, MONTREAL SLIM 210 (U) NAM–IC, MONTREAL SLIM 250 (U) NAM–R, MONTREAL SLIM 250 (U) NAM–IC, MONTREAL SLIM PUSH 175 (U) NAM–R, MONTREAL SLIM PUSH 175 (U) NAM–IC, MONTREAL SLIM PUSH 210 (U) NAM–R, MONTREAL SLIM PUSH 210 (U) NAM–IC,

these basic models have the same characteristics as the models covered by the existing interim waiver.

DOE has reviewed AHT's interim waiver extension request and determined that the CRE basic models identified in AHT's request incorporate the same design characteristics as those basic models covered under the interim waiver in Case Number CR–006 such that the test procedure evaluates these basic models in a manner that is unrepresentative of their actual energy use. For the same reasons set forth in the May 2017 Interim Waiver, DOE understands that the model lines identified in AHT's request are not capable of defrosting once every 24 hours as simulated by the DOE test procedure. *See* 82 FR 24330, 24332–24333. Accordingly, DOE is extending the interim waiver in Case Number CR–006 to the CRE basic models identified by AHT in its interim waiver extension request.

III. Order

After careful consideration of all the material submitted by AHT in this matter, it is *ordered* that:

(1) AHT must, as of the date of publication of this Extension of Interim Waiver in the **Federal Register**, test and rate the following AHT brand commercial refrigerator and commercial ice-cream freezer basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model
AHT	IBIZA 100 (U) NAM–R.
AHT	IBIZA 100 (U) NAM–IC.
AHT	IBIZA 145 (U) NAM–R.
AHT	IBIZA 145 (U) NAM–IC.
AHT	IBIZA 210 (U) NAM–R.
AHT	IBIZA 210 (U) NAM–IC.
AHT	MALTA 145 (U) NAM–R.
AHT	MALTA 145 (U) NAM–IC.
AHT	MALTA 185 (U) NAM–R.
AHT	MALTA 185 (U) NAM–IC.
AHT	MANHATTAN XL 175 (U) NAM–R.
AHT	MANHATTAN XL 175 (U) NAM–IC.
AHT	MANHATTAN XL 210 (U) NAM–R.
AHT	MANHATTAN XL 210 (U) NAM–IC.
AHT	MIAMI 145 (U) NAM–R.
AHT	MIAMI 145 (U) NAM–IC.
AHT	MIAMI XL EC 185 (U) NAM–R.
AHT	MIAMI XL EC 185 (U) NAM–IC.
AHT	MIAMI 210 (U) NAM–R.
AHT	MIAMI 210 (U) NAM–IC.
AHT	MIAMI 250 (U) NAM–R.
AHT	MIAMI 250 (U) NAM–IC.
AHT	PARIS 145 (U) NAM–R.
AHT	PARIS 145 (U) NAM–IC.
AHT	PARIS EC 185 (U) NAM–R.
AHT	PARIS EC 185 (U) NAM–IC.
AHT	PARIS 210 (U) NAM–R.
AHT	PARIS 210 (U) NAM–IC.
AHT	PARIS 250 (U) NAM–R.
AHT	PARIS 250 (U) NAM–IC.
AHT	SYDNEY 175 (U) NAM–R.
AHT	SYDNEY 175 (U) NAM–IC.
AHT	SYDNEY 210 (U) NAM–R.
AHT	SYDNEY 210 (U) NAM–IC.
AHT	SYDNEY EC 213 (U) NAM–R.
AHT	SYDNEY EC 213 (U) NAM–IC.
AHT	SYDNEY EC 223 (U) NAM–R.
AHT	SYDNEY EC 223 (U) NAM–IC.
AHT	SYDNEY 230 (U) NAM–R.
AHT	SYDNEY 230 (U) NAM–IC.
AHT	SYDNEY 250 (U) NAM–R.
AHT	SYDNEY 250 (U) NAM–IC.
AHT	SYDNEY XL 175 (U) NAM–R.
AHT	SYDNEY XL 175 (U) NAM–IC.
AHT	SYDNEY XL 210 (U) NAM–R.
AHT	SYDNEY XL 210 (U) NAM–IC.
AHT	SYDNEY XL 250 (U) NAM–R.
AHT	SYDNEY XL 250 (U) NAM–IC.
AHT	MONTREAL SLIM 175 (U) NAM–R.
AHT	MONTREAL SLIM 175 (U) NAM–IC.
AHT	MONTREAL SLIM 210 (U) NAM–R.
AHT	MONTREAL SLIM 210 (U) NAM–IC.
AHT	MONTREAL SLIM 250 (U) NAM–R.
AHT	MONTREAL SLIM 250 (U) NAM–IC.
AHT	MONTREAL SLIM PUSH 175 (U) NAM–R.
AHT	MONTREAL SLIM PUSH 175 (U) NAM–IC.
AHT	MONTREAL SLIM PUSH 210 (U) NAM–R.
AHT	MONTREAL SLIM PUSH 210 (U) NAM–IC.
AHT	MONTREAL SLIM PUSH 250 (U) NAM–R.
AHT	MONTREAL SLIM PUSH 250 (U) NAM–IC.
AHT	MONTREAL XL 175 (U) NAM–R.
AHT	MONTREAL XL 175 (U) NAM–IC.
AHT	MONTREAL XL 210 (U) NAM–R.
AHT	MONTREAL XL 210 (U) NAM–IC.
AHT	MONTREAL XL 250 (U) NAM–R.
AHT	MONTREAL XL 250 (U) NAM–IC.
AHT	MONTREAL XL EC 185 (U) NAM–R.
AHT	MONTREAL XL EC 185 (U) NAM–IC.
AHT	MONTREAL XL EC 210 (U) NAM–R.
AHT	MONTREAL XL EC 210 (U) NAM–IC.
AHT	MONTREAL XL EC PUSH 185 (U) NAM–R.
AHT	MONTREAL XL EC PUSH 185 (U) NAM–IC.
AHT	MONTREAL XL EC PUSH 210 (U) NAM–R.
AHT	MONTREAL XL EC PUSH 210 (U) NAM–IC.
AHT	MONTREAL XL PUSH 175 (U) NAM–R.
AHT	MONTREAL XL PUSH 175 (U) NAM–IC.
AHT	MONTREAL XL PUSH 210 (U) NAM–R.
AHT	MONTREAL XL PUSH 210 (U) NAM–IC.
AHT	MONTREAL XL PUSH 250 (U) NAM–R.
AHT	MONTREAL XL PUSH 250 (U) NAM–IC.

(2) The alternate test procedure for the AHT basic models referenced in paragraph (1) of this Order is the test procedure for CRE prescribed by DOE at 10 CFR part 431, subpart C, appendix B, except the test period shall be selected as follows:

The first part of the test shall be a 24-hour test starting in steady-state conditions and including eight hours of door opening (according to ASHRAE Standard 72). The energy consumed in this test, *ET*1, shall be recorded.

The second part of the test shall be a defrost cycle, including any operation associated with a defrost. The start and end points of the defrost cycle test period shall be determined according to the instructions for consumer refrigerators and refrigerator-freezers outlined in 10 CFR part 430, subpart B, appendix A, section 4.2.1.1 (for cycling compressor systems) or section 4.2.1.2 (for non-cycling compressor systems). The energy consumed in this test, ET2, and duration, t_{DI}, shall be recorded.

Based on the measured energy consumption in these two tests, the daily energy consumption (DEC) in kWh shall be calculated as:

MONTREAL SLIM PUSH 250 (U) NAM–R, MONTREAL SLIM PUSH 250 (U) NAM–IC, MONTREAL XL 175 (U) NAM–R, MONTREAL XL 175 (U) NAM–IC, MONTREAL XL 210 (U) NAM–R, MONTREAL XL 210 (U) NAM–IC, MONTREAL XL 250 (U) NAM–R, MONTREAL XL 250 (U) NAM–IC, MONTREAL XL EC 185 (U) NAM–R, MONTREAL XL EC 185 (U) NAM–IC, MONTREAL XL EC 210 (U) NAM–R, MONTREAL XL EC 210 (U) NAM–IC, MONTREAL XL EC PUSH 185 (U) NAM–R, MONTREAL XL EC PUSH 185 (U) NAM–IC, MONTREAL XL EC PUSH 210 (U) NAM–R, MONTREAL XL EC PUSH 210 (U) NAM–IC, MONTREAL XL PUSH 175 (U) NAM–R, MONTREAL XL PUSH 175 (U) NAM–IC, MONTREAL XL PUSH 210 (U) NAM–R, MONTREAL XL PUSH 210 (U) NAM–IC, MONTREAL XL PUSH 250 (U) NAM–R, MONTREAL XL PUSH 250 (U) NAM–IC (the petition listed basic model IAMI 145 (U) NAM–R, which DOE understands to mean MIAMI 145 (U) NAM–R).

$$DEC = ET1 \times \frac{(1440 - t_{NDI})}{1440} + \frac{ET2}{3.5}$$

and

$$t_{NDI} = \frac{t_{DI}}{3.5}$$

Where:

DEC = daily energy consumption, kWh;
ET1 = energy consumed during the first part of the test, in kWh;
ET2 = energy consumed during the second part of the test, in kWh
t_{NDI} = normalized length of defrosting time per day, in minutes;
t_{DI} = length of time of defrosting test period, in minutes;
3.5 = time between defrost occurrences, in days; and
1440 = conversion factor, minutes per day.

(3) *Representations.* AHT may not make representations about the energy use of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions of paragraph (2) of this Order and such representations fairly disclose the results of such testing.

(4) This Extension of Interim Waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Extension of Interim Waiver is issued on the condition that the statements, representations, and documentation provided by AHT are valid. If AHT makes any modifications to the defrost controls of these basic models, the interim waiver will no longer be valid and AHT 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 Extension of Interim Waiver (and/or the underlying Order issued in Case Number CR–006) at any time if it determines the factual basis underlying the petition for extension of interim waiver (and/or the underlying Order issued in Case Number CR–006) 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, AHT may request that DOE rescind or modify the Extension of Interim Waiver (and/or the underlying Order issued in Case Number CR–006) if AHT discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) AHT remains obligated to fulfill all applicable requirements set forth at 10 CFR part 429.

Signing Authority

This document of the Department of Energy was signed on June 23, 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 June 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–13956 Filed 6–29–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Announce Financial Assistance for Weatherization Enhancement and Innovation

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy's (DOE), Office of Energy Efficiency and Renewable Energy's (EERE), Weatherization Assistance Program (WAP) intends to issue a Funding Opportunity Announcement for Weatherization Enhancement and Innovation. Congress has directed DOE WAP in the Consolidated Appropriations Act of 2021, signed December 27, 2020, to implement Financial Assistance for Weatherization Enhancement and Innovation.

DATES: Written comments and information on this NOI are requested and will be accepted on or before July 30, 2021. The tentative release date for the funding opportunity announcement is planned for Fall 2021, with concept papers to be submitted in October 2021 and Full Applications to be submitted in December 2021. This FOA timeline is subject to change.

ADDRESSES: Interested persons are encouraged to submit comments by email to the following address: *Brittany.Price@ee.doe.gov* with the subject line ''Announce Financial Assistance for Weatherization Enhancement and Innovation'' included in the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption. No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments, see section III (Submission of Comments) of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact the DOE staff person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Brittany Price, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–5W, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 306–7252. Email: *Brittany.Price@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy's (DOE), Office of Energy Efficiency and Renewable Energy's (EERE), Weatherization Assistance Program (WAP) intends to issue a Funding Opportunity Announcement (FOA) to implement Financial Assistance for Weatherization Enhancement and Innovation, as directed by section 1011(e) of the Consolidated Appropriations Act, 2021, Public Law 116–260.

The purpose of this future FOA is to (1) expand the number of dwelling units that are occupied by low-income persons that receive weatherization assistance by making such dwelling units weatherization-ready; (2) promote the deployment of renewable energy in dwelling units that are occupied by low-income persons; (3) ensure healthy indoor environments by enhancing or expanding health and safety measures and resources available to dwellings that are occupied by low-income persons; (4) disseminate new methods and best practices among entities providing weatherization assistance, including enhanced client education; quality control of work performed; program monitoring; labor training; planning and administration; (5) encourage entities providing weatherization assistance to hire and retain employees who are individuals (A) from the community in which the assistance is provided; and (B) from communities or groups that are underrepresented in the home energy performance workforce, including religious and ethnic minorities, women, veterans, individuals with disabilities, and individuals who are socioeconomically disadvantaged; and (6) for such other activities as the Secretary determines to be appropriate. In 2021, WAP has reserved $18.6 million for award through a competitive process. WAP is developing the award scope and criteria with the intent to release the FOA in the Fall 2021. This notice is not the FOA.

It is anticipated that financial assistance for Weatherization Enhancement and Innovation will be made available each year through 2025, depending on appropriated funds from Congress. Funding is not to exceed 2 percent of WAP's allocation, if such amount is $225,000,000 or more but less than $260,000,000; 4 percent if such amount is $260,000,000 or more but less than $300,000,000; or 6 percent if such amount is $300,000,000 or more. Current WAP Grantees, Subgrantees and other nonprofit entities will be eligible to apply for awards, with a $2 million maximum award and three-year performance period. Listening Sessions were held in March 2021 to solicit input from WAP stakeholders regarding areas of interest and award factors to help inform the FOA development.

DOE welcomes written comments from the public on any subject within the scope of this NOI.

Public Participation

A. Submission of Comments

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

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

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

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

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

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

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

Signing Authority

This document of the Department of Energy was signed on June 25, 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 June 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–13985 Filed 6–29–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2109–000]

Wheatridge Solar Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wheatridge Solar Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 23, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–13926 Filed 6–29–21; 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: RP21–902–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Updates to Tariff Contact Person to be effective 7/22/2021.
Filed Date: 6/22/21.
Accession Number: 20210622–5016.
Comments Due: 5 p.m. ET 7/6/21.

Docket Numbers: RP21–903–000.
Applicants: Black Marlin Pipeline LLC.
Description: § 4(d) Rate Filing: Black Marlin Pipeline LLC updates contact information to be effective 7/23/2021.
Filed Date: 6/22/21.
Accession Number: 20210622–5035.
Comments Due: 5 p.m. ET 7/6/21.

Docket Numbers: RP21–904–000.
Applicants: Chief Oil & Gas LLC, Southern Company Services, Inc.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Chief Oil & Gas LLC, et al.
Filed Date: 6/22/21.
Accession Number: 20210622–5092.
Comments Due: 5 p.m. ET 7/6/21.

Docket Numbers: RP21–905–000.
Applicants: SWN Energy Services Company, LLC, Indigo Minerals LLC.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of SWN Energy Services Company, LLC, et al.
Filed Date: 6/22/21.
Accession Number: 20210622–5098.
Comments Due: 5 p.m. ET 7/6/21.

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: June 23, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–13933 Filed 6–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–85–000]

SOO Green HVDC Link ProjectCo, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on June 21, 2021, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2020), SOO Green HVDC Link ProjectCo, LLC (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent), alleging that PJM's current Open Access Transmission Tariff and Amended and Restated Operating Agreement are unjust and unreasonable, because they require merchant transmission facilities to complete the profoundly-delayed generation interconnection process in order to be studied and integrated into the grid, all as more fully explained in its complaint.

The Complainant certify that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar

pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 12, 2021.

Dated: June 23, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–13925 Filed 6–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

June 23, 2021.

Tumbleweed Solar LLC	[EG21–99–000
PGR 2020 Lessee 8, LLC ..	EG21–100–000
Sugar Solar, LLC	EG21–101–000
BigBeau Solar, LLC	EG21–102–000
Valley Center ESS, LLC	EG21–103–000
Crystal Lake Wind Energy III, LLC.	EG21–104–000
Elara Energy Project, LLC	EG21–105–000
Taygete Energy Project II, LLC.	EG21–106–000
Citadel Solar, LLC	EG21–107–000
Assembly Solar II, LLC	EG21–108–000
Shaw Creek Solar, LLC	EG21–109–000
Swoose LLC	EG21–110–000
Flower Valley LLC	EG21–111–000
Maverick Solar 6, LLC	EG21–112–000
Samson Solar Energy LLC	EG21–113–000
Hawtree Creek Farm Solar, LLC.	EG21–114–000
Maverick Solar 7, LLC	EG21–115–000
Diablo Energy Storage, LLC.	EG21–116–000
Azure Sky Solar Project, LLC.	EG21–117–000
Sky River Wind, LLC	EG21–118–000]

Take notice that during the month of May 2021, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: June 23, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–13935 Filed 6–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–179–000.
Applicants: Clover Creek Solar, LLC.
Description: Notice of Self-Certification of EWG Status of Clover Creek Solar, LLC.
Filed Date: 6/23/21.
Accession Number: 20210623–5106.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: EG21–180–000.
Applicants: Antelope Expansion 1B, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Antelope Expansion 1B, LLC.
Filed Date: 6/23/21.
Accession Number: 20210623–5116.
Comments Due: 5 p.m. ET 7/14/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–027; ER10–1819–031; ER10–1820–034.
Applicants: Public Service Company of Colorado; Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation.
Description: Notice of Change in Status of Public Service Company of Colorado, et al.
Filed Date: 6/23/21.
Accession Number: 20210623–5096.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER13–1430–012; ER13–1561–011; ER15–1218–010; ER16–38–008; ER16–39–007; ER16–2501–004; ER16–2502–004; ER17–2341–004; ER17–2453–004; ER18–713–003; ER18–1076–003; ER18–1077–003; ER20–2888–002; ER21–965–001; ER21–1259–001.
Applicants: Arlington Valley Solar Energy II, LLC, Centinela Solar Energy, LLC, Solar Star California XIII, LLC, Kingbird Solar A, LLC, Kingbird Solar B, LLC, Nicolis, LLC, Tropico, LLC, CA Flats Solar 130, LLC, Imperial Valley Solar 3, LLC, CA Flats Solar 150, LLC, GASNA 6P, LLC, GASNA 36P, LLC, Townsite Solar, LLC, Ventura Energy Storage, LLC, Coso Battery Storage, LLC.
Description: Notice of Non-Material Change in Status of Arlington Valley Solar Energy II, LLC, et al.
Filed Date: 6/22/21.
Accession Number: 20210622–5176.
Comments Due: 5 p.m. ET 7/13/21.

Docket Numbers: ER14–1818–021; ER21–1372–001; ER21–1374–001.
Applicants: Boston Energy Trading and Marketing LLC, Diamond Retail Energy, LLC, Diamond Energy East, LLC.
Description: Triennial Market Power Analysis for Central Region of Boston Energy Trading and Marketing LLC, et al.
Filed Date: 6/21/21.
Accession Number: 20210621–5182.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–21–002.
Applicants: Harts Mill Solar, LLC.
Description: Compliance filing: Informational Filing Pursuant to Section 2 of the PJM Tariff to be effective N/A.
Filed Date: 6/23/21.
Accession Number: 20210623–5092.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2183–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3825 Prairie Hills Wind GIA to be effective 6/14/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5017.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2185–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original IISA, Service Agreement No. 6095; Queue No. AE2–224 to be effective 5/28/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5056.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2186–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Gulf Power Conurrence to Facility Construction Agreement for Affected Sys to be effective 6/17/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5067.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2187–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA/CSA, Service Agreement Nos. 5364 and 5365; Queue No. AB2–160 to be effective 4/16/2019.
Filed Date: 6/23/21.
Accession Number: 20210623–5077.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2188–000.
Applicants: Stoneray Power Partners, LLC.
Description: Market-Based Triennial Review Filing: Triennial Market Power Update—Stoneray Power Partners to be effective 7/1/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5098.
Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2189–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA/CSA, Service Agreement Nos. 5800 and 5834; Queue No. AC1–143 to be effective 9/17/2020.
Filed Date: 6/23/21.
Accession Number: 20210623–5100.
Comments Due: 5 p.m. ET 7/14/21.

Docket Numbers: ER21–2190–000.
Applicants: Glaciers Edge Wind Project, LLC.
Description: Market-Based Triennial Review Filing: Triennial Market Power Update—Glaciers Edge Wind to be effective 7/1/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5101.
Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2191–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2021–06–23 PSCo-WAPA NITS–325–0.3.0-Agrmt to be effective 6/24/2021.
Filed Date: 6/23/21.
Accession Number: 20210623–5124.
Comments Due: 5 p.m. ET 7/14/21.

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.

Debbie-Anne A. Reese,
Deputy Secretary.
[FR Doc. 2021–13928 Filed 6–29–21; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2149–000]

Minco Wind Energy II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Minco Wind Energy II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Dated: June 23, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.
[FR Doc. 2021–13927 Filed 6–29–21; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–458–000]

Golden Pass Pipeline, LLC; Notice of Application for Amendment and Establishing Intervention Deadline

Take notice that on June 11, 2021, Golden Pass Pipeline LLC (GPPL), 811 Louisiana Street, Suite 1400, Houston, Texas 77002, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting to amend the authorization granted December 21, 2016 (December 2016 Order) [1] to construct and operate the Section 3 export facilities. The proposed MP 33 Compressor Station Modification Project(project) entails relocation of and modifications to a portion of the facilities approved in the December 2016 Order to enable GPPL to transport domestically sourced natural gas to the export terminal facilities of Golden Pass LNG Terminal LLC (GPLNG). Construction of the export terminal facilities commenced in 2019.

The MP 33 Compressor Station Modification Project or Project consists of the following: (1) Relocate the Vidor

[1] *Golden Pass Products LLC and Golden Pass Pipeline LLC,* 157 FERC ¶ 61,222 (2016).

Compressor Station approximately 50 feet north-northwest to avoid an existing pipeline right-of-way based on a landowner request; (2) increase the authorized compression at the Vidor Compressor Station from 17,994 horsepower (hp) to 37,101 hp; (3) three new interconnects and appurtenant facilities adjacent to the MP 33 Compressor Station; and (4) elimination of receipt facilities at the existing Texoma delivery interconnect on GPPL's existing system. Golden Pass Pipeline estimates the total cost of the Project to be $25,521,000.

Golden Pass Pipeline's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from Louisiana Department of Environmental Quality, Water Quality Division. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Kevin M. Sweeney, Legal Counsel, Golden Pass Pipeline, LLC, 1717 K Street NW, Suite 900, Washington, DC 20006, by phone at (202) 609–7709, or by email at *ksweeney@kmsenergylaw.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[2] 18 CFR (Code of Federal Regulations) 157.9.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on [July 14, 2021].

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 14, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP21–458–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below . Your written comments must reference the Project docket number (CP21–458–000).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is [July 14, 2021]. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP21–458–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP21–458–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 1717 K Street NW, Suite 900, Washington, DC 20006 or at *ksweeney@kmsenergylaw.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [6] motions to intervene are automatically granted by operation of Rule 214(c)(1).[7] Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[8] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on July 14, 2021.

Dated: June 23, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–13934 Filed 6–29–21; 8:45 am]

BILLING CODE 6717–01–P

[6] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[7] 18 CFR 385.214(c)(1).

[8] 18 CFR 385.214(b)(3) and (d).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0530; FRL–10025–75–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Application for Reference and Equivalent Method Determination (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Application for Reference and Equivalent Method Determination (EPA ICR Number 0559.14, OMB Control Number 2080–0005) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 20, 2021. Public comments were previously requested via the **Federal Register** on February 12, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–ORD–2005–0530 online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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.

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, Environmental Protection Agency, Air Methods and Characterization Division, Air Quality Branch, Mail Drop D205–03, Research Triangle Park, NC 27711; telephone number: 919–541–7877; email address: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room

3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: To determine compliance with the NAAQS, State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.,* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods

Form Numbers: None.

Respondents/affected entities: Private manufacturers, states.

Respondent's obligation to respond: Required to obtain the benefit of EPA designation under 40 CFR part 53.

Estimated number of respondents; 22.

Frequency of response: Annual.

Total estimated burden: 7492 (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $746,029 (per year), includes $152,152 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–13944 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2017–0438; FRL–10025–70–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Annual Public Water Systems Compliance Report (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Annual Public Water System Compliance Report (EPA ICR Number 1812.07, OMB Control Number 2020–0020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested via the **Federal Register** on February 22, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2017–0438 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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.

FOR FURTHER INFORMATION CONTACT: Raquel Taveras, Monitoring, Assistance and Media Programs Division, Office of Compliance, MC–2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–9651; fax number: (202) 564–7083; email address: *taveras.raquel@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Section 1414(c)(3)(A) of the Safe Drinking Water Act (SDWA) requires that each state (a term that includes states, commonwealths, tribes and territories) that has primary enforcement authority under the SDWA shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. These Annual State Public Water System Compliance Reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. To minimize a state's burden in preparing its annual statutorily required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already separately required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

Form Numbers: None.

Respondents/affected entities: States that have primacy enforcement

authority and meet the definition of ''state'' under the SDWA.

Respondent's obligation to respond: Mandatory Section 1414(c)(3)(A) of SDWA.

Estimated number of respondents: 55 (total).

Frequency of response: Annually.

Total estimated burden: 4,400 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $530,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–13945 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OMS–2020–0454; FRL–10025–79–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Public Health Emergency Workplace Response System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Public Health Emergency Workplace Response System (EPA ICR Number 2676.02, OMB Control Number 2030–0049) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 30, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OMS–2020–0454, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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.

FOR FURTHER INFORMATION CONTACT: Daniel Coogan, Office of Resource and Business Operations, Office of Mission Support, Environmental Protection Agency; telephone number: 202–564–1862; email address: *coogan.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Because of the substantial risk to life, safety, or health of the workforce and the public, EPA requests an emergency approval to collect the necessary information from Federal employees, detailees, interns, volunteers, grantee recipients and contractors that perform work in EPA facilities to implement an effective COVID–19 Contact Tracing program.

Each item of information requested is based on CDC and industry best practice for Contact Tracing. This information is necessary to identify individuals in the workforce who are COVID–19 positive and to notify and trace persons in the workforce who were in close contact with the COVID–19 positive employee. Including contractors, interns, grantees, and volunteers, enables EPA to capture the total workforce and take appropriate action.

The following information will be collected for COVID Contact Testing:

—Name;
—Work location;
—Contact information;
—Supervisor;
—Health status;
—Close contacts (as defined by CDC) when in the office; and
—Building and floors visited during period of possible transmission (as defined by CDC).

Form Numbers: None.

Respondents/affected entities: EPA's Contract Tracing Program participants, including detailees, interns, volunteers, grantee recipients and contractors.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 250 (total).

Frequency of response: Once.

Total estimated burden: 63 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $0 (per year), which includes annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–13947 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10018–65–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Office of Mission Support (OMS) is giving notice that it proposes to create a new system of records pursuant to the provisions of

the Privacy Act of 1974. The Public Health Emergency Workplace Response System is being created to collect workplace safety and personnel information in response to a public health emergency such as a pandemic or epidemic.

DATES: Persons wishing to comment on this system of records notice must do so by July 30, 2021. New routine uses for this new system of records will be effective July 30, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OMS–2020–0454, by one of the following methods:

Regulations.gov: www.regulations.gov. Follow the online instructions for submitting comments.

Email: oei.docket@epa.gov.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OMS–2020–0454. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through *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, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

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: Jill Smink at *smink.jill@epa.gov,* (202) 540–9196.

SUPPLEMENTARY INFORMATION: EPA is creating the Public Health Emergency Workplace Response System, EPA–89, to support the Agency's ability to provide a safe and healthy working environment in EPA locations (*i.e.,* locations where the Agency is conducting official business) during a public health emergency (*e.g.,* a Presidential declaration of a national public health emergency, U.S. Department of Health and Human Services declaration of a public health emergency, or other circumstances constituting a public health emergency). EPA–89 will allow the Agency to develop and institute safety measures in response to public health emergency contaminants (*e.g.,* a pathogen or chemical) as needed, which may include:

- Contact Tracing—identification, monitoring, and support of an affected individual (an individual in an EPA location with confirmed or probable exposure to a public health emergency contaminant), and identification and contact of a potentially affected individual (an individual who was in contact with an affected individual or exposed to a public health emergency contaminant while in an EPA location);
- Medical Screening—examination of individuals entering an EPA location for symptoms or other indications consistent with exposure to a public health emergency contaminant; and
- Workplace Access Tracking and Planning—planning and tracking of location and time of individuals in EPA locations for purposes of contact tracing, social distancing, and/or management of exposure to public health emergency contaminants within EPA locations.

SYSTEM NAME AND NUMBER:

Public Health Emergency Workplace Response System, EPA–89.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the EPA Headquarters, 1301 Constitution Ave. NW, Washington, DC 20460, regional offices, field offices and laboratories.

SYSTEM MANAGER(S):

Willie J. Abney, Division Director of Desktop Support Services Division (DSSD), Office of Mission Support, 1301 Constitution Ave. NW, Washington, DC 20460, Email Address: *Abney.Willie@epa.gov,* Phone Number: 202–566–1366.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6329c, 5 U.S.C. 7902, 29 U.S.C. 654, 29 U.S.C. 668, 42 U.S.C. 247d, 44 U.S.C. 3101, 42 U.S.C. 12101, 5 CFR part 339, 29 CFR part 1602, Executive Order 12196, *Occupational safety and health programs for Federal employees* (Feb. 26, 1980), OMB Memorandum M–20–23 *Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again* (Apr. 20, 2020).

PURPOSE(S) OF THE SYSTEM:

EPA proposes to establish a new system of records to manage the Agency's planning and response to a

public health emergency in EPA locations. EPA intends to collect information in the system to assist EPA with maintaining safe and healthy workplaces, to protect individuals in EPA locations from risks associated with a public health emergency, to plan and respond to workplace and personnel flexibilities needed during a public health emergency, to facilitate EPA's cooperation with public health authorities, and assist with contact tracing. Contact tracing is defined as the identification, monitoring, and support of an affected individual (an individual in an EPA location with confirmed or probable exposure to a public health emergency contaminant), and identification and contact of a potentially affected individual (an individual who was in contact with an affected individual or exposed to a public health emergency contaminant while in an EPA location).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include EPA employees. The system also covers individuals working in EPA facilities or on official EPA business, including: EPA contractors, non-EPA government personnel or contractors, interns, grantees, fellows, and volunteers. Other categories of individuals covered by the system include: Visitors to EPA facilities; and potentially affected individuals at EPA locations or otherwise present during official EPA business. The system also covers individuals listed as emergency contacts for such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected in the system may include but is not limited to: Contact information of the individuals (which may include name, address; phone number; email address); EPA LAN ID; EPA employee number; EPA staff office (*e.g.,* organization chart structure) and supervisor contact information (which may include name, phone number, and email address); emergency contact information (which may include name, phone number, and email address); and Agency facility or location access information that includes, but is not limited to, the dates when the affected individual visited the facility or location, the areas that they visited within the facility (*e.g.,* entrance used, office and cubicle number, shared spaces used) or at the location, the duration of time spent in the facility or location, the individuals they came in contact with, and security systems monitoring data; and facility cleaning data. The system also collects Sensitive Personal Identifiable Information (SPII) such as medical information, including but not limited to, dates and results of any: Expected or confirmed medical testing (*e.g.,* temperature readings, viral or bacterial exposure testing, antibody testing) performed in relation to a public health emergency; symptoms consistent with a public health emergency; potential or actual exposure to a public health emergency contaminant; immunizations and vaccination information; or other medical history related to the treatment of a public health emergency contaminant. The system may also collect information, including but not limited to, on: Recent travel details (including dates, locations, carriers); EPA staff certifications relating to dependent care obligations or whether EPA staff are in a high-risk category regarding a public health emergency contaminant; name and contact information of EPA staff assigned to track and respond to an individual's case; date and time of information entry; contents of communications between assigned EPA staff and affected individuals; and case status.

RECORD SOURCE CATEGORIES:

The information in this system is collected from the individual, the individual's manager, and from the individual's emergency contact. When necessary, for non-EPA personnel, information may also be collected from the individual's employer, grantee organization, other federal agencies, or similar designated external points of contact. Information is also collected from security systems monitoring access to Agency facilities (such as video surveillance and key card logs), human resources systems, emergency notification systems, and federal, state, and local agencies assisting with the response to a public health emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The following routine uses apply to this system because the use of the record is necessary for the efficient conduct of government operations. The routine uses are related to and compatible with the original purpose for which the information was collected. Routine uses *I* and *J* are required under OMB M–17–12.

A. Disclosure for Law Enforcement Purposes.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information.

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Congressional Offices.

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

D. Disclosure to Department of Justice.

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

- The Agency, or any component thereof;
- Any employee of the Agency in his or her official capacity;
- Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or

The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation.

E. Disclosure to the National Archives.

Information may be disclosed to the National Archives and Records Administration in records management inspections.

F. Disclosure to Contractors, Grantees, and Others.

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the

performance of their duties or activities for the Agency.

G. *Disclosures for Administrative Claims, Complaints and Appeals.*

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

H. Disclosure in Connection With Litigation.

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the EPA, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

I. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information.

To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

J. Disclosure To Assist Another Agency in Its Efforts To Respond to a Breach.

To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

K. Disclosure to a Public Health Authority.

To Federal agencies such as the Department of Health and Human Services (HHS), State and local health departments, and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with exposures to communicable diseases, and to satisfy mandatory reporting requirements when applicable.

L. Disclosure to Governmental Organization.

To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, to the extent permitted by law, and in consultation with legal counsel, for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats.

M. Disclosure to Emergency Contacts.

To a potentially affected individual's emergency contact for purposes of locating the individual to communicate that they may have been exposed to a public health emergency contaminant in an EPA location or while otherwise present during official EPA business.

N. Disclosure for Contact Tracing.

To affected individuals and/or potentially affected individuals, and/or, when needed, to the (potentially) affected individual's employer, grantee organization, federal agency to whom the individual is contracted, or other similar designated external points of contact, information necessary for contact tracing. For example: Informing an individual that they were exposed to an affected individual or public health emergency contaminant in an EPA location or while otherwise present during EPA business, and the timing and location of the exposure; or contacting the employer of a potentially affected individual in the course of trying to contact the potentially affected individual themselves.

Contact tracing is defined as: Identification, monitoring, and support of an affected individual (an individual in an EPA location with confirmed or probable exposure to a public health emergency contaminant), and identification and contact of a potentially affected individual (an individual who was in contact with an affected individual or exposed to a public health emergency contaminant while in an EPA location), the same definition as above in Supplemental Information.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically on computer storage devices such as computer tapes and disks, or on paper. The computer storage devices are managed by the EPA, Office of Mission Support, 1301 Constitution Ave. NW, Washington, DC 20460. Backup files will be maintained at a disaster recovery site. Computer records are maintained in a secure password-protected environment. Access to computer records is limited to those who have a need to know. Permission level assignments will allow users access only to those functions for which they are authorized. All records are maintained in secure, access-controlled areas or buildings.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by any data category in the system (*e.g.,* name, office, supervisor, date of medical testing, assigned EPA staff). Records are only retrievable by authorized EPA staff (who are EPA employees and/or contractors) and retrieval methods are limited by permission levels as described below under *Technical Safeguards.*

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

EPA will retain and dispose of these records in accordance with the National Archives and Records Administration General Records Schedule. EPA–89 follows the EPA Records Policy for retention and disposal, per schedule 1012 (Information and Technology Management) and schedule 1049 (Information Access and Protection Records). The schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including log-in files, audit trail files, and system usage files. Records in EPA–89 will be deleted or destroyed when the Agency determines they are no longer needed for administrative, legal, audit, or other purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect PII and SPII in EPA–89 are commensurate with those required for an information

system rated moderate for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800–53, ''Recommended Security Controls for Federal Information Systems,'' Revision 4.

Administrative Safeguards.

EPA staff must complete annual agency training for Information Security and Privacy. EPA instructs staff to lock and secure their computers when unattended.

Technical Safeguards.

The system administrator, an EPA staff member, authorizes appropriate permission levels for authorized EPA staff. Permission level assignments allow authorized users to access only those system functions and records specific to their Agency work need. EPA also has technical security measures including restrictions on computer access to authorized individuals and required use of a personal identity verification (PIV) card and password.

Physical Safeguards.

EPA equipment used for EPA–89 is located in the Federal cloud space not connected to other federal systems. Only authorized employees have access to this information in the Federal space.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURES:

Any individual who wishes to know whether this system of records contains a record about themselves, and to obtain a copy of any such record(s), should make a written request to the Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, *privacy@epa.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–13989 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2011–0096; FRL–10025–76–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Cross-Media Electronic Reporting Rule (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Cross-Media Electronic Reporting Rule (EPA ICR Number 2002.08, OMB Control Number 2025–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act . This is a proposed extension of the ICR, which is currently approved through August 31, 2021. Public comments were previously requested via the **Federal Register** on January 15, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OEI–2011–0096, online using *www.regulations.gov* (our preferred method), *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Shirley Miller or Dipti Singh, Information Exchange Services Division, Office of Information Management, Office of Mission Support (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–2908 or 202–566–0739, respectively; email address: *miller.shirley@epa.gov* or *singh.dipti@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The scope of this ICR is the electronic reporting components of CROMERR, which is designed to: (i) Allow EPA to comply with the Government Paperwork Elimination Act of 1998; (ii) provide a uniform, technology-neutral framework for electronic reporting across all EPA programs; (iii) allow EPA programs to offer electronic reporting as they become ready for CROMERRR; and (iv) provide states with a streamlined process—together with a uniform set of standards—for approval of their electronic reporting provisions for all their EPA-authorized programs. Responses to the collection of information are voluntary. In order to accommodate CBI, the information collected must be in accordance with the confidentiality regulations set forth in 40 CFR part 2, subpart B. Additionally, EPA will ensure that the information collection procedures comply with the Privacy Act of 1974 and the OMB Circular 108.

Form Numbers: None.

Respondents/affected entities: Entities that report electronically to EPA and state, tribal, or local government authorized programs; and state, tribal, and local government authorized programs implementing electronic reporting.

Respondent's obligation to respond: Voluntary, required to obtain or retain a benefit (Cross-Media Electronic Reporting Rule (CROMERR) established to ensure compliance with the Government Paperwork Elimination Act (GPEA)).

Estimated number of respondents: 132,724 (total).

Frequency of response: On occasion.

Total estimated burden: 81,985 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,710,366 (per year), including $3,620,310 in annualized labor costs and $1,090,056 in annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 4,569 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The decrease in respondent burden can be attributed primarily to two reasons. First, over the past three years, the Agency made improvements to CDX to enhance efficiencies in end-user registration, integration, and Help Desk support. These improvements resulted in reduced burden to respondents. Second, through technological improvements, the Agency now is able to obtain real world data via Google Analytics on the frequency and amount of time a respondent spends accessing CDX web pages and features. Based on this information, EPA has revised the burden estimates associated with some of the CDX registration and identity proofing activities. The Agency believes that these revised burden estimates more accurately reflect the resources spent by respondents conducting electronic reporting activities under CROMERR. Note that the decrease in respondent burden described above was offset by an almost two-fold increase in the number of respondents that report to state, tribal, and local electronic document receiving systems. In developing this ICR, EPA revised the approach used to estimate the number of these reporters. The revised approach uses shared CROMERR services solution data to supplement estimates obtained based on analysis of respondent universe growth rates in EPA program ICRs, which was the previous approach used to estimate number of reporters. The overall change in respondent burden is considered an ''adjustment,'' because it results from changes in the respondent universe and hourly burden estimates used in the development of the ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–13950 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0408; FRL–10025–72–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's WaterSense Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), EPA's WaterSense Program (EPA ICR Number 2233.08, OMB Control Number 2040–0272) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested via the **Federal Register** on February 24, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OW–2006–0408 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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.

FOR FURTHER INFORMATION CONTACT: Tara O'Hare, WaterSense Branch, Water Infrastructure Division, Office of Wastewater Management, Office of Water, (Mail Code 4204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8836; email address: *ohare.tara@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: WaterSense is a voluntary program designed to promote use of water-efficient products and services via a common label. The label provides an incentive for manufacturers and builders to design, produce, and market water-efficient products and homes. Data collected under this ICR will assist WaterSense in demonstrating results and carrying out evaluation efforts to ensure continual program improvement. Shipment and sales data submitted by WaterSense manufacturer and retailer/distributor partners are collected as confidential business information (CBI) using the procedures outlined in the WaterSense CBI security plan under the Clean Water Act.

As a terms of clearance for the previous ICR, EPA was required to address comments on an April 2020 **Federal Register** notice (85 FR 20268) that sought input on whether and how the program could better understand and collect information on consumer satisfaction with labeled products. As summarized in the supporting statement, there was no support for conducting a survey or study on consumer satisfaction for use in future product reviews. There was, however, support for a general survey to provide information to improve awareness of the WaterSense label, which is covered under this ICR.

Form Numbers

- *Partnership Agreements:* Builders 6100–19; Licensed Certification Providers 6100–20; Manufacturers 6100–13; Professional Certifying Organizations 6100–07; Promotional partners 6100–06; Retailers/distributors 6100–12

- Application for Professional Certifying Organization Approval *6100–X3*
- *Annual Reporting Forms:* Builders 6100–09; Professional Certifying Organizations 6100–09; Promotional partners 6100–09
- *Annual Reporting Forms—Online and Hard-copy Confidential Business Information (CBI) Forms:* Plumbing Manufacturers 6100–09; Non-plumbing Manufacturers 6100–09; Retailers/Distributors 6100–09
- Provider Quarterly Reporting Form 6100–09
- *Award Application Forms:* Builders 6100–17; Licensed Certification Providers 6100–17; Manufacturers 6100–17; Professional Certifying Organizations 6100–17; Promotional Partners 6100–17; Retailers/Distributors 6100–17
- Consumer Awareness Survey *6100–X2*

Respondents/affected entities: Respondents will consist of WaterSense partners and participants in the consumer survey. WaterSense partners include product manufacturers; professional certifying organizations; retailers; distributors; utilities; federal, state, and local governments; home builders; licensed certification providers; and non-governmental organizations (NGOs).

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 2,561 (total).

Frequency of response: Once a prospective partner organization reviews WaterSense materials and decides to join the program, it will submit the appropriate Partnership Agreement for its partnership category (this form is only submitted once). Professional Certifying Organizations must include additional documentation to begin their partnership by completing an Application for Professional Certifying Organization Approval (this form is only submitted once). Each year, EPA also asks partners to submit an Annual Reporting Form and Awards Application (voluntarily at the partner's discretion). Licensed certification providers for WaterSense-labeled new homes are asked to submit a Provider Quarterly Reporting Form four times each year. EPA also may conduct two Consumer Awareness Surveys over the three-year period of the ICR.

Total estimated burden: 3,212 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $293,189 per year, includes $905 annualized operation & maintenance costs.

Changes in the estimates: There is no change in burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–13946 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10025–40–OP]

Request for Nominations for the Science Advisory Board; PFAS Review Panel

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a Panel to review draft EPA documents that are being developed to support EPA's National Primary Drinking Water Rulemaking for per- and polyfluoroalkyl substances (PFAS). These draft documents will describe EPA's prepared analyses of health effects data that will inform the derivation of proposed Maximum Contaminant Level Goals for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). Additionally, the documents will include elements from EPA's assessment of the health risk reduction benefits of potential reductions in drinking water concentrations of PFOA and PFOS for targeted health endpoints. The documents will also include a framework for estimating health risks associated with PFAS mixtures.

DATES: Nominations should be submitted by July 21, 2021 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice and request for nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board via telephone/voice mail (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and related regulations. The SAB Staff Office is forming an expert panel, the SAB PFAS Review Panel, under the auspices of the Chartered SAB. The SAB PFAS Review Panel will provide advice through the chartered SAB. The SAB and the SAB PFAS Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB PFAS Review Panel will conduct the review of draft EPA documents that are being developed to support EPA's National Primary Drinking Water Rulemaking for per- and polyfluoroalkyl substances (PFAS) prepared by the EPA's Office of Ground Water and Drinking Water (OGWDW) and Office of Science and Technology (OST).

EPA has made final determinations to regulate two contaminants, perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). EPA is currently moving forward to implement the national primary drinking water regulation development process for PFAS. The Regulatory Determinations outline avenues that the agency is considering to further evaluate additional PFAS chemicals and provide flexibility for the agency to consider groups of PFAS as supported by the best available science.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: *Toxicology, specifically: Reproductive/developmental, hepatic, immunology and neurotoxicology; epidemiology with expertise in: Immunology, endocrinology, reproductive/developmental and cardiology; physiologically-based pharmacokinetic (PBPK) modeling; physician/clinician with a focus on cardiology; risk assessment; toxicity of chemical mixtures; economist with expertise in health related benefit cost analysis and valuing avoided adverse health outcomes; dose response relationships in economic models.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being

Formed,'' provided on the SAB website (see the ''Nomination of Experts'' link under ''Current Activities'' at *http://www.epa.gov/sab*). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability or ethnicity. Nominations should be submitted in time to arrive no later than July 21, 2021.

The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes: Current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the Panel on the SAB website at *http://www.epa.gov/sab.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form is required and allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *http://www.epa.gov/sab.* This form should not be submitted as part of a nomination.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB website at *http://www.epa.gov/sab.*

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2021–13857 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0287; EPA–HQ–OPP–2021–0288; FRL–10022–67]

Agency Information Collection Activities; Proposed Renewal of Two Currently Approved Collections; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit requests to renew two currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities that are summarized in this document. The ICRs and accompanying material are available for public review and comment in the relevant dockets identified in this document for the ICR.

DATES: Comments must be received on or before August 30, 2021.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the corresponding ICR as identified in this document, online using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division 7101M, Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates 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 submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Submit your comments by the deadline identified under **DATES**.

6. Identify the docket ID number assigned to the ICR action in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

III. What do I need to know about the PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

IV. Which ICRs are being renewed?

EPA is planning to submit two currently approved ICRs to OMB for review and approval under the PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

A. Docket ID Number EPA–HQ–OPP–2021–0288

Title: Certification of Pesticide Applicators.

ICR number: EPA ICR No. 0155.14.

OMB control number: OMB Control No. 2070–0029.

ICR status: The approval for this ICR is scheduled to expire on December 31, 2022.

Abstract: EPA administers certification programs for pesticide applicators under section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA allows EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. The regulations in 40 CFR part 171 include procedures for certification programs for States, Federal agencies, Indian tribes, or U.S. territories who wish to develop and implement their own certification plans and programs, after obtaining EPA approval. This ICR addresses the paperwork activities performed by businesses, individuals and regulators to comply with training and certification requirements associated with applicators of restricted use pesticides (RUPs). Because of the potential of improperly applied RUPs to harm human health or the environment, pesticides under this classification may be purchased and applied only by ''certified applicators'' or by persons under the direct supervision of certified applicators. To become a certified applicator, a person must meet certain standards of competency; these standards are met through completion of a certification program or test. The additional information requirements contained in the January 4, 2017 final rule (82 FR 952; RIN 2070–AJ20) that amended the regulations at 40 CFR part 171 are addressed in another ICR that is currently approved under OMB Control No. 2070–0196.

All 50 states, the District of Columbia, American Samoa, Cheyenne River Sioux, Guam, Commonwealth of the Northern Mariana Islands, Oglala Sioux, Puerto Rico, Republic of Palau, Shoshone-Bannock Tribe Affiliated Tribes and U.S. Virgin Islands as well as the U.S. Department of Defense, the U.S. Department of the Interior, the U.S. Department of Energy and the U.S. Department of Agriculture (USDA)(USDA, APHIS/PPQ and USDA Forest Service) administer applicator certification programs within their jurisdictions, but each agency's certification plan must be approved by EPA before it can be implemented. Agencies authorized by EPA to administer a certification program are collectively referred to in this document as ''authorized agencies.'' Currently all 50 states, the District of Columbia, 6 territories, 4 tribes and 5 federal agencies are authorized to run their own certification programs. Under authorized agencies' certification programs, dealerships of RUP are not required to report their dealership information and RUP sales directly to EPA, and such information is not included in the paperwork burden estimates of this ICR.

In areas where no authorized agency has jurisdiction, EPA may administer a certification program directly, called a Federal program. Federal certification programs require RUP dealers to maintain records of RUP sales and to report and update their names and addresses with the pesticide regulatory agency for enforcement purposes. Starting in 2007 and in 2014 respectively, the Agency implemented EPA-administered applicator certification programs for Indian Country and for Navajo Nation (79 FR 7185–89). Under the EPA plan for Indian Country, dealerships operating in Indian Country are required to report their dealership and individual business names and addresses to EPA Regional offices.

This ICR also addresses how registrants of certain pesticide products are expected to perform specific, special paperwork activities, such as training and recordkeeping, in order to comply with the terms and conditions of the pesticide registration (*e.g.,* registrants of anthrax-related pesticide products that assert claims to inactivate Bacillus anthracis (anthrax) spores). Paperwork activities associated with the use of such products are conveyed specifically as a condition of the registration.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,379,443.81 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include pesticide applicators, administration of certification programs by States/Tribal lead agencies (authorized agencies), individuals or

entities engaged in activities related to the registration of a pesticide product, and RUP dealers (only for EPA administrated programs).

Estimated total number of potential respondents: 444,639 (total).

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 1,379,444 hours (annual).

Estimated total annual costs: $57,047,143.94. This includes an estimated burden cost of $57,047,143.94 and an estimated cost of $0 for non-burden hour paperwork costs, *e.g.,* investment or maintenance and operational costs.

Changes in the estimates from the last approval: The renewal of this ICR will result in neither a decrease nor increase of hours in the total estimated respondent burden identified in the currently approved ICR. Since the Agency is renewing this ICR as is, the total estimated respondent burden for this renewal ICR remains the same at 59,190 hours. The only adjustments calculated is the cost in burden which is made to reflect the latest wage labor rates (BLS 2019). These changes are adjustments.

In addition, OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. EPA intends to update this Supporting Statement during the comment period to reflect the 18-question format, and has included the questions in an attachment to this Supporting Statement. In doing so, the Agency does not expect the change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

B. Docket ID Number EPA–HQ–OPP–2021–0287

Title: Pesticides; Certification of Pesticide Applicators; Final Rule [RIN 2070–AJ20].

ICR number: EPA ICR No. 2499.03.

OMB control number: OMB Control No. 2070–0196.

ICR status: The approval for this ICR is scheduled to expire on February 28. 2022.

Abstract: This ICR amendment covers the revisions contained in thea final rule ''Certification of Pesticide Applicators'' (Certification rule) at 40 CFR part 171, which regulates the certification of applicators of RUPs. This ICR estimates the incremental burden of revised requirements applicable under the PRA, that are not already included in the ICR ''Certification of Pesticide Applicators'' covering 40 CFR part 171 prior to the new final rule. That ICR, which this ICR amends, was currently-approved by the OMB at the time this ICR was submitted to OMB with the final rule, and is termed the ''existing ICR'' in this document.

The existing regulation (prior to the new final rule) has provisions for states, the District of Columbia (DC), tribes, territories, and federal agencies that wish to certify applicators to use RUPs, to submit certification plans to EPA for review and approval, and requirements to report specific information related to applicator certification activities annually. The regulation has standards of competency for persons who are certified to apply RUPs, as well as requirements related to noncertified applicators who apply RUPs under the direct supervision of certified applicators. In addition, it already requires pesticide retail dealers to maintain records of RUP sales in areas where the EPA administers an applicator certification program.

The final rule is intended to improve the competency of certified applicators of RUPs and noncertified applicators who apply RUPs under the direct supervision of certified applicators. The final rule includes new and revised standards for certification for commercial and private applicators, provisions for recertification of applicators, and training for noncertified applicators applying RUPs under the supervision of certified applicators. The revisions also include changes to improve the clarity and organization of the rule and overall program operation. The proposed changes to the regulation are intended to ensure that all persons who use RUPs—*i.e.,* private applicators, commercial applicators, and noncertified applicators using RUPs under the direct supervision of certified applicators—are competent to use RUPs in a manner that will not result in unreasonable adverse effects to themselves, others, or the environment.

This amendment ICR estimates the burden and costs of the final rule changes related to information collection and includes: Training for noncertified applicators applying RUPs under the direct supervision of certified applicators, recordkeeping of the noncertified applicator training, recordkeeping of RUP sales by pesticide dealerships under certification programs not administered by the EPA, and burden to states, DC, territories, tribes, and federal agencies to revise certification plans as needed to comply with the revised requirements.

The following sections provide a general overview of the paperwork requirements in the final rule; burden and cost estimates are found in section 6.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,280,849 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include Agricultural Establishments, Nursery and Tree Production, Agricultural Pest Control and Pesticide Handling on Farms and Crop Advisors, Agricultural (animal) Pest Control (livestock spraying), Forestry Pest Control, Wood Preservation Pest Control, Pesticide Registrants, Pesticide Dealers, Research & Demonstration Pest Control and Crop Advisor, Ornamental & Turf, Rights-of-Way Pest Control, Environmental Protection Program Administrators, and Governmental Pest Control Programs.

Estimated total number of potential respondents: 1,860,974.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 195.

Estimated total annual burden hours: 2,280,849 hours.

Estimated total annual costs: $108,061,898. This includes an estimated burden cost of $108,061,898 and an estimated cost of $0 for non-burden hour paperwork costs, *e.g.,* investment or maintenance and operational costs.

Changes in the estimates from the last approval: The renewal of this ICR will result in neither a decrease nor increase of hours in the total estimated respondent burden identified in the currently approved ICR. Since the Agency is renewing this ICR as is, the total estimated respondent burden for this renewal ICR remains the same at 2,280,849 hours. The only adjustments calculated is the cost in burden which is made to reflect the latest wage labor rates (BLS 2019). These changes are adjustments.

In addition, OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. EPA intends to update this Supporting Statement

during the comment period to reflect the 18-question format, and has included the questions in an attachment to this Supporting Statement. In doing so, the Agency does not expect the change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

IV. What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 24, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–13894 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R9–2021–04; FRL–10023–16–Region 9]

Commonwealth Utilities Corporation Power Plant Site, Rota, Commonwealth of the Northern Mariana Islands; Notice of Proposed CERCLA Settlement Agreement and Order on Consent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement with Commonwealth Utilities Corporation (CUC), for payment of costs of a removal action at a power plant owned and operated by CUC on the Island of Rota in the Commonwealth of the Northern Mariana Islands (CNMI). The Environmental Protection Agency (EPA) enters the settlement pursuant to Section 122(h)(1) of CERCLA. The settlement provides for CUC's payment of $315,000, plus interest, towards costs incurred by EPA and the United States in removing polychlorinated biphenyl wastes from the CUC power plant in Rota during 2011–2013. The settlement includes a covenant not to sue pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following the date of publication of this Notice in the **Federal Register**, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before July 30, 2021.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from David H. Kim, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3882. Comments should reference the CUC Power Plant Removal Site, Rota, CNMI and should be addressed to Mr. Kim at the above address.

FOR FURTHER INFORMATION CONTACT: David H. Kim, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3882; fax: (417) 947–3570; email: *kim.david@epa.gov.*

Enrique Manzanilla,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 2021–13886 Filed 6–29–21; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3002]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995.

DATES: Comments must be received on or before July 30, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or to Tom Fitzpatrick *tom.fitzpatrick@exim.gov,* 202–565–3642. Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

Comments submitted in response to this notice may be made available to the public through the *WWW.REGULATIONS.GOV.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tom Fitzpatrick *tom.fitzpatrick@exim.gov,* 202–565–3642.

SUPPLEMENTARY INFORMATION: The application tool can be reviewed at: *https://www.exim.gov/sites/default/files//forms/eib92-29.pdf.*

The Export-Import Bank of the United States, pursuant to the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635, et seq.), facilitates the finance of the export of U.S. goods and services. The ''Report of Premiums Payable for Exporters Only'' form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers.

Title and Form Number: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.

Type of Review: Renewal.

Need and Use: The ''Report of Premiums Payable for Exporters Only'' form is used by exporters to report and pay premiums on insured shipments to various foreign buyers under the terms of the policy and to certify that premiums have been correctly computed and remitted. The 'Report of Premiums Payable for Exporters Only' is used by EXIM to determine the eligibility of the shipment(s) and to calculate the premium due to EXIM for

its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Monthly Number of Respondents: 2,600.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 7,800 hours.

Frequency of Reporting or Use: Monthly.

Government Expenses:

Reviewing Time per Year: 7,800 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $331,500.

Benefits and Overhead: 20%.

Total Government Cost: $397,800.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–13969 Filed 6–29–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3012]

Agency Information Collection Activities: Comment Request; EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before July 30, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Jean Fitzgibbon, *jean.fitzgibbon@exim.gov,* Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Jean Fitzgibbon. 202–565–3620.

SUPPLEMENTARY INFORMATION: The Export-Import Bank of the United States, pursuant to the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635, *et seq.*), facilitates the finance of the export of U.S. goods and services. The ''Report of Premiums Payable for Exporters Only'' form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers.

The Application for Short Term Letter of Credit Export Credit Insurance Policy is used to determine the eligibility of the applicant and the transaction for EXIM assistance under its insurance program. EXIM customers are able to submit this form on paper or electronically.

Title and Form Number: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: This form is used by a financial institution (or broker acting on its behalf) to obtain approval for coverage of a short-term letter of credit. The information allows the EXIM staff to make a determination of the eligibility of the applicant and transaction for EXIM assistance under its programs.

The application tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib92-34.pdf.*

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 11.

Estimated Time per Respondent: 1 hr.

Annual Burden Hours: 11.

Frequency of Reporting of Use: On occasion.

Government Expenses:

Reviewing Time per Year: 11 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $468 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $561.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–13975 Filed 6–29–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–3011]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before July 30, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov.* (EIB 11–01) By email to Madolyn Phillips, *Madolyn.Phillips@exim.gov,* Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

Comments submitted in response to this notice may be made available to the public through the *www.regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Madolyn Phillips, *Madolyn.Phillips@exim.gov,* 202–565–3701.

SUPPLEMENTARY INFORMATION: The Export-Import Bank of the United States, pursuant to the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635, *et seq.*), facilitates the finance of the export of U.S. goods and services. The ''Report of Premiums Payable for Exporters Only'' form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers.

Title and Form Number: EIB 11–01, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide

an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of April 22, 2021 (86 FR 20494).

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Survey Type: Web based/email based survey; Feedback/Comment Evaluation Form; Detailed Mail Evaluation Form; Telephone; Focus Group.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 10.

Average Number of Respondents per Activity: 467.

Annual Responses: 4,670.

Frequency of Response: Once per request.

Average Minutes per Response: 8.

Burden Hours: 623.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov*. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–13951 Filed 6–29–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0546; FRS 35608]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 30, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0546.

Title: Section 76.59 Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 120 respondents and 130 responses.

Estimated Time per Response: 0.5 to 40 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Total Annual Burden: 958 hours.

Total Annual Cost: $640,150.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Market modification allows the Commission to modify the local television market of a particular commercial television broadcast station to enable commercial television stations, cable operators and satellite carriers to better serve the interests of local communities. Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming. Section 338(l) of the Communications Act (the satellite market modification provision) and Section 614(h)(1)(C) of the Communications Act (the corresponding cable provision) permit the Commission to add communities to or delete communities from a station's local television market following a written request. Furthermore, the Commission may determine that particular communities are part of more than one television market.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2021–13998 Filed 6–29–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 July 15, 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. *Heritage Bank of St. Tammany Employee Stock Ownership Plan, Covington, Louisiana*; to acquire additional voting shares of Heritage NOLA Bancorp, Inc., and thereby indirectly acquire voting shares of Heritage Bank of St. Tammany, both of Covington, Louisiana.

Board of Governors of the Federal Reserve System, June 25, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–13997 Filed 6–29–21; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PCSCOTUS–2021–01; Docket No. PCSCOTUS–2021–0001; Sequence No. 3]

Office of Asset and Transportation Management; Presidential Commission on the Supreme Court of the United States; Notification of Upcoming Public Virtual Meeting and Request for Public Comment

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Request for public comment; meeting notice.

SUMMARY: GSA is accepting written public comments on the work of the Presidential Commission on the Supreme Court of the United States (Commission). Further, GSA is providing notice of an open public virtual meeting of the Commission in accordance with the requirements of the Federal Advisory Committee Act. For information on the topics discussed, please see the **SUPPLEMENTARY INFORMATION** section of this notice. This meeting is open to the public and will be live-streamed at *www.whitehouse.gov/pcscotus/.* Information about the public meeting will be posted at *www.whitehouse.gov/pcscotus/* prior to the meeting.

DATES: The Commission will hold a public virtual meeting on July 20, 2021 from 8:30 a.m. to 6:30 p.m., Eastern Standard Time (EST).

ADDRESSES: This meeting will be conducted virtually on the internet. Interested individuals must register to attend as instructed below.

Procedures for Attendance and Public Comment

Attendance. This meeting is open to the public and the Commission encourages the public's attendance. To attend this public virtual meeting, please send an email with the Subject: Registration. In the body of the email, provide your full name, organization (if applicable), email address, and phone number to the Designated Federal Officer, at *info@pcscotus.gov.* Registration requests must be received by 5:00 p.m. ET, on July 16, 2021. Registrations received after this day/time may not be processed.

Public Comments. Written public comments are being accepted via *http://www.regulations.gov,* the Federal eRulemaking portal throughout the life of the Commission. Written comments on the Commission will be accepted until November 15, 2021. To submit a written public comment, go to *http://www.regulations.gov* and search for PCSCOTUS–2021–0001. Then, click on the ''Comment Now'' button that shows up in the search results. Select the link ''Comment Now'' that corresponds with this notice. Follow the instructions provided on the screen. Please include your name, company name (if applicable), and ''PCSCOTUS–2021–01, Notification of Upcoming Public Virtual Meeting and Request for Public Comment'' on your attached document (if applicable). Public comments meeting our public comment policy, included under **SUPPLEMENTARY INFORMATION**, will be made available for review. Comments provided by 5:00 p.m. ET, on July 16, 2021 will be provided to the Commission members in advance of the July 20 public meeting. Comments submitted after this date will still be provided to the Commission members, but please be advised that Commission members may not have adequate time to consider the comments prior to the meeting.

Special accommodations. For information on services for individuals with disabilities, or to request accommodation of a disability, please contact the Designated Federal Officer at least 10 business days prior to the meeting to give GSA as much time as possible to process the request.

FOR FURTHER INFORMATION CONTACT: For information on the public virtual meeting, contact Dana Fowler, Designated Federal Officer, Office of Government-wide Policy, General Services Administration, at *info@pcscotus.gov,* 202–501–1777.

SUPPLEMENTARY INFORMATION:

Background

The Administrator of GSA established the Commission under the Federal Advisory Committee Act on April 26, 2021 pursuant to Executive Order 14023, *Establishment of the Presidential Commission on the Supreme Court of the United States,* issued on April 9, 2021. Per the executive order, the Commission shall produce a report for the President that includes the following:

(i) An account of the contemporary commentary and debate about the role and operation of the Supreme Court in our constitutional system and about the functioning of the constitutional process by which the President nominates and, by and with the advice and consent of the Senate, appoints Justices to the Supreme Court;

(ii) The historical background of other periods in the Nation's history when the Supreme Court's role and the nominations and advice-and-consent process were subject to critical assessment and prompted proposals for reform; and

(iii) An analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals.

Meeting Agenda

The purpose of this meeting is for the Commissioners to hear testimony from experts. This testimony will be organized into six panels.

- *Panel #1:* Perspectives from Supreme Court Practitioners and Views on the Confirmation Process
- *Panel #2:* Perspectives on Supreme Court Reform I
- *Panel #3:* Perspectives on Supreme Court Reform II
- *Panel #4:* Term Limits and Turnover on the Supreme Court
- *Panel #5:* Composition of the Supreme Court
- *Panel #6:* Closing Reflections on the Supreme Court and Constitutional Governance

Public Comment Policy

The Commission asks that written public comments be respectful and relevant to the work of the Commission. All comments are reviewed before they can be shared with the Commission or posted online. Comments that include the following will not be shared on *Regulations.gov:*

- Vulgar, obscene, profane, threatening, or abusive language; personal attacks of any kind.
- Discriminatory language (including hate speech) based on race, national origin, age, gender, sexual orientation, religion, or disability.
- Endorsements of commercial products, services, organizations, or other entities.
- Repetitive posts (for example, if you submit the same material multiple times).
- Spam or undecipherable language (gratuitous links will be viewed as spam).
- Copyrighted material.
- Links to external sites.
- Images or videos.
- Solicitation of funds.
- Procurement-sensitive information.
- Surveys, polls, and questionnaires subject to the Office of Management and Budget Paperwork Reduction Act clearance.
- Personally Identifiable Information (PII) or Sensitive Information (SI).
- Off-topic posts.
- Media inquiries.

Thank you for your interest in the Presidential Commission on the Supreme Court of the United States. We look forward to hearing from you.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2021–13999 Filed 6–29–21; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations for members.

SUMMARY: The National Advisory Council for Healthcare Research and Quality (the Council) is to advise the Secretary of HHS (Secretary) and the Director of the Agency for Healthcare Research and Quality (AHRQ) with respect to activities proposed or undertaken to carry out AHRQ's statutory mission. AHRQ produces evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services and with other

partners to make sure that the evidence is understood and used. Seven current members' terms will expire in November 2021.

DATES: Nominations should be received on or before 60 days after date of publication.

ADDRESSES: Nominations should be sent to Jaime Zimmerman via email at *NationalAdvisoryCouncil@ahrq.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, AHRQ, at (301) 427–1456.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c provides that the Secretary shall appoint to the Council twenty one appropriately qualified individuals. At least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed below. In addition, the Secretary designates, as ex officio members, representatives from other Federal agencies, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. 42 U.S.C. 299c(c)(3).

Seven current members' terms will expire in November 2021. To fill these positions, we are seeking individuals who: (1) Are distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; (2) are distinguished in the fields of health care quality research or health care improvement; (3) are distinguished in the practice of medicine; (4) are distinguished in other health professions; (5) represent the private health care sector (including health plans, providers, and purchasers) or are distinguished as administrators of health care delivery systems; (6) are distinguished in the fields of health care economics, information systems, law, ethics, business, or public policy; and (7) represent the interests of patients and consumers of health care. 42 U.S.C. 299c(c)(2). Individuals are particularly sought with experience and success in these activities. AHRQ will accept nominations to serve on the Council in a representative capacity.

The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected by the Secretary to serve on the Council beginning with the meeting in the spring of 2022. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest. Please note that once a candidate is nominated, AHRQ may consider that nomination for future positions on the Council.

The Department seeks a broad geographic representation. In addition, AHRQ conducts and supports research concerning priority populations, which include: Inner city; rural; low income; minority; women; children; elderly; and those with special health care needs, including those who have disabilities, need chronic care, or need end-of-life health care. See 42 U.S.C. 299(c). AHRQ also includes in its definition of priority populations those groups identified in Section 2(a) of Executive Order 13985 as members of underserved communities: Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Nominations of persons with expertise in health care for these priority populations are encouraged.

Dated: June 24, 2021.

Marquita Cullom,

Acting Director.

[FR Doc. 2021–13966 Filed 6–29–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Head Start Program Performance Standards (OMB #0970–0148)

AGENCY: Office of Head Start, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office Head Start (OHS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the information collection requirements under the Head Start Program Performance Standards (OMB #0970–0148). There are no changes to the information collection.

DATES: Comments due within 30 days of publication. OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: Section 641A of the Head Start Act, 42 U.S.C. 9836A, directs HHS to develop ''scientifically based and developmentally appropriate education performance standards related to school readiness'' and ''ensure that any such revisions in the standards do not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services.'' The Office of Head Start (OHS) announced in the **Federal Register** in 2016 the first comprehensive revision of the Head Start Program Performance Standards (HSPPS) since their original release in 1975. This information collection was approved alongside the final rule for the HSPPS.

This information collection is entirely recordkeeping and does not contain any standardized instruments to provide flexibility for local programs. These records are intended to act as a tool for grantees and delegate agencies to be used in their day-to-day operations. For example, this includes the requirement that programs maintain a waiting list of eligible families. There are no changes to the record keeping requirements.

Respondents: Head Start Grantees. Depending on the standard, the calculated burden hours is based on the individual enrollee (1,054,720), family (956,120), program (3,020), or staff (265,030). In a few cases, only a proportion of one of these may apply.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
1301.6(a)	3,020	1	0.70	2,114	2,114
1302.12(k)	1,054,720	1	.166	175,084	175,084
1302.14(c)	3,020	1	2.00	6,040	6,040
1302.16(b)	3,020	1	5.00	15,100	15,100
1302.33(a)–(b)	1,054,720	1	1.00	1,054,720	1,054,720
1302.33(c)(2)	294,632	1	2.00	589,264	589,264
1302.42(a)–(b)	1,054,720	1	0.66	696,115	696,115
1302.42(e)	3,020	1	0.50	1,510	1,510
1302.47(b)(7)(iv)	3,020	1	0.50	1,510	1,510
1302.53(b)–(d)	3,020	1	0.166	501	501
1302.90(a)	3,020	1	0.50	1,510	1,510
1302.90(b)(1)(i)–(iv), (b)(4)	79,509	1	0.33	26,238	26,238
1302.93(a)	26,503	1	0.25	6,626	6,626
1302.94(a)	3,020	1	0.166	501	501
1302.101(a)(4), 1302.102(b)–(c)	3,020	1	79.00	238,580	238,580
1302.102(d)(3)	110	1	10.00	1,100	1,100
1303.12	3,020	1	0.166	501	501
1303.22–24	956,120	1	0.33	315,520	315,520
1303.42–53	260	1	40.00	10,400	10,400
1303.70(c)	200	1	1.00	200	200
1303.72(a)(3)	3,020	1	2.00	6,040	6,040
1304.13	75	1	60.00	4,500	4,500
1304.15(a)	400	1	0.25	100	100

Estimated Total Annual Burden Hours: 3,153,774.

Authority: 42 U.S.C. 9836A.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–14123 Filed 6–29–21; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1960]

Agency Information Collection Activities; Proposed Collection; Comment Request; MedWatch: The Food and Drug Administration Medical Products Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA's MedWatch adverse experience reporting (AER) program.

DATES: Submit either electronic or written comments on the collection of information by August 30, 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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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–2014–N–1960 for ''MedWatch: The FDA Medical Products Reporting Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential

Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch: The FDA Medical Products Reporting Program

OMB Control Number 0910–0291—Extension

This information collection supports FDA laws and regulations governing adverse event reports and product experience reports for FDA-regulated products. The Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b, 355, 360i, 360l, 379aa, and 393) and the Public Health Service Act (42 U.S.C. 262) authorize FDA to collect adverse event reports and product experience reports from regulated industry and to monitor the safety of drugs, biologics, medical devices, and dietary supplements. These reporting and recordkeeping requirements are found in FDA regulations, discussed in Agency guidance, and included in Agency forms. Although there are no laws or regulations mandating postmarket reporting for medical foods, infant formula, cosmetics, or tobacco products, we encourage voluntary reporting of adverse experiences associated with these products.

To facilitate both consumer and industry reporting of adverse events and experiences with FDA-regulated products, we developed the MedWatch program. The MedWatch program allows anyone to submit reports to FDA on adverse events, including injuries and/or deaths, as well as other product experiences associated with the products we regulate. While the MedWatch program provides for both paper-based and electronic reporting, this information collection covers paper-based reporting. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 329, 600, and 803 (21 CFR 310, 314, 600, and 803), and specified in sections 503B, 760, and 761 of the FD&C Act (21 U.S.C. 353b, 379aa, and 379aa–1). Mandatory reporting of adverse events for human cells, tissues, and cellular- and tissue-based products (HCT/Ps) have been codified in § 1271.350 (21 CFR 1271.350). Other postmarketing reporting associated with requirements found in sections 201, 502, 505, and 701 (21 U.S.C. 321, 352, 355, and 371) of the FD&C Act and applicable to certain drug products with and without approved applications are approved under OMB control number 0910–0230.

Since 1993, mandatory adverse event reporting has been supplemented by voluntary reporting by healthcare professionals, patients, and consumers via the MedWatch reporting process. To carry out its responsibilities, the Agency needs to be informed when an adverse event, product problem, error with use of a human medical product, or evidence of therapeutic failure is suspected or identified in clinical use. When FDA receives this information from healthcare professionals, patients, or consumers, the report becomes data that will be used to assess and evaluate the risk associated with the product. FDA will take any necessary action to reduce, mitigate, or eliminate the public's exposure to the risk through regulatory and public health interventions.

To implement these reporting provisions for FDA-regulated products (except vaccines) during their post-approval and marketed lifetimes, we developed the following three forms, available for download from our website or upon request to the Agency: (1) Form FDA 3500 may be used for voluntary (*i.e.,* not mandated by law or regulation) reporting by healthcare professionals; (2) Form FDA 3500A is used for mandatory reporting (*i.e.,* required by law or regulation); and (3) Form FDA 3500B, available in English and Spanish, is written in plain language and may be used for voluntary reporting (*i.e.,* not mandated by law or regulation) by consumers (*i.e.,* patients and their caregivers). Respondents to the

information collection are healthcare professionals, medical care organizations and other user facilities (*e.g.,* extended care facilities, ambulatory surgical centers), consumers, manufacturers of biological, food products including dietary supplements and special nutritional products (*e.g.,* infant formula and medical foods), cosmetics, drug products or medical devices, and importers.

Use of Form FDA 3500 (Voluntary Reporting)

This voluntary version of the form may be used by healthcare professionals to submit all reports not mandated by Federal law or regulation. Individual healthcare professionals are not required by law or regulation to submit reports to the Agency or the manufacturer, with the exception of certain adverse events following immunization with vaccines as mandated by the National Childhood Vaccine Injury Act of 1986. Reports for vaccines are not submitted via MedWatch or MedWatch forms, but are submitted to the Vaccines Adverse Event Reporting System (VAERS; see *http://vaers.hhs.gov*), which is jointly administered by FDA and the Centers for Disease Control and Prevention.

Hospitals are not required by Federal law or regulation to submit reports associated with drug products, biological products, or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device-related deaths and serious injuries.

Under Federal law and regulation (section 761(b)(1) of the FD&C Act), a dietary supplement manufacturer, packer, or distributor whose name appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States. However, FDA bears the burden to gather and review evidence that a dietary supplement may be adulterated under section 402 of the FD&C Act after that product is marketed. Therefore, the Agency depends on the voluntary reporting by healthcare professionals and especially by consumers of suspected serious adverse events and product quality problems associated with the use of dietary supplements. All dietary supplement reports were originally received by the Agency on paper versions of Form FDA 3500 (by mail or fax). Today, electronic reports may be sent to the Agency via an online submission route called the Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.* In that case, the Form FDA 3500 is not used.

Form FDA 3500 may be used to report to the Agency adverse events, product problems, product use errors, and therapeutic failures. The form is provided in both paper and electronic formats. Reporters may mail or fax paper forms to the Agency. A fillable .pdf version of the form is available at *https://www.accessdata.fda.gov/scripts/medwatch/* or electronically submit a report via the MedWatch Online Voluntary Reporting Form at *https://www.accessdata.fda.gov/scripts/medwatch/.* Reporting is supported for drugs, non-vaccine biologicals, medical devices, food products, special nutritional products, cosmetics, and non-prescription human drug products marketed without an approved application. The paper form may also be used to submit reports about dietary supplements. Electronic reports for dietary supplements may be submitted to the Agency via an online submission route called the Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.* Electronic reports for tobacco products may be submitted to the Agency via the tobacco questionnaire within the online Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.*

Use of Form FDA 3500A—Mandatory Reporting

Drug and Biological Products

Sections 503B, 505(j), and 704 of the FD&C Act (21 U.S.C. 374) require that important safety information relating to all human prescription drug products be made available to FDA in the event it becomes necessary to take appropriate action to ensure protection of the public health. Mandatory reporting of adverse events for HCT/Ps is codified in § 1271.350. Consistent with statutory requirements, information is required to be submitted electronically and therefore we account for most all reports under OMB control number 0910–0645, established to support electronic reporting to our MedWatch program. At the same time, regulations provided for waivers from the electronic submission requirements and we therefore account for paper-based reporting in this information collection.

Medical Device Products

Section 519 of the FD&C Act (21 U.S.C. 360i) requires manufacturers and importers, of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to assure that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. The Safe Medical Device Act of 1990, signed into law on November 28, 1990, amends section 519 of the FD&C Act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under 21 CFR part 803 (part 803). Part 803 mandates the use of the Form FDA 3500A for reporting to FDA on medical devices. While most reporting associated with medical device products is covered under OMB control number 0910–0437, we retain coverage for paper-based adverse experience report submissions in this collection.

Dietary Supplements

Section 502(x) in the FD&C Act implements the requirements of The Dietary Supplement and Nonprescription Drug Consumer Protection Act, which became law (Pub. L. 109–462) on December 22, 2006. These requirements apply to manufacturers, packers, and distributors of nonprescription human drug products marketed without an approved application. The law requires reports of serious adverse events to be submitted to the Agency by manufacturers of dietary supplements. Electronic reports for dietary supplements may be submitted using the Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.* Paper-based dietary supplement reports may be submitted using the MedWatch Form FDA 3500A.

Use of Form FDA 3500B—Consumer Voluntary Reporting

This voluntary version of the form may be used by consumers, patients, or caregivers to submit reports not mandated by Federal law or regulation. Individual consumers, patients, or caregivers are not required by law or regulation to submit reports to the Agency or the manufacturer. FDA supports and encourages direct reporting to the Agency by consumers of suspected adverse events and other product problems associated with human medical products, food, dietary supplements, and cosmetic products and invite these respondents to visit our

website at *https://www.fda.gov/safety/report-problem-fda* for more information. Since the inception of the MedWatch program in July 1993, the program has been promoting and facilitating voluntary reporting by both the public and healthcare professionals. FDA has further encouraged voluntary reporting by requiring inclusion of the MedWatch toll-free phone number or the MedWatch internet address on all outpatient drug prescriptions dispensed, as mandated by section 17 of the Best Pharmaceuticals for Children Act (Pub. L. 107–109).

Section 906 of the FDA Amendments Act amended section 502(n) of the FD&C Act, mandating that published direct-to-consumer advertisements for prescription drugs include the following statement printed in conspicuous text (this includes vaccine products): ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *https://www.fda.gov/medwatch,* or call 1–800–FDA–1088.'' Most private vendors of consumer medication information, the drug product-specific instructions dispensed to consumers at outpatient pharmacies, remind patients to report ''side effects'' to FDA and provide contact information to permit MedWatch reporting.

Since 2013, FDA has made available the 3500B form. Proposed during the previous authorization in 2012, the 3500B form is a version of the 3500 form that is tailored for consumers and written in plain language in conformance with the Plain Writing Act of 2010 (*https://www.govinfo.gov/content/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf*). The 3500B form evolved from several iterations of draft versions, with input from human factors experts, from other regulatory agencies and with extensive input from consumer advocacy groups and the public. Since 2019, the 3500B form has been available in Spanish at *https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverse-event-reporting-program/reporting-serious-problems-fda* and available to upload electronically since 2021 at *https://www.accessdata.fda.gov/scripts/medwatch/index.cfm?action=reporting.spanish.*

Form FDA 3500B, may be used to report adverse events, product problems, product use errors and problems after switching from one product maker to another maker to the Agency. The form is provided in both paper and electronic formats. Respondents may submit reports by mail or fax paper forms to the Agency or electronically submit a report via the MedWatch Online Voluntary Reporting Form at *https://www.accessdata.fda.gov/scripts/medwatch/.* A fillable .pdf version of the form, available at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM349464.pdf* may be downloaded, completed, and mailed or faxed to the Agency. Reporting is supported for drugs, non-vaccine biologicals, medical devices, food products, special nutritional products, cosmetics, and non-prescription human drug products marketed without an approved application. The paper form may also be used to submit reports about dietary supplements. Electronic reports for dietary supplements may be submitted to the Agency via an online submission route called the Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.* Electronic reports for tobacco products may be submitted to the Agency via the tobacco questionnaire within the online Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/.*

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center or 21 CFR section and/or FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research/Center for Drug Evaluation and Research: Form 3500	14,727	1	14,727	0.66 (40 minutes)	9,720
Form 3500A(§§ 310.305, 314.80, 314.98, 600.80, and 1271.350)	599	98	58,702	1.21	71,029
Form 3500A (§ 310.305 outsourcing facilities)	50	2	100	1.21	121
Center for Devices and Radiological Health: Form 3500	5,233	1	5,233	0.66 (40 minutes)	3,454
Form 3500A (part 803)	2,277	296	673,992	1.21	815,530
Center for Food Safety and Applied Nutrition: Form 3500	1,793	1	1,793	0.66 (40 minutes)	1,183
Form 3500A	1,659	1	1,659	1.21	2,007
Center for Tobacco Products: Form 3500	39	1	39	0.66 (40 minutes)	26
All Centers: Form 3500B	13,750	1	13, 750	0.46 (28 minutes)	6,325
Written requests for temporary waiver under § 329.100(c)(2)	1	1	1	1	1
Total					909,396

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We are retaining the currently approved burden estimates for the information collection.

Dated: June 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13943 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–1340]

Determination of Regulatory Review Period for Purposes of Patent Extension; AXONICS SACRAL NEUROMODULATION SYSTEM

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AXONICS SACRAL NEUROMODULATION SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department

of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 27, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–1340 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; AXONICS SACRAL NEUROMODULATION SYSTEM.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until FDA grants permission to market the device. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device AXONICS SACRAL NEUROMODULATION SYSTEM. AXONICS SACRAL NEUROMODULATION SYSTEM is indicated for treatment of chronic fecal incontinence in patients who have failed or are not candidates for more conservative treatments. Subsequent to this approval, the USPTO received a patent term restoration application for AXONICS SACRAL NEUROMODULATION SYSTEM (U.S. Patent No. 7,331,499) from Alfred E. Mann Foundation for Scientific

Research, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 14, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of AXONICS SACRAL NEUROMODULATION SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AXONICS SACRAL NEUROMODULATION SYSTEM is 681 days. Of this time, 494 days occurred during the testing phase of the regulatory review period, while 187 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* October 27, 2017. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) for human tests to begin, as required under section 520(g) of the FD&C Act, became effective October 27, 2017.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* March 4, 2019. The applicant claims March 1, 2019, as the date the premarket approval application (PMA) for AXONICS SACRAL NEUROMODULATION SYSTEM (PMA 190006) was initially submitted. However, FDA records indicate that PMA 190006 was submitted on March 4, 2019.

3. *The date the application was approved:* September 6, 2019. FDA has verified the applicant's claim that PMA 190006 was approved on September 6, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 434 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 25, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13972 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0515]

Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarketing Adverse Experience Reporting and Recordkeeping for Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on postmarketing reporting and recordkeeping of adverse experiences for drug and biological products.

DATES: Submit either electronic or written comments on the collection of information by August 30, 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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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.

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- 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–0515 for ''Postmarketing Adverse Experience Reporting and Recordkeeping for Drug and Biological Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarketing Adverse Experience Reporting and Recordkeeping for Drug and Biologics Products

OMB Control Number 0910–0230—Extension

This information collection supports statutory provisions set forth in the Federal Food, Drug, and Cosmetic Act (FD&C Act) regarding the monitoring of FDA-regulated products. Specifically, FDA must be promptly informed of adverse experiences associated with the use of marketed drugs, including human drugs and biological products. Regulations in §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) implement reporting and recordkeeping requirements that enable FDA to take action to protect the public health from adverse drug experiences. All applicants who have received marketing approval for drug products are required to report serious, unexpected adverse drug experiences (15-day ''Alert reports''), as well as followup reports (§ 314.80(c)(1)) to FDA. This includes reports of all foreign or domestic adverse experiences as well as those based on information from applicable scientific literature and certain reports from postmarketing studies. Section 314.80(c)(1)(iii) pertains to such reports submitted by nonapplicants.

Under § 314.80(c)(2), applicants must provide periodic reports of adverse drug experiences. For the reporting interval, a periodic report includes reports of serious, expected adverse drug experiences, all nonserious adverse drug experiences, and an index of these reports; a narrative summary and analysis of adverse drug experiences; an analysis of the 15-day Alert reports submitted during the reporting interval; and a history of actions taken because of adverse drug experiences. Under § 314.80(j), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs), manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports (§ 310.305(c)). Section 310.305(c)(5) pertains to the submission of followup reports to reports forwarded to the manufacturers, packers, and distributors by FDA. Under § 310.305(g), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

Section 760 of the FD&C Act (21 U.S.C. 379aa) also provides for mandatory safety reporting for over-the-counter (OTC) human drug products not subject to applications approved under section 505 of the FD&C Act (21 U.S.C. 355) (NDAs or ANDAs). These requirements apply to all OTC drug products marketed without an approved application, including those marketed under the OTC Drug Monograph Review process (whether or not subject to a final monograph), those marketed outside the monograph system, and including those that have been discontinued from marketing but for which a report of an adverse event was received. Under 21 CFR 329.100, respondents must submit reports according to section 760 of the FD&C Act in an electronic format.

To assist respondents with implementation of section 760 of the FD&C Act, FDA developed the guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products

Marketed Without an Approved Application,'' available at *https://www.fda.gov/media/77193/download.* The guidance document discusses what should be included in a serious adverse drug event report submitted under section 760(b)(1) of the FD&C Act, including how to submit these reports and followup reports under section 760(c)(2) of the FD&C Act.

Section 760(e) of the FD&C Act also requires that responsible persons maintain records of nonprescription drug adverse event reports, whether the event is serious or not, for a period of 6 years. FDA's guidance recommends that respondents maintain records of efforts to obtain the minimum data elements for a report of a serious adverse drug event and any followup reports.

The primary purpose of FDA's adverse drug experience reporting system is to enable identification of signals for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provide the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning), to make decisions about risk evaluation and mitigation strategies or the need for postmarketing studies or clinical trials and, when necessary, to initiate removal of a product from the market.

In addition, this information collection includes an International Council for Harmonisation (ICH) guidance for industry entitled ''Providing Postmarketing Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report),'' available at *https://www.fda.gov/media/85520/download.* The guidance describes the conditions under which applicants may use the ICH3 E2C(R2) Periodic Benefit-Risk Evaluation Report format for certain types of adverse event reporting. FDA regulations in §§ 314.80(c)(2) and 600.80(c)(2) (21 CFR 600.80(c)(2)) require applicants to submit postmarketing periodic safety reports for each approved application. The reports must be submitted quarterly for the first 3 years following the U.S. approval date and annually thereafter and must contain the information described in §§ 314.80(c)(2)(ii) and 600.80(c)(2)(ii) (the information collection associated with 21 CFR part 600—Biological Products, is approved under OMB control number 0910–0308). The Agency guidance assists respondents with satisfying the regulatory requirements in an alternative format, noting that the process differs depending on whether an applicable periodic safety update report (PSUR) waiver is in place. The information collection burden for waivers of a PSUR are currently approved in OMB control number 0910–0771; however, it is being consolidated with this information collection for administrative efficiency.

Similarly, the information collection accounts for burden that may be applicable to the guidance document, ''Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During a Pandemic,'' available at *https://www.fda.gov/media/72498/download.* In response to the Coronavirus Disease 2019 public health emergency, we revised the Agency guidance document, '', to provide recommendations for recordkeeping applicable to any pandemic, not just influenza, including recommendations for planning, notification, and documentation for continuity of operations for firms that report postmarketing adverse events during any pandemic.

Respondents to this collection of information are (1) manufacturers, packers, distributors, and applicants of FDA-regulated drug and biologic products; (2) manufacturers, packers, and distributors of marketed prescription drug products without an FDA-approved application; and (3) manufacturers, packers, and distributors of marketed nonprescription drug products, including OTC drug products marketed without an approved application, OTC drug products marketed under the OTC Drug Monograph Review process (whether subject to a final monograph or not), and drug products marketed outside the monograph system.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section or type of respondent and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
310.305(c)(5)	3	1	3	1	3
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	820	17.32	14,202	60	852,120
Reports of serious adverse drug events (§ 329.100)	285	690	196,650	6	1,179,900
Applicants that have a PSUR waiver for an approved application	55	3.4	187	1	187
Applicants that do not have a PSUR waiver for an approved application	29	2.3	67	2	134
Notifying FDA when normal reporting is not feasible	350	1	350	8	2,800
Total [2]			211,464		2,035,149

[1] The reporting burden for §§ 310.305(c)(1), (2), and (3), and 314.80(c)(1)(i) and (ii) is covered under OMB control number 0910–0645.

[2] The capital costs or operating and maintenance costs associated with this collection of information are approximately $25,000 annually.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section or FD&C Act section and activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
310.305	25	1	25	16	400
314.80(j)	325	2,025	658,240	16	10,531,840
Recordkeeping of nonprescription drug adverse event reports (Section 760(e)(1) of the FD&C Act)	300	885.6667	265,700	8	2,125,600
Adding Adverse Event report planning to Continuity of Operations Plans	100	1	100	50	5,000
Maintaining documentation of pandemic conditions and resultant high absenteeism	350	1	350	8	2,800
Maintaining records to identify what reports have been stored and when the reporting process was restored	350	1	350	8	2,800
Total [2]			924,765		12,668,440

[1] There are no capital costs or operating costs associated with this collection of information.
[2] There are maintenance costs of approximately $22,000 annually.

The information collection reflects adjustments resulting in an overall decrease in burden hours and an increase in annual responses. We believe these adjustments reflect expected fluctuations in burden and invite comment on our assumptions.

Dated: June 25, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13968 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2184]

Determination of Regulatory Review Period for Purposes of Patent Extension; FETROJA

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for FETROJA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 27, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked. and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2184 for Determination of Regulatory Review Period for Purposes of Patent Extension; FETROJA. 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 § 10.20 (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:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, FETROJA (cefiderocol sulfate tosylate) indicated for patients 18 years of age or older for the treatment of the following infections caused by susceptible Gram-negative microorganisms:

- Complicated urinary tract infections, including pyelonephritis and
- hospital-acquired bacterial pneumonia and ventilator-associated bacterial pneumonia. To reduce the development of drug-resistant bacteria and maintain the effectiveness of FETROJA and other antibacterial drugs, FETROJA should be used only to treat or prevent infections that are proven or strongly suspected to be caused by bacteria. Subsequent to this approval, the USPTO received a patent term restoration application for FETROJA (U.S. Patent No. 9,238,657) from Shionogi & Co., Ltd. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of FETROJA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for FETROJA is 2,400 days. Of this time, 2,064 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 21, 2013. The applicant claims March 22, 2013, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 21, 2013, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 14, 2018. The applicant claims February 12, 2019, as the date the new drug application (NDA) for FETROJA (NDA 209445) was initially submitted. However, FDA records indicate that NDA 209445 was submitted on December 14, 2018.

3. *The date the application was approved:* November 14, 2019. FDA has verified the applicant's claim that NDA 209445 was approved on November 14, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 726 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13971 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–1900]

Determination of Regulatory Review Period for Purposes of Patent Extension; BALVERSA

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BALVERSA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 27, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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.

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- 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–E–1900 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BALVERSA.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes

effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, BALVERSA (erdafitinib) indicated for the treatment of adult patients with locally advanced or metastatic urothelial carcinoma that has susceptible FGFR3 or FGFR2 genetic alterations and progressed during or following at least one line of prior platinum-containing chemotherapy including within 12 months of neoadjuvant or adjuvant platinum-containing chemotherapy. Patients are selected for therapy based on an FDA-approved companion diagnostic for BALVERSA. This indication is approved under accelerated approval based on tumor response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Subsequent to this approval, the USPTO received a patent term restoration application for BALVERSA (U.S. Patent No. 8,895,601) from Astex Therapeutics Ltd. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 4, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BALVERSA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BALVERSA is 2,179 days. Of this time, 1,972 days occurred during the testing phase of the regulatory review period, while 207 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 26, 2013. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 26, 2013.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 18, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for BALVERSA (NDA 212018) was initially submitted on September 18, 2018.

3. *The date the application was approved:* April 12, 2019. FDA has verified the applicant's claim that NDA 212018 was approved on April 12, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 691 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 22, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13973 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1207]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 30, 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 0910–0583. Also include the FDA docket number found in brackets in the heading of this document.

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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Plant Varieties Intended for Food Use

OMB Control Number 0910–0583—Revision

This information collection supports recommendations found in Agency guidance pertaining to new plant varieties intended for food use. Respondents to the collection of information are developers of new plant varieties intended for food use.

I. Consultation Procedures: Foods Derived From New Plant Varieties; Form FDA 3665

The Agency guidance document entitled ''Guidance on Consultation Procedures: Foods Derived From New Plant Varieties,'' which is available on our website at *https://www.fda.gov/FoodGuidances,* describes our consultation process for the evaluation of information on new plant varieties provided by developers. We believe this consultation process will help ensure that human and animal food safety issues or other regulatory issues (*e.g.,* labeling) are resolved prior to commercial distribution. Additionally, such communication will help to ensure that any potential food safety issues regarding a new plant variety are resolved during development and will help to ensure that all market entry decisions by the industry are made consistently and in full compliance with the standards of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

Since 1992, when FDA issued its ''Statement of Policy: Foods Derived From New Plant Varieties'' (the 1992 policy) (57 FR 22984, May 29, 1992), we have encouraged developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA during the plant development process to discuss possible scientific and regulatory issues that might arise. In the 1992 policy, we explained that under the FD&C Act developers of new foods (in this document food refers to both human and animal food) have a responsibility to ensure that the foods they offer to consumers are safe and in compliance with all requirements of the FD&C Act (57 FR 22984 at 22985). Respondents may use Form FDA 3665, submitted via the Electronic Submissions Gateway (*https://www.fda.gov/industry/electronic-submissions-gateway*), to request consultation.

II. Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use; Form FDA 3666

Since May 29, 1992, when we issued a policy statement on foods derived from new plant varieties, including those varieties that are developed through biotechnology, we have encouraged developers of new plant varieties to consult with us early in the development process to discuss possible scientific and regulatory issues that might arise (57 FR 22984). The guidance entitled ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-recommendations-early-food-safety-evaluation-new-non-pesticidal-proteins-produced*) continues to foster early communication by encouraging developers to submit to us their evaluation of the food safety of their new proteins. Such communication helps to ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply of the new protein.

We believe that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the procedures for early food safety evaluation of new proteins produced by new plant varieties, including bioengineered food plants, and the procedures for communicating with us about the safety evaluation.

Interested persons may use Form FDA 3666 to transmit their submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition (CFSAN). Form FDA 3666 is entitled ''Early Food Safety Evaluation of a New Non-Pesticidal Protein Produced by a New Plant Variety (New Protein Consultation)'' and may be used in lieu of a cover letter for a New Protein Consultation (NPC). The form may be accessed at FDA's web page for forms (*https://www.fda.gov/about-fda/reports-manuals-forms/forms*) using the search term ''3666.'' To enable field-fillable functionality of FDA forms, they must be downloaded. Form FDA 3666 prompts a submitter to include certain elements of an NPC in a standard format and helps the respondent organize their submission to focus on the information needed for our safety review. The form, and elements prepared as attachments to the form, may be prepared using the CFSAN Online Submission Module (*https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm*). Once the submission is prepared, it may be submitted in electronic format via the Electronic Submissions Gateway (*https://www.fda.gov/industry/electronic-submissions-gateway*), paper format, or as electronic files on physical media with paper signature page.

In the **Federal Register** of November 23, 2020 (85 FR 74734), we published a 60-day notice requesting public comment on information collection associated with the guidance document ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use.'' No comments were received.

In the **Federal Register** of March 4, 2021 (86 FR 12688), we published a 60-day notice requesting public comment on information collection associated with the guidance document ''Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use.'' No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Agency guidance recommendations; information collection	Form FDA No.	Number of responses	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Consultation Procedures: Foods Derived From New Plant Varieties						
Initial consultation	None	20	2	40	4	160
Final consultation	3665	12	1	12	150	1,800
Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use						
First four data components	3666	6	1	6	4	24
Two other data components	3666	6	1	6	16	96

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Agency guidance recommendations; information collection	Form FDA No.	Number of responses	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total				64		2,080

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

For efficiency of Agency operations, we are consolidating these related information collections. We retain our estimate of burden associated with the individual collection activities but have increased burden in OMB control number 0910–0583 by 52 responses and 1,960 hours annually to reflect the reorganization of the information collection. Upon OMB approval of our request, we intend to discontinue OMB control number 0910–0704.

Dated: June 24, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13953 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2192; FDA–2020–E–2194; FDA–2020–E–2195]

Determination of Regulatory Review Period for Purposes of Patent Extension; OXBRYTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OXBRYTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 27, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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 Nos. FDA–2020–E–2192; FDA–2020–E–2194; and FDA–2020–E–2195, for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OXBRYTA.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, OXBRYTA (voxelotor) indicated for the treatment of sickle cell disease in adults and pediatric patients 12 years of age and older. Subsequent to this approval, the USPTO received patent term restoration applications for OXBRYTA (U.S. Patent Nos. 9,018,210, 10,017,491, and 10,034,879) from Global Blood Therapeutics, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OXBRYTA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OXBRYTA is 1,847 days. Of this time, 1,694 days occurred during the testing phase of the regulatory review period, while 153 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 6, 2014. FDA has verified the applicant's claims that the date the investigational new drug application became effective was on November 6, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 26, 2019. FDA has verified the applicant's claims that the new drug application (NDA) for OXBRYTA (NDA 213137) was initially submitted on June 26, 2019.

3. *The date the application was approved:* November 25, 2019. FDA has verified the applicant's claims that NDA 213137 was approved on November 25, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 318 days, 329 days, or 332 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13976 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–1259; FDA–2020–E–1264; and FDA–2020–E–1265]

Determination of Regulatory Review Period for Purposes of Patent Extension; POLIVY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for POLIVY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by

December 27, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 August 30, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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 Nos. FDA–2020–E–1259; FDA–2020–E–1264; and FDA–2020–E–1265 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; POLIVY.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product POLIVY (polatuzumab vedotin-piiq). POLIVY is indicated in combination with bendamustine and a rituximab product for the treatment of adult patients with relapsed or refractory diffuse large B-cell lymphoma, not otherwise specified, after at least two prior therapies. Subsequent to this approval, the USPTO received patent term restoration applications for POLIVY (U.S. Patent Nos. 8,088,378; 8,545,850; and 8,691,531) from Genentech, Inc., and the USPTO requested FDA's assistance in determining this patents' eligibility for patent term restoration. In a letter dated May 8, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of POLIVY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO

requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for POLIVY is 3,050 days. Of this time, 2,876 days occurred during the testing phase of the regulatory review period, while 174 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* February 4, 2011. FDA has verified the applicant's claims that the date the investigational new drug application became effective was on February 4, 2011.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 19, 2018. FDA has verified the applicant's claim that the biologics license application (BLA) for POLIVY (BLA 761121) was initially submitted on December 19, 2018.

3. *The date the application was approved:* June 10, 2019. FDA has verified the applicant's claim that BLA 761121 was approved on June 10, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,032 days, 1,127 days, or 1,445 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 23, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13949 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0424]

Medical Devices; Exemption From Premarket Notification: Powered Patient Transport, All Other Powered Patient Transport

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice announcing receipt of a petition requesting exemption from the premarket notification requirements. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Dan Reed, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1526, Silver Spring, MD 20993–0002, 240–402–4717.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 2021 (86 FR 31722), in FR Doc. 2021–12505, on page 31722, the following correction is made:

On page 31722, in the second column, in the header of the document, and, also on page 31723, in the first column under ''Instructions,'' ''Docket No. FDA–2021–N–0493'' is corrected to read ''Docket No. FDA–2021–P–0424''.

Dated: June 25, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–13967 Filed 6–29–21; 8:45 am]

BILLING CODE 4164–01–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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Transgender People: Immunity, Prevention, and Treatment of HIV and STIs.
Date: July 26, 2021.
Time: 2:00 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: David C. Chang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451–0290, *changdac@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: AIDS and AIDS-Related Applications.
Date: July 27, 2021.
Time: 11:00 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: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; UNITE Transformative Research to Address Health Disparities and Advance Health Equity (U01).
Date: July 27, 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: Bukhtiar H. Shah, DVM, 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: Topics in Virology.
Date: July 28, 2021.
Time: 10:00 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: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV Molecular Virology, Cell Biology, Immune and Therapeutic-Focused Application.
Date: July 28, 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: Audrey O. Lau, MPH, Ph.D., Chief Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4088, *audrey.lau@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.
Date: July 28, 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: Elaine Sierra-Rivera, 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Social Sciences and Chronic and Infectious Disease Epidemiology.
Date: July 28, 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: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Sciences and Chronic and Infectious Disease Epidemiology.
Date: July 28, 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: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; UNITE Transformative Research to Address Health Disparities and Advance Health Equity at Minority Serving Institutions (U01).
Date: July 29–30, 2021.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Mycology, Parasitology and Pathogenesis.
Date: July 29, 2021.
Time: 10:00 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: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology and Metabolism.
Date: July 29, 2021.
Time: 10:30 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: Liliana N. 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: Center for Scientific Review Special Emphasis Panel; Program Project: Endocannabinoids as Therapeutic Targets.
Date: July 29, 2021.
Time: 1:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Innate and Adaptive Immunology.
Date: July 30, 2021.
Time: 10:00 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: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Innate and Adaptive Immunology.
Date: July 30, 2021.
Time: 10:00 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: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1742, *kaushikbasun@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: June 24, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–13942 Filed 6–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Scientific Advisory Committee on Alternative Toxicological Methods; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). SACATM is a federally chartered external advisory group of scientists from the public and private sectors, including

representatives of regulated industry and national animal protection organizations. SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the National Institute of Environmental Health Sciences (NIEHS) and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. This SACATM meeting will be a virtual meeting only and available to the public for remote viewing. Registration is required to access the virtual meeting and to present oral comments. Information about the meeting and registration are available at *https://ntp.niehs.nih.gov/go/32822.*

DATES:

Meeting: September 28, 2021, 10:00 a.m.–3:30 p.m. EDT; September 29, 2021, 10:00 a.m.–4:00 p.m. EDT. Ending times are approximate; meeting may end earlier or run later.

Registration for Virtual Meeting: Deadline is September 29, 2021, 4:00 p.m. EDT.

Written Public Comment Submissions: Deadline is September 17, 2021.

Register to Present Oral Comments: Deadline is September 17, 2021.

Registration to view the virtual meeting and present oral public comments is required.

ADDRESSES:

Meeting web page: The preliminary agenda, registration, and other meeting materials are at *https://ntp.niehs.nih.gov/go/32822.*

Virtual Meeting: The URL for viewing the virtual meeting will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Sheena Scruggs, Designated Federal Official for SACATM, Office of Policy, Review, and Outreach, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3355, Email: *sheena.scruggs@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2126, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: The meeting is open to the public with time scheduled for oral public comments. Due to restrictions on in-person gatherings amid ongoing public health concerns, the meeting will be convened as a virtual meeting.

SACATM will provide input to ICCVAM, NICEATM, and NIEHS on programmatic activities and issues. Preliminary agenda items for the upcoming meeting include: (1) Major ICCVAM accomplishments in 2021; (2) regulatory needs and research applications for ecotoxicity testing; (3) evolving approaches to validation; and (4) update on NICEATM computational resources. Please see the preliminary agenda for information about specific presentations.

The preliminary agenda, roster of SACATM members, background materials, public comments, and any additional information will be posted when available on the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) or may be requested in hardcopy from the Designated Federal Official for SACATM. Following the meeting, summary minutes will be prepared and made available on the SACATM meeting website.

Registration is required to attend the virtual meeting and is open to all interested persons. Registrants will receive instructions on how to access the virtual meeting in the email confirming their registration. Individuals who plan to provide oral comments (see below) are required to register online at the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) by September 17, 2021, to facilitate planning for the meeting. Individuals are encouraged to visit the website often to stay abreast of the most current information regarding the meeting.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Ms. Robbin Guy at phone: (984) 287–3136 or email: *robbin.guy@nih.gov* in advance of the meeting. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: Written and oral public comments are invited for the agenda topics. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.* The deadline for submission of written comments is September 17, 2021. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The preliminary agenda allows for several public comment periods, each allowing up to six commenters a maximum of five minutes per speaker. Registration for oral comments is on or before September 17, 2021, at *https://ntp.niehs.nih.gov/go/32822.* Registration is on a first-come, first-served basis. Each organization is allowed one time slot per comment period. After the maximum number of speakers per comment period is exceeded, individuals registering to submit an oral comment for the topic will be placed on a wait list and notified should an opening become available. Commenters will be notified after September 17, 2021, to provide logistical information for their presentations. If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Robbin Guy by email: *guyr2@niehs.nih.gov* by September 17, 2021.

Meeting Materials: The preliminary meeting agenda will be posted when available on the meeting web page at *https://ntp.niehs.nih.gov/go/32822* and will be updated one week before the meeting. Individuals are encouraged to visit this web page often to stay abreast of the most current information regarding the meeting.

Responses to this notice are voluntary. No proprietary, classified, confidential, or sensitive information should be included in statements submitted in response to this notice or presented during the meeting. This request for input is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Background Information on ICCVAM, NICEATM, and SACATM: ICCVAM is an interagency committee composed of representatives from 17 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability, and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm.*

SACATM, established by the ICCVAM Authorization Act [Section 285l–3(d)], provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods to ICCVAM, NICEATM, and Director of NIEHS and NTP. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: June 24, 2021.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2021–13919 Filed 6–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Project: 2022 National Survey on Drug Use and Health (OMB No. 0930–0110)

SAMHSA is requesting from the Office of Management and Budget (OMB) approval to administer the National Survey on Drug Use and Health (NSDUH), a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. NSDUH data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

As certain parts of the United States reduce COVID–19 restrictions, NSDUH in-person data collection will proceed where possible. However, to ensure sufficient data are collected to produce nationally representative estimates for the 2022 survey, NSDUH will continue to employ a mix of in-person and web-based modes of administration to allow those respondents living in areas with COVID–19 restrictions the opportunity to participate. If the COVID–19 pandemic subsides to such levels to allow in-person data collection to resume nationwide, SAMHSA may reassess that multimode data collection model as part of the 2022 NSDUH.

In those areas where in-person data collection is permitted, NSDUH protocols, processes, and materials will continue to reflect the need to ensure the safety of respondents and field interviewers with respect to COVID–19—after initial implementation of such measures beginning in October 2020—which include equipping field interviewers with masks, gloves, disinfecting wipes, and hand sanitizer for use during data collection and providing a COVID–19 risk information form to all respondents.

Unlike previous NSDUHs, a hybrid address-based sampling (ABS) design will be implemented for the 2022 NSDUH. ABS refers to the sampling of residential addresses from a list based on the U.S. Postal Service's Computerized Delivery Sequence file. In areas with high expected ABS coverage, the ABS frame will be used. In all other areas, traditional field enumeration will be used to construct the dwelling unit frames.

In addition, the NSDUH questionnaire must be updated periodically to reflect changing substance use and mental health issues and to continue producing current data. For the 2022 NSDUH, the following questionnaire updates are planned: (1) Replacing the tobacco module with a redesigned nicotine module that includes questions about vaping, removes low priority items to reduce respondent burden and eliminates outdated terminology; (2) revising the marijuana module to include questions about the use of CBD, update questions on the mode of administration and eliminate outdated terminology and includes changes to the market information for marijuana questions; (3) redesigning the adult and youth mental health services utilization modules into one Mental Health Service Utilization model to remove questions with outdated terminology and include questions about newer treatments with recent increases in popularity; and (4) replacing the drug treatment module with a redesigned alcohol and drug treatment module that includes questions about newer treatments and those that have increased in popularity, as well as eliminating outdated terminology and reducing respondent burden.

As with all NSDUH/NHSDA [1] surveys conducted since 1999, the sample size of the NSDUH main study for 2022 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate for the NSDUH main study is shown below in Table 1.

[1] Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA).

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2022 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	168,674	1	168,674	0.083	14,000
Interview	67,507	1	67,507	1.000	67,507
Screening Verification	5,060	1	5,060	0.067	339
Interview Verification	10,126	1	10,126	0.067	678
Total	168,674		251,367		82,524

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.

Carlos Graham,

Social Science Analyst.

[FR Doc. 2021–13937 Filed 6–29–21; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning July 1, 2021, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of July 1, 2021.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2021–10, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2021, and ending on September 30, 2021. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (0%) plus two percentage points (2%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remain the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning October 1, 2021, and ending on December 31, 2021.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	093021	3	3	2

Dated: June 24, 2021.

Jeffrey Caine,

Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2021–13924 Filed 6–29–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: Critical Facility Information of the Top 100 Most Critical Pipelines

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 1652–0050, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR addresses a statutory requirement for TSA to develop and implement a plan to inspect critical pipeline systems. On May 26, 2021, OMB approved TSA's request for an emergency revision of this collection to address the ongoing cybersecurity threat to pipeline systems and associated infrastructure. TSA is now seeking to renew and revise the collection as it expires on November 30, 2021. The ICR describes the nature of the information collection and its expected burden, which TSA is seeking to continue its collection of critical facility security information.

DATES: Send your comments by August 30, 2021.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), 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 1652–0050; Critical Facility Information of the Top 100 Most Critical Pipelines: The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) specifically required TSA to develop and implement a plan for reviewing the pipeline security plans and inspecting the critical facilities of the 100 most critical pipeline systems.[1] Pipeline owner/operators determine which facilities qualify as critical facilities based on guidance and criteria set forth in the TSA Pipeline Security Guidelines published in December 2010 and 2011, with an update published in April 2021. To execute the 9/11 Act mandate, TSA visits critical pipeline facilities and collects site-specific information from pipeline owner/operators on facility security policies, procedures, and physical security measures.

TSA collects facility security information during the site visits using a Critical Facility Security Review (CFSR) form. The CFSR looks at individual pipeline facility security measures and procedures.[2] This collection is voluntary. Information collected from the reviews is analyzed and used to determine strengths and weaknesses at the nation's critical pipeline facilities, areas to target for risk reduction strategies, pipeline industry implementation of the voluntary guidelines, and the potential need for regulations in accordance with the 9/11 Act provision previously cited.

TSA visits with pipeline owner/operators to follow up on their implementation of security improvements and recommendations made during facility visits. During critical facility visits, TSA documents and provides recommendations to improve the security posture of the facility. TSA intends to continue to follow up with pipeline owner/operators via email on their status toward implementation of the recommendations made during the critical facility visits. The follow up will be conducted at intervals of six, 12, and 18 months after the facility visit.

TSA previously initiated the PRA approval process by publishing a notice on April 8, 2021, 86 FR 18291, announcing our intent to conduct this collection with a revision. Due to the emergency revision of the information collection, TSA is reinitiating the approval process.

Revision

TSA is revising the information collection to align the CFSR question set with the revised Pipeline Security Guidelines, and to capture additional criticality criteria. As a result, the question set has been edited by removing, adding and rewriting several questions, to meet the Pipeline Security Guidelines and criticality needs. Further, TSA is moving the collection instrument from a PDF format to an Excel Workbook format.

Emergency Revision

While the above listed collections are voluntary, on May 26, 2021, OMB approved TSA's request for an emergency revision of this information collection, allowing for the institution of mandatory requirements. *See* ICR Reference Number: 202105–1652–002. The revision was necessary as a result of the recent ransomware attack on one of the Nation's top pipeline supplies and other emerging threat information. In order to address the ongoing cybersecurity threat to pipeline systems and associated infrastructure, TSA issued a Security Directive (SD) applicable to owner/operators of a hazardous liquid and natural gas pipeline or liquefied natural gas facility notified by TSA that their pipeline system or facility is critical. These owner/operators are required to review Section 7 of TSA's Pipeline Security Guidelines and assess current activities, using the TSA Pipeline Cybersecurity Self-Assessment form, to address cyber risk, and identify remediation measures that will be taken to fill those gaps and a timeframe for achieving those measures. The form provided is based on the instrument used for the CFSRs, limited to cybersecurity issues and augmented to address the scope of the SD. The critical pipeline owner/operators are required to report the results of this assessment to TSA within 30 days of issuance of the SD. In cooperation with the Cybersecurity and Infrastructure Security Agency, TSA will use this information to make a global assessment of the cyber risk posture of the industry.

TSA is seeking renewal of this information collection for the maximum three-year approval period.

To the extent information provided by operators for each information collection is Sensitive Security Information (SSI), TSA will protect in accordance with procedures meeting the transmission, handling, and storage requirements of SSI set forth in 49 CFR parts 15 and 1520.

TSA estimates the annual hour burden for the information collection related to the voluntary collection of the CFSR form to be 320 hours. TSA will conduct a maximum of 80 facility reviews each year, with each review taking approximately 4 hours (320 = 80 × 4).

TSA estimates the annual hour burden for the information collection related to TSA follow ups on the recommendations based on the above CFSRs made to facility owner/operators to be 480 hours. TSA estimates each owner/operator will spend approximately 2 hours to submit a response to TSA regarding its voluntary implementation of security recommendations made during each critical facility visit. If a maximum of 80 critical facilities are reviewed each year, and TSA follows up with each facility owner/operator every 6, 12, and 18 months following the visit, the total annual burden is 480 (80 × 2 x 3) hours.

For the mandatory collection, TSA estimates 100 owner/operators will complete and submit the Pipeline Cybersecurity Self-Assessment form. It will take each owner/operator approximately 6 hours to complete and

[1] *See* sec. 1557 of the 9/11 Act, Public Law 110–53 (121 Stat. 266, 475; Aug. 3, 2007), as codified at 6 U.S.C. 1207.

[2] The CFSR differs from a Corporate Security Review (CSR) conducted by TSA in another information collection that looks at corporate or company-wide security management plans and practices for pipeline operators. *See* OMB Control No. 1652–0056 at *https://www.reginfo.gov* for the PRA approval of information collection for these CSRs.

submit this form, for a total of 600 hours (100 × 6).

The total estimated burden for the entire information collection is 1,400 hours annually—320 hours for the CFSR form, 480 hours for the recommendations follow-up procedures, and 600 hours for the Pipeline Cybersecurity Self-Assessment form.

Dated: June 24, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–13884 Filed 6–29–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Pipeline Operator Security Information

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 1652–0055, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). On May 26, 2021, OMB approved TSA's request for an emergency revision of this collection to address the ongoing cybersecurity threat to pipeline systems and associated infrastructure. TSA is now seeking to renew the collection as it expires on November 30, 2021. The ICR describes the nature of the information collection and its expected burden. Specifically, the collection involves the submission of data concerning pipeline security incidents, appointment of cybersecurity coordinators, and coordinators' contact information.

DATES: Send your comments by August 30, 2021.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), 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 1652–0055; Pipeline Operator Security Information. In addition to TSA's broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation [,]'' *see* 49 U.S.C. 114, TSA is required to issue recommendations for pipeline security measures and conduct inspections to assess implementation of the recommendations. *See* sec. 1557 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (August 3, 2007). Consistent with these requirements, TSA produced Pipeline Security Guidelines in December 2010 and 2011, with an update published in April 2021.

As the lead Federal agency for pipeline security and consistent with its statutory authorities, TSA needs to be notified of all (1) incidents that may indicate a deliberate attempt to disrupt pipeline operations and (2) activities that could be precursors to such an attempt. The Pipeline Security Guidelines encourage pipeline operators to notify the Transportation Security Operations Center (TSOC) via phone or email as soon as possible if any of the following incidents occurs or if there is other reason to believe that a terrorist incident may be planned or may have occurred:

- Explosions or fires of a suspicious nature affecting pipeline systems, facilities, or assets.
- Actual or suspected attacks on pipeline systems, facilities, or assets.
- Bomb threats or weapons of mass destruction threats to pipeline systems, facilities, or assets.
- Theft of pipeline company vehicles, uniforms, or employee credentials.
- Suspicious persons or vehicles around pipeline systems, facilities, assets, or right-of-way.
- Suspicious photography or possible surveillance of pipeline systems, facilities, or assets.
- Suspicious phone calls from people asking about the vulnerabilities or security practices of a pipeline system, facility, or asset operation.
- Suspicious individuals applying for security-sensitive positions in the pipeline company.
- Theft or loss of Sensitive Security Information (SSI) (detailed pipeline maps, security plans, etc.).

When voluntarily contacting the TSOC, the Guidelines request pipeline operators to provide as much of the following information as possible:

- Name and contact information (email address, telephone number).
- The time and location of the incident, as specifically as possible.
- A description of the incident or activity involved.
- Who has been notified and what actions have been taken.
- The names and/or descriptions of persons involved or suspicious parties and license plates as appropriate.

On May 26, 2021, OMB approved TSA's request for an emergency revision of this information collection. *See* ICR Reference Number: 202105–1652–002. The revision was required as a result of the recent ransomware attack on one of the Nation's top pipeline supplies and other emerging threat information. TSA issued a Security Directive (SD) with requirements for TSA-specified critical pipeline owner/operators of hazardous liquid and natural gas pipelines and liquefied natural gas facilities. The SD included two new information collections. TSA now requires all owner/operators subject to the SD's requirements to report cybersecurity incidents or potential cybersecurity incidents on their information and operational technology systems to the Cybersecurity & Infrastructure Security Agency (CISA) within 12 hours of discovery using the CISA Reporting System. In addition, the SD requires critical pipeline owner/operators to appoint cybersecurity coordinators and to provide contact information for the coordinators to TSA. To ensure that

information reported pursuant to the SD is identifiable within the system, TSA requires these owners/operators to indicate that they are providing the information pursuant to the SD. TSA is now seeking renewal of this revised information collection for the maximum three-year approval period.

Using the CISA reporting system, TSA expects the mandatory reporting of pipeline cybersecurity incidents to CISA will occur 20 times per year for each pipeline owner/operator, and it will take approximately 2 hours to gather the appropriate information to submit each incident report. The potential burden to the public for this task is 100 × 20 × 2 hours = 4,000 hours.

TSA estimates that approximately 100 pipeline owner/operators will report their cybersecurity manager and alternate point of contact information. It will take the pipeline owner/operator approximately 30 minutes (0.50 hour) to do so, and the potential burden for this task is 100 × 0.50 hour = 50 hours.

For non-cybersecurity pipeline incidents, TSA expects voluntary reporting of pipeline security incidents will occur on an irregular basis. TSA estimates that approximately 32 incidents will be reported annually, requiring a maximum of 30 minutes (0.50 hour) to collect, review, and submit event information. The potential burden to the public for this task is estimated to be 16 hours. Therefore, the total hour burden to the public for this information collection request is estimated to be 4,000 hours + 50 hours + 16 hours = 4,066 hours annually.

Dated: June 24, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–13885 Filed 6–29–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–35]

30-Day Notice of Proposed Information Collection: Application for Roster Personnel (Appraisers) Designation and Appraisal Reports, OMB Control No.: 2502–0538

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 30, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/ Start Printed Page 15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 8, 2021 at 86 FR 8652.

A. Overview of Information Collection

Title of Information Collection: Application for Fee or Roster Personnel (Appraisers) Designation and Appraisal Reports.

OMB Approval Number: 2502–0538.

Type of Request: Extension.

Form Number: HUD 92563–A, HUD 92564–CN, Fannie Mae Forms: 1004, 1004C, 1004D, 1004MC, 1025, and 1073.

Description of the need for the information and proposed use: Accurate and thorough Appraisal reporting is critical in determining eligibility of a property that will be collateral for FHA-insured financing. The collection allows HUD to maintain an effective appraisal program with the ability to maintain sufficient oversight of its Roster Appraisers and to inform prospective homeowners, seeking FHA-insured financing, of the benefits of obtaining an independent home inspection.

Respondents: Business or other for profit.

Estimated Number of Respondents: 22,345.

Estimated Number of Responses: 495,676.

Frequency of Response: On occasion.

Average Hours per Response: .56.

T*otal Estimated Burdens:* $843,541.

The public comment period for the notice published on February 8, 2021, closed on April 9, 2021.

Summary of Form HUD–92564–CN Comments and HUD Responses:

Comment: A commenter expressed concern that a section of a disclosure statement on the form that the qualified home inspector ''*will . . . estimate the remaining useful life of the major systems, equipment, structure and finishes*'' does not accurately state the scope of a home inspection and should be replaced with ''*will. . .report systems and components that appear to be near the end of their service lives*''.

HUD Response: HUD clarified the statement by incorporating the recommended replacement language.

Comment: A commenter encouraged HUD to implement efforts to expand portals for delivering form HUD–92564–CN: *For Your Protection: Get a Home Inspection* message as widely as possible, by all existing and evolving methods, to as many prospective homebuyers as possible, and to prospective buyers likely to enter the home buying market in the foreseeable future.

HUD Response: HUD continues to utilize electronic and digital methods as well as paper versions to disseminate the English and Spanish versions of form HUD 92564–CN, *For Your Protection: Get a Home Inspection* to prospective home buyers through real estate brokers and any conceivable means. The form is also available in English and Spanish on HUD website and is accessible by real estate brokers, mortgage originators and prospective homebuyers. There is no cost associated with accessing the form and the website is available 24 hours a day, 7 days per week. Additionally, HUD has incorporated Form HUD–92564–CN, *For Your Protection: Get a Home Inspection* into its origination and processing policy described in the Single Family Housing Policy Handbook 4000.1 and requires Mortgagees to provide the form to prospective homebuyers at first contact, be it for pre-qualification, pre-approval, or initial application.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A and more specifically regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other form of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

(5) ways to minimize the burden of the collection of information on those who are respond, including the use of automated collection techniques or other forms of information technology.

Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

The public comment period for the notice published on February 8, 2021, closed on April 9, 2021.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–13954 Filed 6–29–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[PPWOIRADA1/PRCRFRFR6.XZ0000/PR.RIRAD1801.00.1; OMB Control Number 1093–0006]

Agency Information Collection Activities; Natural and Cultural Resource Agencies Customer Relationship Management (Volunteer.gov) and OF 301 Forms

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary, Department of the Interior (Interior), Office of the Secretary, Department of the Interior are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 30, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1093–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 5, 2021 (86 FR 12966). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) How might the agency minimize the burden of this collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of response).

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

Abstract: Various laws, statutes, and regulations, to include the Public Lands Corps Act (16 U.S.C. 1721 et. seq.), the Outdoor Recreation Authority (16 U.S.C. 4601), Volunteers in the National Forests Program (16 U.S.C. 558 a–d), and the Forest Foundation Volunteers Act (16 U.S.C. 583j), authorize Federal land management agencies to work with volunteers to plan, develop, maintain, and manage projects and service activities on public lands and adjacent projects throughout the nation. We use volunteers to aid in disaster response, interpretive functions, visitor services, conservation measures and development, research and development, recreation, and or other activities as allowed by an agency's policy and regulations. Providing, collecting, and exchanging written and electronic information is required from potential and selected program participants of all ages so they can access opportunities and benefits provided by agencies guidelines. Those under the age of 18 years must have written consent from a parent or guardian to participate in volunteer activities.

In this revision, Interior will request OMB approval to assume the management and responsibility of common forms OF–301, OF–301a, and OF–301b from the Department of Agriculture—U.S. Forest Service (currently approved under OMB Control No. 0596–0080). These forms, available for prospective volunteers to complete electronically or as paper forms, serve two functions:

- Recruiting potential volunteers, and
- Formalizing agreements between current volunteers and the agencies with which they are volunteering.

The customer relationship management web-based portal, *Volunteer.gov,* is the agencies' response to meeting the public's request for

improved digital customer services to access and apply for engagement opportunities. Under one security platform parameter, the *Volunteer.gov* website provides prospective and current program participants the ability to establish an account for electronic submission of program applications and to obtain status of applications and enrollments. Planned future functionality will provide information digitally on benefits and requirements, and will facilitate improved tracking of volunteer service hours. Currently, these data points are tracked manually and are accessible from agency volunteer program coordinators.

This information collection specifically minimizes the burden on the respondents. While electronic records provide a means to streamline data collection and allow participant access to track benefits and control the sharing of their data, the participating agencies will continue to provide accessible paper versions of the volunteer forms upon request and while the functionality in the web-based portal is being built.

Participating Agencies:

- Department of the Interior: All Interior offices and units, including National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, Office of Surface Mining Reclamation and Enforcement, and U.S. Geological Survey.
- Department of Agriculture: U.S. Forest Service and Natural Resources Conservation Service.
- Department of Defense: U.S. Army Corps of Engineers.
- Department of Commerce: National Oceanic and Atmospheric Administration—Office of National Marine Sanctuaries.

Common Forms:

Forms OF–301—Volunteer Application: Individuals interested in volunteering may access the *Volunteer.gov* website to complete an on-line application on the *Volunteer.gov* website. Alternatively, they may contact any agency listed above to request a Volunteer Application (Form OF–301). We collect the following information from applicants via Form OF–301:

- Name and contact information (address, telephone number, and email address);
- Date of birth (proposed new data field);
- Preferred work categories;
- Interests;
- Citizenship status;
- Available dates and preferred location;
- Physical limitations; and
- Lodging preferences.

Information collected using this form or *Volunteer.gov* assists agency volunteer coordinators and other personnel in matching volunteers with agency opportunities appropriate for an applicant's skills, physical condition, and availability. We are proposing to collect date of birth to be used along with other unique identifiers for each volunteer applicant. Using date of birth will allow all participating agencies across locations to better track applicants via the *Volunteer.gov* website.

Forms OF–301A—Volunteer Service Agreement: We use this form to establish agreements for volunteer services between Federal agencies and individual or group volunteers, to include eligible international volunteers. We require the signature of parents or guardians for all applicants under 18 years of age. We collect the following information from volunteers via Form OF–301A:

- Name and contact information (address, telephone number, and email address);
- Date of birth (proposed new data field);
- Citizenship information; and,
- Emergency contact information.

Forms OF–301A describe the service a volunteer will perform, and asks a volunteer to confirm their understanding of the purpose of the volunteer program, their fitness and ability to perform the duties as described, and whether they consent to being photographed. We are proposing to collect date of birth to be used along with other unique identifiers for each volunteer applicant. Using date of birth will allow all participating agencies across locations to track their volunteer hours.

Forms OF–301B—Volunteer Group Sign-up: We use this form to document awareness and understanding by adult individuals in groups about the volunteer activities between a Federal agency and a partner organization with group participants, and accompanies the Form OF–301a. We collect the following information from volunteers via Form OF–301b:

- Name and contact information (address, telephone number, and email address);
- Month and year of birth (proposed new data field);
- Confirmation of understanding of the purpose of the volunteer program;
- Fitness and ability to perform the duties as described; and
- Whether they consent to being photographed

We are proposing to collect month and year of birth to be used along with other unique identifiers for each volunteer applicant. Using month and year of birth will allow all participating agencies across locations to track their volunteer hours across positions.

Each participating agency must request OMB approval of, and report their own burden associated with, the use of common forms OF–301, OF–301a, and OF–301b in order to be authorized to participate in this information collection. Interior will not assume the burden for any agencies other than its own bureaus and offices that participate in the volunteer program.

Title of Collection: Natural and Cultural Resource Agencies Customer Relationship Management (Volunteer.gov) and OF 301 Forms.

OMB Control Number: 1093–0006.

Form Number: OF–301, OF–301A, and OF–301B.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and private sector (cooperating associations and partner organizations) interested in volunteer opportunities.

Total Estimated Number of Annual Respondents: 561,408.

Total Estimated Number of Annual Responses: 561,408.

Estimated Completion Time per Response: Completion time varies from 5 minutes to 15 minutes, depending on the function being performed.

Total Estimated Number of Annual Burden Hours: 100,918 Hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Typically once per year.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–13900 Filed 6–29–21; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000.19XL1109AF.L13100000. DF00000 MO #4500153111]

Notice of Public Meetings of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Central California Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will hold a public meeting on Wednesday, Sept. 22, 2021, from 1 p.m. to 5 p.m., with public comments accepted at 4:30 p.m. The RAC will conduct a field tour on Thursday, Sept. 23, 2021, from 8:30 a.m. to 12:30 p.m.

The RAC will hold a business meeting on Wednesday, Nov. 17, 2021, from 1 p.m. to 5 p.m., with public comments accepted at 4:30 p.m. The RAC will conduct a field tour on Thursday, Nov. 18, 2021, from 8:30 a.m. to 12:30 p.m.

If Centers for Disease Control (CDC) COVID–19 guidelines preclude on-site meetings, the field tours will be cancelled, and the business meetings will be held in virtual formats via Zoom on Wednesday, Sept. 22, 2021, and on Wednesday, Nov. 17, 2021.

The meetings and field tours are open to the public.

ADDRESSES: Meeting links and participation instructions will be made available to the public via news media, social media, the BLM California website *https://go.usa.gov/xH9ya,* and through personal contact 2 weeks prior to the meeting. The Sept. 22 meeting will be held at the BLM Ukiah Field Office, 2550 North State Street, Suite 2, Ukiah, CA 95482. The Sept. 23 field tour will be to the Berryessa Snow Mountain National Monument. The Nov. 17 meeting be held at the Harris Ranch Inn & Restaurant, 24505 West Dorris Avenue, Coalinga, CA 93210. The Nov. 18 field tour will be to the Panoche and Tumey Hills recreation areas.

Written comments pertaining to any of the above meetings can be sent to the BLM Central California District Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762, Attention: RAC meeting comments.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer Serena Baker, email: *sbaker@blm.gov* or telephone: (916) 941–3146. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Ms. Baker during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with BLM-managed public lands in central California. Topics for these meetings are as follows:

Sept. 22 and 23, 2021: On Sept. 22, the RAC will hear about the BLM Trails and Travel Management Plan for the Berryessa Snow Mountain National Monument and determine how it will participate in the process. The RAC will also be briefed on development of the South Cow Mountain OHV Management Area Recreation Improvement Plan, hear reports from the district and field offices, and schedule meeting dates for 2022. On Sept. 23, the RAC will tour the Berryessa Snow Mountain National Monument that will be affected by the BLM Trails and Travel Management Planning under development.

Nov. 17 and 18, 2021: On Nov. 17, The RAC will discuss development of the San Joaquin Desert Hills Special Recreation Management Area (SRMA) Activity Plan and discuss any action related to the plan development. The RAC will also learn about recreational target shooting impacts throughout the Central California District and hear reports from the district and field offices. On Nov. 18, the RAC will tour public lands in the Panoche and Tumey Hills recreation areas and discuss how the San Joaquin Desert Hills SRMA Activity Plan would apply to these areas.

All meetings are open to the public. Each formal RAC meeting will have time allocated for public comments. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Central California District Office listed in the **ADDRESSES** section of this notice. All comments received will be provided to the RAC.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**). Meetings and field tours will follow current CDC COVID–19 guidance regarding social distancing and wearing of masks.

Detailed minutes for the RAC meetings will be maintained in the BLM Central California District Office. Minutes will also be posted to the BLM California RAC web page.

(Authority: 43 CFR 1784.4–2)

Carly Summers,

Acting Deputy State Director, Communications.

[FR Doc. 2021–13941 Filed 6–29–21; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–MAMC–31883; PPNCNACEN0, PPMPSAS1Z.Y00000]

Request for Nominations for the Mary McLeod Bethune Council House National Historic Site Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Mary McLeod Bethune Council House National Historic Site Advisory Commission (Commission).

DATES: Written nominations must be postmarked by July 30, 2021.

ADDRESSES: Nominations should be sent to Tonya Thompson, Chief of Staff, National Capital Parks-East, National Park Service, 1900 Anacostia Drive SE, Washington, DC 20020, telephone (202) 407–5267, or email *latonya_thompson@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Tonya Thompson, Chief of Staff, National Capital Parks-East, National Park Service, 1900 Anacostia Drive SE, Washington, DC 20020, telephone (202)

407–5267, or email *latonya_thompson@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission was authorized on December 11, 1991, by Public Law 102–211 (54 U.S.C. 320101 formerly 16 U.S.C. 461 note), for the purpose of advising the Secretary of the Interior (Secretary) on the implementation of a general management plan for the Mary McLeod Bethune Council House National Historic Site. The Commission meets at least semiannually to discuss matters relating to the management and development of the historic site.

The Commission is composed of 15 members appointed by the Secretary for 4-year terms, as follows: (1) Three members selected from recommendations submitted by the National Council of Negro Women, Inc.; (2) two members selected from recommendations submitted by other national organizations in which Mary McLeod Bethune played a leadership role; (3) two members with professional expertise in the history of African American women; (4) three members with professional expertise in archival management; (5) three members representing the general public; and (6) two members with professional expertise in historic preservation. The NPS is currently seeking members to represent all categories.

Nominations should be typed and include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Commission and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the same process. Members can not appoint deputies or alternates.

Members of the Commission serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the NPS, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of title 5 of the United States Code.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–13920 Filed 6–29–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–CHOH–31910; PPNCCHOHS0–PPMPSPD1Z.YM0000]

Chesapeake and Ohio Canal National Historical Park Commission; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Chesapeake and Ohio Canal National Historical Park Commission (Commission) will meet as indicated below.

DATES: The virtual meeting will take place on Thursday, July 15, 2021. The meeting will begin at 9:00 a.m. until 12:00 p.m. (EASTERN).

ADDRESSES: The meeting will be held on-line. Instructions for accessing the meeting will available in advance on the Commission's website at *https://www.nps.gov/choh/learn/news/federal-advisory-commission.htm* or by emailing *choh_information@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Tina Cappetta, Superintendent, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport, MD 21795, or via telephone at (301) 714–2201, or by email *tina_cappetta@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission was established on January 8, 1971, under 16 U.S.C. 410y–4, as amended, and is regulated by the Federal Advisory Committee Act. Appendix D, Division B, Title I, Section 134 of Public Law 106–554, December 21, 2000, and Section 1 of Public Law 113–178, September 26, 2014, respectively, amended the enabling legislation extending the term of the Commission for a period to expire on September 26, 2024.

Purpose of the Meeting: The agenda will include discussion of park updates and outline goals for Fiscal Year 2021 and beyond. The final agenda will be posted on the Park's website at *https://www.nps.gov/choh/learn/news/federal-advisory-commission.htm.* The website includes meeting minutes from all prior meetings.

This meeting is open to the public. Interested persons may present, either orally or through written comments, information for the Commission to consider during the public meeting. Written comments will also be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to Mackensie Henn, Assistant to the Superintendent, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport, MD 21795, (240) 520–3135, or by email *choh_information@nps.gov.* Comments sent via email should include Comments for July 2021 Advisory Commission Meeting in the subject line. All written comments will be provided to members of the Commission.

Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. All comments will be made part of the public record and will be electronically distributed to all Commission members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–13921 Filed 6–29–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0047]

Notice of Intent To Prepare an Environmental Impact Statement for the Vineyard Wind South Project Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: Consistent with the regulations implementing the National

Environmental Policy Act (NEPA), BOEM announces its intent to prepare an EIS for the review of a construction and operations plan (COP) submitted by Vineyard Wind, LLC (Vineyard Wind) for its Vineyard Wind South Project. The COP proposes the phased development, construction, and operation of wind energy facilities offshore Massachusetts with export cables connecting to the onshore electric grid in Barnstable County, Massachusetts. This NOI announces the EIS scoping process for the Vineyard Wind South COP. Additionally, this NOI seeks public comment and input under section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed wind energy facilities, including the COP, can be found on BOEM's website at: *www.BOEM.gov/Vineyard-Wind-South.*

DATES: Comments are due to BOEM no later than July 30, 2021.

BOEM will hold virtual public scoping meetings for the Vineyard Wind South EIS at the following dates and times (eastern daylight time):

- Monday, July 19, 5:30 p.m.;
- Friday, July 23, 1:00 p.m.; and
- Monday, July 26, 5:30 p.m.

ADDRESSES: Comments can be submitted in any of the following ways:

- In written form, delivered by mail or delivery service, enclosed in an envelope labeled, ''VINEYARD WIND SOUTH COP EIS'' and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or
- Through the *regulations.gov* web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2021–0047. Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Proposed Action

In Executive Order 14008, President Biden stated that it is the policy of the United States:

> to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, on April 1, 2015, BOEM awarded Lease OCS–A 0501, covering an area offshore Massachusetts, to Vineyard Wind. In June 2021, Vineyard Wind assigned the northeastern portion of Lease OCS–A 0501 to a subsidiary, Vineyard Wind 1, LLC, and BOEM renamed the remaining area Lease OCS–A 0534. Vineyard Wind has the exclusive right to submit a COP for activities within Lease OCS–A 0534, and it submitted a phased development COP to BOEM proposing the construction and installation, operations and maintenance, and conceptual decommissioning of offshore wind energy facilities (the Project or Vineyard Wind South). The Project is proposed within the area defined by Lease OCS–A 0534 and a small portion of the area within Lease OCS–A 0501 for potential development (collectively, the Lease Area).

Vineyard Wind South's purpose and need is to develop commercial-scale, offshore wind energy facilities in two phases in the Lease Area, with up to a total of 130 wind turbine positions, two to five offshore substations (also called ''electrical service platforms''), inter-array cables, up to three onshore substations, and up to five transmission cables making landfall in Barnstable County, Massachusetts. Phase One of Vineyard Wind South is called ''Park City Wind.'' It would contribute to Connecticut's mandate of 2,000 megawatts (MW) of offshore wind energy by 2030, as outlined in Connecticut Public Act 19–71, through Vineyard Wind's 804–MW Power Purchase Agreement (PPA) with Connecticut's Public Utilities Regulatory Authority. Vineyard Wind is actively competing for PPAs for Phase Two of Vineyard Wind South, which would provide approximately 1,200–1,500 MW of offshore wind energy to the northeastern states. The two phases combined would provide a total of approximately 2,004–2,304 MWs of offshore wind energy and would contribute to the region's electrical reliability.

Based on the goals of the applicant and BOEM's authority, the purpose of BOEM's action is to respond to Vineyard Wind's COP proposal and determine whether to approve, approve with modifications, or disapprove Vineyard Wind's COP to construct and install, operate and maintain, and decommission commercial-scale offshore wind energy facilities within the Lease Area (the Proposed Action). BOEM's action is needed to further the United States policy to make Outer Continental Shelf energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)), including consideration of natural resources, safety of navigation, and existing ocean uses.

In addition, the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) anticipates receipt of one or more requests for authorization to take marine mammals incidental to activities related to the Project under the Marine Mammal Protection Act (MMPA). NMFS' issuance of an MMPA incidental take authorization is a major Federal action, and, in relation to BOEM's action, is considered a connected action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of Vineyard Wind's request for authorization to take marine mammals incidental to specified activities associated with the Project (*e.g.,* pile driving)—is to evaluate the applicant's request pursuant to specific requirements of the MMPA and its implementing regulations administered by NMFS, consider impacts of the applicant's activities on relevant resources, and if appropriate, to issue the permit or authorization. NMFS needs to render a decision regarding the request for authorization due to NMFS's responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(D)) and its implementing regulations. If NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt BOEM's EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers, New England District (USACE) anticipates a permit action to be undertaken through authority delegated to the District Engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The USACE considers issuance of a permit under these two delegated authorities a major Federal action connected to BOEM's Proposed Action (40 CFR 1501.9(e)(1)). The applicant's stated purpose and need for the project, as indicated above, is to provide a commercially viable offshore wind energy project within the Lease Area to help Connecticut and other northeastern

states achieve their renewable energy goals.

The basic project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of a commercial-scale, offshore wind energy project for renewable energy generation and distribution to the New England energy grid. USACE intends to adopt BOEM's EIS to support its decision on any permits requested under section 10 of the RHA or section 404 of the CWA.

Preliminary Proposed Action and Alternatives

The Proposed Action is the construction and operation of wind energy facilities in two phases on the Lease Area as described in the COP submitted by Vineyard Wind. In its COP, Vineyard Wind proposes the construction and operation of up to 130 wind turbines, two to five offshore substations, inter-array cables, and up to three onshore substations with up to five export cables connecting to the onshore electric grid in Barnstable County, Massachusetts.

A combination of monopiles, piled jackets, or both could be used as foundations in Phase One, pending the outcome of a foundation feasibility analysis. In Phase Two, monopiles, jackets (with piles or suction buckets), bottom-frame foundations (with piles, gravity pads, or suction buckets), or a combination of those foundation types may be used, pending the outcome of a foundation feasibility analysis.

The closest point of the Vineyard Wind South development is 19.9 statute miles south of Martha's Vineyard and 23.7 statute miles from Nantucket. The Project also may include one reactive compensation station (booster station) that would be located in one of two potential locations that are 14.62 statute miles south of Martha's Vineyard and 16.54 statute miles from Nantucket or 22.98 miles south of Martha's Vineyard and 19.24 miles from Nantucket. The offshore export cables would be buried below the seabed. The onshore export cables, substations, and grid connections would be in Barnstable County, Massachusetts.

If any reasonable alternatives are identified during the scoping period, BOEM will evaluate those alternatives in the draft EIS, which will also include a no action alternative. Under the no action alternative, BOEM would disapprove the COP, and the Vineyard Wind South wind energy facilities described in the COP would not be built in the Lease Area.

Once BOEM completes the EIS and associated consultations, BOEM will decide whether to approve, approve with modification, or disapprove the Vineyard Wind South COP. If BOEM approves the COP and the Project is constructed, the lessee must submit a plan to decommission the facilities before the end of the lease term.

Summary of Potential Impacts

The draft EIS will identify and describe the potential effects of the Proposed Action on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action. This includes such effects that occur at the same time and place as the Proposed Action or alternatives and such effects that are later in time or occur in a different place. Potential impacts include, but are not limited to, impacts (both beneficial and adverse) on air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. These potential impacts will be analyzed in the draft and final EIS.

Based on a preliminary evaluation of these resources, BOEM expects potential impacts on sea turtles and marine mammals from underwater noise caused by construction and from collision risks with Project-related vessel traffic. Structures installed by the Project could permanently change benthic habitat and other fish habitat. Commercial fisheries and for-hire recreational fishing could be impacted. Project structures above the water could affect the visual character defining historic properties and recreational and tourism areas. Project structures also would pose an allision and height hazard to vessels passing close by, and vessels would in turn pose a hazard to the structures. Additionally, the Project could adversely impact military use, air traffic, land-based radar services, cables and pipelines, and scientific surveys. Beneficial impacts are also expected by facilitating achievement of state renewable energy goals, increasing job opportunities, improving air quality, and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

Anticipated Permits and Authorizations

In addition to the requested COP approval, various other federal, state, and local authorizations will be required for the Vineyard Wind South Project. Applicable Federal laws include the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, NEPA, MMPA, RHA, CWA, and Coastal Zone Management Act. BOEM will also conduct government-to-government tribal consultations. For a full listing of regulatory requirements applicable to the Vineyard Wind South Project, please see the COP, volume I, available at *https://www.boem.gov/vineyard-wind-south/*.

BOEM has chosen to use the NEPA substitution process to fulfill its obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, regulations implementing section 106 of the NHPA, at 36 CFR 800.8(c), allow the NEPA process and documentation to substitute for various aspects of review otherwise required under the NHPA. This substitution is intended to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project could have on the human environment. During preparation of the EIS, BOEM will ensure that the NHPA process for NEPA substitution will fully meet all NHPA obligations.

Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM expects to issue the NOA in July 2022. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM expects to make the final EIS available to the public in March 2023. A record of decision will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

This project is a ''covered project'' under section 41 of the Fixing America's Surface Transportation Act (FAST–41). FAST–41 provides increased transparency and predictability by requiring federal agencies to publish comprehensive permitting timetables for all covered projects. FAST–41 also provides procedures for modifying permitting timetables to address the unpredictability inherent in the environmental review and permitting

process for significant infrastructure projects. To view the FAST–41 Permitting Dashboard for Vineyard Wind South, visit: *https://cms.permits.performance.gov/permitting-project/vineyard-wind-south.*

Scoping Process

This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the Vineyard Wind South EIS. Throughout the scoping process, federal agencies, state, tribal, and local governments, and the general public have the opportunity to help BOEM determine significant resources and issues, impact-producing factors, reasonable alternatives (*e.g.,* size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as to provide additional information.

As noted above, BOEM will use the NEPA substitution process provided for in the NHPA regulations. BOEM will consider all written requests from individuals or organizations to participate as consulting parties under NHPA and, as discussed below, will determine who among those parties will be a consulting party in accordance with NHPA regulations.

BOEM will hold virtual public scoping meetings for the Vineyard Wind South EIS at the following dates and times (eastern daylight time):

- Monday, July 19, 5:30 p.m.;
- Friday, July 23, 1:00 p.m.; and
- Monday, July 26, 5:30 p.m.

Registration for the virtual public meetings may be completed here: *https://www.boem.gov/Vineyard-Wind-South-Scoping-Virtual-Meetings* or by calling (703) 787–1073.

NEPA Cooperating Agencies: BOEM invites other federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of this EIS. The NEPA regulations specify that qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency. Agencies also should consider the factors for determining cooperating agency status in the Council on Environmental Quality memorandum entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' dated January 30, 2002. This document is available on the internet at: *http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if a governmental entity is not a cooperating agency, it will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties: Certain individuals and organizations with a demonstrated interest in the Project can request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or economic stake in historic properties affected by the Project. Additionally, the same provision allows those with concerns about the Project's effect on historic properties to request to be consulting parties.

Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them in writing to become consulting parties. To become a consulting party, those invited must respond in writing, preferably by the requested response date.

Interested individuals or organizations that did not receive an invitation can request to be consulting parties by writing to the appropriate staff at ERM, which is supporting BOEM in its administration of this review. ERM's NHPA contact for this review is Danna Allen (678–904–4399, *ERM.NAVineyardWindSouthSection106@erm.com.* BOEM will determine which interested parties should be consulting parties.

Comments: Federal agencies, tribal, state, and local governments, and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the **ADDRESSES** section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals can request that BOEM withhold their names, addresses, or other personally identifiable information included in their comment from the public record; however, BOEM cannot guarantee that it will be able to do so. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Additionally, under section 304 of NHPA, BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as confidential and provide the reasons why BOEM should do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, comments, views, information, analysis, alternatives, or suggestions from the public; affected federal, state, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party on the Proposed Action. Specifically, BOEM requests information on the following topics:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.

2. Potential effects that the Proposed Action could have on physical resources

including air quality, water quality, and wetlands and other waters of the United States.

3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA section 106 and its implementing regulations (36 CFR part 800), BOEM seeks comment and input from the public and consulting parties regarding the identification of historic properties within the Proposed Action's area of potential effects, the potential effects on those historic properties from the activities proposed in the COP, and any information that supports identification of historic properties under NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available information regarding known historic properties during the public scoping period at *https://www.boem.gov/vineyard-wind-south/.* BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities in, or in the vicinity of, the Proposed Action and their possible impacts on the Project or the Project's impacts on those activities.

7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the Proposed Action as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by BOEM and the cooperating agencies.

Authority: This NOI is published in accordance with NEPA, 42 U.S.C. 4321 *et seq.,* and 40 CFR 1501.9.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–13994 Filed 6–29–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1526 (Final)]

Supplemental Schedule for the Final Phase of an Anti-Dumping Duty Investigation; Silicon Metal From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: Effective June 24, 2021.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi ((202) 708–1669), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective December 7, 2020, the Commission established a general schedule for the conduct of the final phase of its investigations on silicon metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia [1] following a preliminary determination by the U.S. Department of Commerce (''Commerce'') that imports of silicon metal from Bosnia and Herzegovina and Iceland were being sold at less than fair value (''LTFV'') [2] and that imports of silicon metal from Kazakhstan were subsidized by the government of Kazakhstan.[3] 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** of December 30, 2020 (85 FR 86578). 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 February 22, 2021. All persons who requested the opportunity were permitted to participate.

The Commission subsequently issued its final determinations that an industry in the United States was materially injured by reason of imports of silicon metal provided for in subheading 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'') from Bosnia and Herzegovina and Iceland that have been found by the Commerce to be sold in the United States at LTFV and by imports of silicon metal from Kazakhstan found to be subsidized by the government of Kazakhstan. Commerce has issued a final affirmative antidumping duty determination with respect to silicon metal from Malaysia.[4] Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigation on imports of silicon metal from Malaysia.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final antidumping duty determination is July 8, 2021. Supplemental party comments may address only Commerce's final antidumping duty determination regarding imports of silicon metal from Malaysia. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of this investigation regarding subject imports from Malaysia will be placed in the nonpublic record on July 19, 2021; and a public version will be issued thereafter.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document

[1] 85 FR 86578, December 30, 2020.

[2] 85 FR 80009, December 11, 2020.

[3] 85 FR 78122, December 3, 2020.

[4] 86 FR 33224, June 24, 2021. The Commission investigations became staggered when Commerce postponed its final determination regarding LTFV imports of silicon metal from Malaysia. 86 FR 7701, February 1, 2021.

Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–14000 Filed 6–29–21; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0047]

Plant-Specific, Risk-Informed Decisionmaking: Inservice Testing

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 1.175, ''Plant-Specific, Risk-Informed Decisionmaking: Inservice Testing.'' This RG has been revised to incorporate additional information since Revision 0 was issued, particularly information to be consistent with the terminology and defense-in-depth philosophy provided in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' as well as to endorse a standard by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code for Operations and Maintenance.

DATES: Revision 1 to RG 1.175 is available on June 30, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0047 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–2021–0047. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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. (ET), Monday through Friday, except Federal holidays.

Revision 1 to RG 1.175 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21140A055 and ML19240B374, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Zeechung Wang, telephone: 301–415–1686, email: *Zeechung.Wang@nrc.gov,* or Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 1 of RG 1.175 was issued with a temporary identification of Draft Regulatory Guide, DG–1286. It addresses new information identified since the previous revision of this guide was issued.

II. Additional Information

The NRC published a notice of the availability of DG–1286 (ADAMS Accession No. ML19240B371), in the **Federal Register** on April 6, 2021 (86 FR 17860), for a 30-day public comment period. The public comment period closed on May 6, 2021. The NRC has not received any comments on DG–1286.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 1 of RG 1.175 describes methods acceptable to the NRC staff for developing risk-informed inservice testing and supplements the guidance provided in RG 1.174. Issuance of this RG in final form would not constitute backfitting or forward fitting or affect issue finality as further discussed below.

Issuance of RG 1.175, would not constitute backfitting as defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. As explained in RG 1.175, applicants and licensees would not be required to comply with the positions set forth in RG 1.175.

Dated: June 24, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Project Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–13883 Filed 6–29–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–311; NRC–2021–0131]

PSEG Nuclear, LLC; Exelon Generation Company, LLC; Salem Nuclear Generating Station, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License No. DPR–75, issued to PSEG Nuclear, LLC, for operation of the Salem Nuclear Generating Station, Unit No. 2. The proposed amendments would revise Technical Specification (TS) actions for rod position indicators. This is a one-time change during the current operating cycle to support maintenance on the transformer supplying power to all of the Unit No. 2 rod position indicators.

DATES: Submit comments by July 30, 2021. Request for a hearing or petitions for leave to intervene must be filed by August 30, 2021.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0131. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James S. Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6606, email: *James.Kim@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0131, facility name, unit number(s), docket number(s), application date, and subject, if applicable, when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0131.
- *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 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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0131 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License No. DPR–75, issued to PSEG Nuclear LLC, for operation of the Salem Nuclear Generating Station, Unit No. 2, located in Salem County, New Jersey.

The proposed amendments would revise TS 3.1.3.2.1, ''Position Indication Systems—Operating,'' to modify TS Action b.4 for more than one inoperable analog rod position indicator per group from 24 hours to 30 hours. This is a one-time change during the current operating cycle to support maintenance on the transformer supplying power to all of the Unit No. 2 rod position indicators.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Rod position indication instrumentation is not an accident initiator, providing indication only of the control and shutdown rods positions. Normal operation, abnormal occurrences and accident analyses assume the rods are at certain positions within the reactor core. The proposed one-time change modifies the time that rod position indication may be inoperable. The existing TS Actions and other plant instrumentation provide appropriate compensation for that inoperability. Thus, this change does not involve a significant increase in the probability of an accident.

Extending the allowed outage time to restore inoperable rod position indicators does not affect the operability of the shutdown or control rods. With rod position indicators inoperable, the position of non-indicating rods is required to be verified by indirect means (*i.e.,* moveable incore detectors). Thus, inoperable rod position indication instrumentation does not involve an increase in the consequences of an accident. The inoperable rod position indication does not have any impact on the ability to trip the reactor in response to analyzed accidents and transients.

Therefore, the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The proposed change will not impose any new or different requirement or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, the proposed one-time change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Loss of rod position indication does not cause a rod to be misaligned. With rod position indicators inoperable, the control rods are required to be placed in manual control, and the position of non-indicating rods is required to be verified using indirect means. The proposed change will not affect the ability of the shutdown or control rods to perform their required function.

The proposed amendment will not result in a design basis or safety limit being exceeded or altered. Therefore, since the proposed change does not impact the response of the plant to a design basis accident, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the 3 standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 60 day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing'') section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds

an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated June 18, 2021 (ADAMS Accession No. ML21169A004).

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

Dated: June 24, 2021.

For the Nuclear Regulatory Commission.

James S. Kim, Project Manager,

Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–13896 Filed 6–29–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–01; NRC–2021–0122]

GE-Hitachi Nuclear Energy Americas, LLC; Morris Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff received and is considering an application for the renewal of special nuclear materials (SNM) License No. SNM–2500, which currently authorizes GE-Hitachi Nuclear Energy Americas, LLC (GEH), to possess, transfer, and store radioactive material at the Morris Operation. The renewed license would authorize GEH to continue to store radioactive material for an additional 20 years from May 31, 2022, the expiration date of the current license. Because this license renewal application contains Sensitive Unclassified Non-Safeguards Information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 30, 2021. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by July 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0122 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–2021–0122. 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. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kristina L. Banovac, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC staff received, by letter dated June 30, 2020, as supplemented by letters dated February 26, 2021, March 19, 2021, and March 24, 2021, an application from GEH for renewal of SNM License No. SNM–2500 for the Morris Operation for an additional 20 years (ADAMS Accession Nos. ML20182A699 (Package), ML21057A119 (Package), ML21085A859, and ML21083A200 (Package)). The license authorizes GEH to possess, transfer, and store radioactive material at the Morris Operation located in Grundy County, Illinois, near Morris, Illinois. This license renewal, if approved, would authorize GEH to continue to store radioactive material at the Morris Operation, under the provisions of 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.'' No additional radioactive material will be authorized for storage under the license renewal, if approved.

Following an NRC administrative completeness review, documented in a letter to GEH dated April 20, 2021 (ADAMS Accession No. ML21104A080), the NRC staff determined that the renewal application contains sufficient information for the NRC to begin its technical review and the application is acceptable for docketing. The application is docketed in Docket No. 72–01, the existing docket for SNM License No. SNM–2500. If the NRC approves the renewal application, the approval will be documented in the renewal of SNM License No. SNM–2500. The NRC will approve the license renewal application if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a safety evaluation report. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing'') section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format (PDF). Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. (ET) on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory

documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., (ET), Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: June 24, 2021.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2021–13891 Filed 6–29–21; 8:45 am]

BILLING CODE 7590–01–P

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0112]

Fuel Qualification for Advanced Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2246, ''Fuel Qualification for Advanced Reactors.'' The purpose of this NUREG report is to provide a fuel qualification assessment framework for use by applicants. Specifically, the framework provides objective criteria, derived from regulatory requirements, that when satisfied, would support regulatory findings for licensing.

DATES: Submit comments by August 30, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0112. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Timothy Drzewiecki, telephone: 301–415–5184, email: *Timothy.Drzewiecki@nrc.gov* and Jordan Hoellman, telephone: 301–415–5481, email: *Jordan.Hoellman2@nrc.gov*. Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0112 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0112.
- *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 draft NUREG, NUREG–2246, ''Fuel Qualification for Advanced Reactors'' is available in ADAMS under Accession No. ML21168A063.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–1112 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

Proposed advanced reactor designs use fuel designs and operating environments (*e.g.,* neutron energy spectra, fuel temperatures, neighboring materials) that differ from the large experience base available for traditional light-water reactor fuel. The purpose of this report is to identify criteria that will be useful for advanced reactor designs through an assessment framework that would support regulatory findings associated with nuclear fuel qualification. The report begins by examining the regulatory basis and related guidance applicable to fuel qualification, noting that the role of nuclear fuel in the protection against the release of radioactivity for a nuclear facility depends heavily on the reactor design. The report considers the use of accelerated fuel qualification techniques and lead test specimen programs that may shorten the timeline for qualifying fuel for use in a nuclear reactor at the desired parameters (*e.g.,* burnup). The assessment framework particularly emphasizes the identification of key fuel manufacturing parameters, the specification of a fuel performance envelope to inform testing requirements, the use of evaluation models in the fuel qualification process, and the assessment of the experimental data used to develop and validate evaluation models and empirical safety criteria.

Dated: June 25, 2021.

For the Nuclear Regulatory Commission.

John P. Segala,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–13955 Filed 6–29–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued two

exemptions in response to requests from one licensee. The exemptions afford the licensee temporary relief from certain requirements under NRC regulations. The exemptions are in response to the licensee's requests for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: During the period from May 17, 2021, to May 19, 2021, the NRC granted two exemptions in response to requests submitted by one licensee from April 16, 2021, to April 21, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from May 17, 2021, to May 19, 2021, the NRC granted two exemptions in response to requests submitted by one licensee from April 16, 2021, to April 21, 2021. These exemptions temporarily allow the licensee to deviate from certain requirements (as cited in this notice) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemption from certain requirements of 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' section IV.F., ''Training,'' for Vistra Operations Company LLC (for Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2), grants a temporary exemption from the offsite biennial emergency preparedness exercise requirement. The exemption affords this licensee temporary relief from the requirements of 10 CFR part 50, appendix E, regarding offsite response organization (ORO) participation in the biennial emergency preparedness exercise for calendar year 2021. This exemption will not adversely affect the emergency response capability of the facility because the licensee has conducted numerous drills, exercises, and other training activities that have exercised the licensee's emergency response strategies since the last evaluated biennial emergency preparedness exercise and that State, county and local OROs have participated therein.

The exemption from certain requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI, ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' for Vistra Operations Company LLC (for Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2) ensures that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe and secure operation of this facility and the implementation of the licensee's NRC-approved security plans, protective strategy, and implementing procedures. The licensee has committed to certain security measures to ensure response readiness and for its security personnel to maintain performance capability.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19 related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables in this notice provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

COMANCHE PEAK NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2
DOCKET NOS. 50–445 AND 50–446

Document description	ADAMS accession No.
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2—One-Time Request for Exemption from the Biennial Emergency Preparedness Exercise Requirements in 10 CFR part 50, appendix E, sections IV.F.2.b and IV.F.2.c, dated April 21, 2021	ML21111A364
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2—Temporary Exemption from Requirements of 10 CFR part 50, appendix E, sections IV.F.2.b and IV.F.2.c (EPID L–2021–LLE–0028 [COVID–19]), dated May 17, 2021	ML21119A349
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2—Request for a Temporary Exemption from 10 CFR part 73, appendix B, section VI, subsection A.7 Regarding Annual Force-on-Force (FOF) Exercises, due to COVID–19 PHE, dated April 16, 2021	ML21106A293

COMANCHE PEAK NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2—Continued
DOCKET NOS. 50–445 AND 50–446

Document description	ADAMS accession No.
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2—Supplemental Information Regarding Request for a Temporary Exemption from 10 CFR part 73, appendix B, section VI, subsection A.7 Regarding Annual Force-on-Force (FOF) Exercises [COVID–19], dated May 12, 2021	ML21132A126
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2—Temporary Exemption from Annual Force-on-Force Exercise Requirement of 10 CFR part 73, appendix B, "General Criteria for Security Personnel," subsection A.7 (EPID L–2021–LLE–0024 [COVID–19]), dated May 19, 2021	ML21133A003

Dated: June 24, 2021.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–13887 Filed 6–29–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0173, CSRS/FERS Designation of Beneficiary, Standard Form 3102

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), CSRS/FERS Designation of Beneficiary, Standard Form 3102.

DATES: Comments are encouraged and will be accepted until July 30, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to: *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0173) was previously published in the **Federal Register** on August 13, 2020 at 85 FR 49402, allowing for a 60-day public comment period. One comment was received: "*The SSA agrees that combining the SF 2808 and SF 3102 simplifies the process and eliminates the possibility of invalid designations due to the completion of the incorrect form. Since OPM maintains all SF 2808 forms, agencies do not have access to previously filed forms to respond to employee requests for information. This may be problematic when employees are assessing the need to update their records. The new SF 3102 should indicate that agencies do not maintain the CSRS designation forms and provide instructions for employees to complete a new form if they are unsure if they have previously completed a designation or are unsure about whom they have previously designated. Otherwise, the form should indicate that employees must contact OPM for information about previously filed SF 2808 forms. The SSA suggests that, in addition to accepting wet signatures on the retirement designation beneficiary forms, OPM accept digital signatures using PIV credentials by employees and HR offices. Forms with validated digital employee signatures using PIV credentials should not require witness signatures. Since it is crucial for employees keeping their designation forms up to date, having a mechanism for electronic submission provides for more timely submission by employee and certification by HR offices*". Our response is: *(1)* "*Filing a designation is not needed if the person is satisfied with the federal order of precedence for payment of lump-sum payment under CSRS or FERS. Furthermore, individuals receive a copy of the form that is filed with the employing agency or OPM and can access their personal records to determine whether there is a need to update a previously filed form. Additionally, the form cautions the applicant that the person designated will be paid even if that person's name or relationship to the designator changes after the form is filed. We revised the instructions to indicate that the employee subject to CSRS should send both copies of the revised SF 3102 to OPM who will validate the form and provide a copy to the employee for their records. We indicated that the employing agency does not maintain the form of the CSRS employee.*" *and (2)* "*By regulation, employees are not allowed to use electronic signatures or PIV/CAC cards to sign the SF 3102, Designation of Beneficiary form. Title 5, Code of Federal Regulations on CSRS designations states that a designation of beneficiary must be in writing, signed and witnessed and received in the employing office (or in OPM, in the case of a retiree, or compensationer, or a separated employee) before the death of the designator. Therefore, no changes will be made to the signature and witness requirement because there are no changes to the appropriate regulation.*" The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 3102, CSRS/FERS Designation of Beneficiary, is used by an

employee or annuitant covered under the Civil Service Retirement System or the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death. The SF 3102 (FERS Designation of Beneficiary) is being combined with the SF 2808 (CSRS Designation of Beneficiary). The proposed version of SF 3102 will supersede all previous editions of SF 2808 and SF 3102.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: CSRS/FERS Designation of Beneficiary.

OMB Number: 3206–0173.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 5,888.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 1,472.

Office of Personnel Management.

Kellie C. Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2021–13898 Filed 6–29–21; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Evidence To Prove Dependency of a Child, RI 25–37

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Evidence to Prove Dependency of a Child, RI 25–37.

DATES: Comments are encouraged and will be accepted until July 30, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0206) was previously published in the **Federal Register** on April 2, 2021, at 86 FR 17418, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–37 is designed to collect sufficient information for the Office of Personnel Management to determine whether the surviving child of a deceased federal employee is eligible to receive benefits as a dependent child.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Evidence To Prove Dependency of a Child.

OMB Number: 3206–0206.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 250.

Estimated Time per Respondent: 1 Hour.

Total Burden Hours: 250 hours.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2021–13899 Filed 6–29–21; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Standard Form 2800—Application for Death Benefits Under the Civil Service Retirement System (CSRS); Standard Form 2800A—Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death (CSRS)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Application for Death Benefits Under the Civil Service Retirement System (CSRS), SF 2800 and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death (CSRS), SF 2800A.

DATES: Comments are encouraged and will be accepted until July 30, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to: *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0156) was previously published in the **Federal Register** on February 10, 2021 at 86 FR 8930, allowing for a 60-day public comment period. Two comments were received, but they had no relation to this information collection request.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 2800 is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. Standard Form 2800A is needed for deaths in service so that survivors can make the needed elections regarding military service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Death Benefits under the Civil Service Retirement System (SF 2800); and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death (SF 2800A).

OMB Number: 3206–0156.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 2800 = 40,000; SF 2800A = 400.

Estimated Time per Respondent: SF 3106 = 45 minutes; SF 3106A = 45 minutes.

Total Burden Hours: 30,300 hours (SF 2800 = 30,000; SF 2800A = 300).

Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2021–13897 Filed 6–29–21; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92250; File No. SR–NSCC–2021–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Increase the National Securities Clearing Corporation's Minimum Required Fund Deposit

June 24, 2021.

I. Introduction

On April 26, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–005 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to increase its minimum required fund deposit. The Proposed Rule Change was published for comment in the **Federal Register** on May 14, 2021,[3] and the Commission has received one comment letter [4] on the changes proposed therein.[5]

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is June 28, 2021.

The Commission is extending the 45-day time period for Commission action on the Proposed Rule Change. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [7] and for the reasons stated above, the Commission designates August 12, 2021, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the Proposed Rule Change (File No. SR–NSCC–2021–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13913 Filed 6–29–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 91809 (May 10, 2021), 86 FR 26588 (May 14, 2021) (File No. SR–NSCC–2021–005) (''Notice of Filing'').

[4] *See* letter from Parsons, Behle & Latimer, Counsel for Alpine Securities Corporation (''Alpine''), dated June 4, 2021, to Vanessa Countryman, Secretary, Commission (''Alpine Letter''), available at *https://www.sec.gov/comments/sr-nscc-2021-005/srnscc2021005.htm.*

[5] NSCC appended an Exhibit 2 to the materials filed on April 26, 2021. The appended Exhibit 2 consists of a comment letter that NSCC received from one of its members objecting to NSCC's proposal in response to member outreach NSCC conducted in 2019. *See* Notice of Filing, *supra* note 4, at 26593. A copy of the comment letter is available at *https://www.dtcc.com/-/media/Files/Downloads/legal/rule-filings/2021/NSCC/SR-NSCC-2021-005.pdf.*

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34317; File No. 812–15194]

iCapital KKR Private Markets Fund, et al.

June 24, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDC'') and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: iCapital KKR Private Markets Fund (formerly known as

Altegris KKR Commitments Master Fund) (the ''Company''); iCapital Registered Fund Adviser LLC (''iCapital RF Adviser''); StepStone Group LP (''StepStone Group''); StepStone Group Real Estate LP, StepStone AMP (GP), LLC, StepStone Atlantic (GP), L.P., StepStone Capital III (GP), LLC, StepStone European Fund GP S.à r.l., StepStone Ferro (GP), LLC, StepStone K Opportunities (GP), LLC, StepStone Secondaries II (GP), LLC, StepStone Secondaries III (GP), S.à r.l., StepStone Secondaries III (GP), LLC, StepStone UWF Secondaries (GP), L.P., StepStone KF (GP), LLC, StepStone NPS Siera (GP), LLC, StepStone NPS PE (GP), LLC, StepStone Rivas (GP), LLC, StepStone FSS (GP), LLC (collectively, with StepStone Group, the ''Existing StepStone Affiliated Advisers''); and StepStone Pioneer Capital I, L.P., StepStone Pioneer Capital Buyout Fund I, L.P., StepStone Mezzanine Partners I–A L.P., StepStone Private Equity Partners II L.P., StepStone Masters III L.P., StepStone Pioneer Capital Buyout Fund II, L.P., StepStone Pioneer Capital II, L.P., T.F. Capital Investors II L.P., StepStone PA Tap Fund I, LP, StepStone-Syn Investments, L.L.L.P., StepStone Pioneer Opportunities Fund, L.P., StepStone Pioneer Opportunities Fund II, L.P., StepStone Private Equity Partners III L.P., Latin America Opportunities (Delaware) L.P., StepStone Pioneer Capital III, L.P., Europe Enterprise III Onshore L.P., Asia Enterprise II Onshore LLC, StepStone Private Equity Partners L.P., StepStone Masters IV L.P., StepStone Capital Partners IV, L.P., StepStone XL Opportunities Fund II–B, L.P., Terrace Investment Holdings SMF, LLC, Sunstone PE Opportunities Fund, LLC, StepStone AP Opportunities Fund, L.P., Capitol Private Opportunities III LP, Capitol Private Opportunities III (Parallel) LP, StepStone Secondary Opportunities Fund IV, L.P., StepStone Private Equity Partners Offshore L.P., Asia Enterprise II Offshore L.P., StepStone Mezzanine Partners (Offshore) I–A L.P., StepStone International Investors II–G, L.P., StepStone International Investors II, L.P., StepStone Masters III Offshore L.P., MBKP North Asian Opportunities Partners Offshore L.P., T.F. Capital Investors II Offshore L.P., StepStone International Investors III, L.P., Latin America Opportunities L.P., Europe Enterprise III Offshore L.P., StepStone NPS PE Fund, L.P., StepStone Secondary Opportunities Fund III Offshore Holdings SCSP, Pegasus Multi-Strategy Series (A) LP, StepStone Tactical Growth Fund II Offshore Holdings, L.P., StepStone Capital Partners IV Europe Holdings SCSP, StepStone JP Opportunities Fund IA, L.P., StepStone KF Private Equity Fund II, L.P., StepStone BVK Opportunities Fund SCSP, StepStone Secondary Opportunities Fund IV Offshore Holdings, L.P., SIMA Private Equity 6 GMBH & Co. KG, 2006 Co-Investment Portfolio, L.P., 2007 Co-Investment Portfolio, L.P., 2008 Co-Investment Portfolio, L.P., Capitol Private Opportunities II (Parallel) LP, Capitol Private Opportunities II LP, Capital Private Opportunities LP, CGR/PE, LLC, Europe Enterprise II Offshore, L.P., Europe Enterprise III Offshore, L.P., Lexington C/RE, LLC, Masters IV Cayman Holdings, L.P., Mezzanine Co-Investment Portfolio, L.P., NYSCRF Pioneer Opportunities Fund A, L.P., NYSCRF Pioneer Partnership Fund B, L.P., Silverstone I, LLC, Silverstone II, LLC—Series A, Silverstone II, LLC—Series B, Silverstone II, LLC—Series C, Silverstone II, LLC—Series D, Silverstone II, LLC—Series E, Silverstone II, LLC—Series F, Silverstone II, LLC—Series G, Silverstone II, LLC—Series H, Silverstone II, LLC—Series I, Silverstone II, LLC—Series J, Silverstone II, LLC—Series K (Class 1), Silverstone II, LLC—Series K (Class 2), Silverstone III, L.P., StepStone A Opportunities Fund, L.P., StepStone Aegon Opportunities Fund, LP.—Series A, StepStone Aegon Opportunities Fund, LP.—Series B, StepStone AMP Opportunities Fund, L.P., StepStone AMP Opportunities Fund, L.P.—Series A, StepStone Atlantic Fund, L.P.—Infrastructure Series 1 2011, StepStone Atlantic Fund, L.P.—Private Equity Series 1 2009, StepStone Atlantic Fund, L.P.—Private Equity Series 2 2012, StepStone Atlantic Fund, L.P.—Private Markets Series 1 2014, StepStone Atlas Opportunities Fund II, L.P., StepStone Atlas Opportunities Fund LP, StepStone AZ China and Asia Opportunities Fund, L.P., StepStone AZ Secondary Opportunities Fund, L.P., StepStone Capital Partners II Cayman Holdings, L.P., StepStone Capital Partners II Onshore, L.P., StepStone Capital Partners III Offshore Holdings, L.P., StepStone Capital Partners III, L.P., StepStone Capital Partners IV Offshore Holdings, L.P., StepStone CC Opportunities Fund, LLC, StepStone CGC Opportunities I, L.P., StepStone Endurance L.P., StepStone European Fund SCS, SICAV–FIS—StepStone Capital Partners III Compartment, StepStone European Fund SCS, SICAV–FIS—StepStone Real Estate Partners III Compartment, StepStone Ferro Opportunities Fund, L.P., StepStone FSS Opportunities Fund, L.P., StepStone H Opportunities Fund, L.P., StepStone International Investors IV (Delaware), L.P., StepStone International Investors IV (Guernsey), L.P., StepStone JP Opportunities Fund II, L.P., StepStone JP Opportunities Fund, L.P., StepStone K Real Estate Co-Investment Fund, L.P., StepStone K Strategic Opportunities Fund II, L.P., StepStone K Strategic Opportunities Fund III, L.P., StepStone K Strategic Opportunities Fund, L.P., StepStone KF Private Equity Fund, L.P., StepStone Maple Opportunities Fund, L.P., StepStone Masters V Cayman Holdings, L.P., StepStone Masters V LP, StepStone Mexico I Co-Investment Opportunities Fund, L.P., StepStone Mexico I SPC, StepStone NL Opportunities Fund II, L.P., StepStone NL Opportunities Fund, L.P., StepStone NPS PE Fund, L.P.—Tranche B, StepStone OH Secondary Opportunities Fund, L.P., StepStone P Opportunities Fund, L.P., StepStone Phoenix Opportunities Fund, L.P., StepStone PIFSS Real Estate Co-Investment Fund, L.P., StepStone Pioneer Capital Europe II, L.P. Incorporated, StepStone Pioneer Capital Europe Opportunities Fund I, L.P. Incorporated, StepStone Pioneer Capital Europe Opportunities Fund IB, L.P. Incorporated, StepStone PPL Secondary Opportunities Fund, L.P., StepStone Private Access Partnership, L.P., StepStone Private Equity Partners III Cayman Holdings, L.P., StepStone Private Equity Partners Offshore II L.P., StepStone Private Equity Portfolio L.P., StepStone Real Estate Partners III Cayman, LP, StepStone Real Estate Partners III I Opportunities Fund, L.P., StepStone Real Estate Partners III Offshore, L.P., StepStone Real Estate Partners III TE, L.P., StepStone Real Estate Partners III, L.P., StepStone Real Estate Partners IV Parallel, L.P., StepStone Real Estate Partners IV, L.P., StepStone Rivas Private Equity Fund, L.P., StepStone Secondary Opportunities Fund II Offshore Holdings, L.P., StepStone Secondary Opportunities Fund II, L.P., StepStone Secondary Opportunities Fund III, L.P., StepStone Secondary Opportunities Fund, L.P., StepStone SEDCO European Opportunities Fund, L.P., StepStone SEDCO U.S. Opportunities Fund, L.P., StepStone Tactical Growth Fund II, L.P., StepStone Tactical Growth Fund Offshore Holdings, L.P., StepStone Tactical Growth Fund, L.P., StepStone UWF Secondary Opportunities Fund, L.P.—Series A, StepStone UWF Secondary Opportunities Fund, L.P.—Series B, StepStone XL Opportunities

Fund II–A, L.P., StepStone XL Opportunities Fund, L.P., Terrace Investment Holdings, LLC, StepStone R Co-Investment Partnership, L.P., StepStone C Strategic Core Infrastructure Partnership, L.P., Sunsira Infrastructure Fund, LLC, StepStone G Infrastructure Opportunities, L.P., StepStone Scorpio Infrastructure Opportunities Fund, L.P., StepStone KF Infrastructure Fund II, L.P., StepStone K Infrastructure Opportunities Fund, L.P., UK Canadian Hydro Holdco A Limited, StepStone KF Infrastructure Fund, L.P., StepStone NLGI Infrastructure Opportunities Fund, L.P., StepStone NPS Infrastructure Fund, L.P., Real Estate International Partnership Fund I, L.P., SRE Curator-TS, LP, SRE Maple Direct Investco, LP, SRE Maple REIT Investco, LP, Real Estate Domestic Partnership Fund I, L.P., Real Estate Global Partnership Fund II, L.P., SRE Care—Investco, L.P., SRE Colt Devco—Investco, L.P., SRE Colt OPCO—Investco, L.P., SRE Curator—Investco, L.P., SRE Encore—Investco, L.P., SRE Freyja—Investco, L.P., SRE Hasso—Investco, L.P., SRE Magnesia—Investco, L.P., SRE Panther—Investco, L.P., and SRE Preservation—Investco, L.P., SRE Ripple—Investco LP, SRE Stern Debt—Investco, L.P., SRE Stern Equity—Investco, L.P., SREP III COLT OPCO REIT, LLC, SREP III Flight—Investco, L.P., Sunstone Real Estate, L.P., Bridge Village Limited, StepStone E Opportunities Fund, L.P., StepStone E Offshore Opportunities Fund, L.P., StepStone M Opportunities Fund, L.P., StepStone LMM Opportunities Fund I, L.P.—Series A, StepStone LMM Opportunities Fund I, L.P.—Series B, Multibrand SICAV–SIF—Valida Private Equity Fund, Heathrow Forest Asia Opportunities Fund, L.P., StepStone NPS PE Fund II, L.P., LCIV Infrastructure Fund, StepStone B Infrastructure Opportunities Fund, L.P., StepStone NPS Infrastructure Fund II, L.P., Swiss Capital FPT Private Debt Fund L.P., Swiss Capital GPIM Private Debt Fund L.P., Swiss Capital HPS Private Debt Fund L.P., SC ACM Private Debt Fund L.P., SC Co-Investments Private Debt Fund L.P., SC NXT Capital Private Debt Fund L.P., SC ACA Private Debt Fund L.P., Swiss Capital HYS Private Debt Fund L.P., Swiss Capital KKR Private Debt Fund L.P., Swiss Capital Capitala Private Debt Fund L.P., SC BTC Private Debt Fund L.P., Swiss Capital KA Private Debt Fund L.P., Swiss Capital TLCP Private Debt Fund L.P., Swiss Capital DCM Private Debt Fund L.P., Swiss Capital PD (Offshore) Funds SPC, SC FPT Private Debt Offshore SP, SC NXT Capital Private Debt Offshore SP, SC ACA Private Debt Offshore SP, Swiss Capital CAPITALA Private Debt Offshore SP, Swiss Capital BTC Private Debt Offshore SP, Swiss Capital Co-Investments Private Debt Offshore SP, Swiss Capital HYS Private Debt Offshore SP, Swiss Capital ASP Private Debt Offshore SP, SC ACM Private Debt Offshore SP, Swiss Capital KA Private Debt Offshore SP, StepStone Private Debt Secondary Funds SPC, SC DCM Secondary SP, Swiss Capital Alternative Strategies Funds SPC, SC Alternative Strategy 1 SP, SC Alternative Strategy 2 SP, SC Alternative Strategy 3 SP, SC Alternative Strategy 4 SP, SC Alternative Strategy 5 SP, SC Alternative Strategy 6 SP, SC Alternative Strategy 7 SP, SC Alternative Strategy 8 SP, SC Alternative Strategy 9 SP, SC Alternative Strategy 10 SP, SC Alternative Strategy 11 SP, SC Alternative Strategy 12 SP, SC Alternative Strategy 13 SP, SC Alternative Strategy 14 SP, StepStone ADF Opportunities Fund L.P., SC CWMAA Senior Corporate Lending L.P., Senior Corporate Lending Enhanced I Fund L.P., SCL XL I Fund L.P., SSG NLGI Private Debt Funds SPC, SSG NLGI European Direct Lending SP, SSG ME Private Debt Fund LP, Swiss Capital BG OL Private Debt Fund LP, Swiss Capital Alternative Strategies Funds II SPC, SC Alternative Strategy A SP, StepStone Real Estate Partners IV Europe SCS, StepStone Secondary Opportunities Fund IV Europe Holdings SCSp, Swiss Capital PRO Loan V plc, Swiss Capital PRO Loan VII plc, Swiss Capital Private Markets Funds, LG Income Fund, SC LV Private Debt Fund, Swiss Capital Private Markets II Funds, AGON Fund, Senior Corporate Lending Fund I, EuroPrima Fund, CWPS Global Infrastructure Fund, Senior Corporate Lending Europe Fund, Swiss Capital Credit Strategies ICAV, LG Direct Lending Platform Fund, SC LV Private Debt Platform Fund, Swiss Capital Credit Strategies II ICAV, 3SC PRIDE Fund, SSG Valluga Fund, Swiss Capital PRO Colours Funds plc, SC New Targets Funds, SC Target D Fund, SC Target O Fund, Oceanic Global Investment Funds plc, Pacific Ocean Fund, Swiss Capital Non-Traditional Funds, Swiss Capital PRO Non-Traditional Funds, Swiss Capital PRO Matrix Fund, Swiss Capital PRO Disintermediation I Fund, Swiss Capital PRO Unicum Fund, Swiss Capital PRO SST Fund, SC Private Debt Fund III L.P., Swiss Capital European Private Debt Funds I (SICAV) SCSp, ACM European Private Debt Fund, BLK European Private Debt Fund, TKH European Private Debt Fund, Co-Investment European Private Debt Fund, Apera European Private Debt Fund, CVC CP SSG European Private Debt Fund, TEREF LUX I, HCM European Private Debt Fund, Bridgepoint European Private Debt Fund, StepStone Trade Finance ICAV, StepStone Trade Finance Fund, Swiss Capital Credit Strategies III ICAV, PR Private Debt Fund, Swiss Capital Private Markets III, PR Private Debt Platform Fund, SSG Credit Strategies IV ICAV, SSG GEN Credit Fund I, SSG Credit Strategies V ICAV, and SSG GEN Credit Fund II (collectively, the ''Existing Affiliated Investors'').

FILING DATES: The application was filed on January 22, 2020 and amended on May 13, 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 July 14, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Stephen Jacobs at *sjacobs@icapitalnetwork.com* and Richard Horowitz at *richard.horowitz@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819 or Lisa Reid Ragen, 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. The Company was organized under Delaware law as a statutory trust for the

purpose of operating as an externally-managed, non-diversified, closed-end management investment company. The Company is a registered investment company under the Act. The Company's Objectives and Strategies [1] are to seek long-term capital appreciation and the Company intends to allocate at least 80% of its assets to private equity-type investments sponsored or advised by Kohlberg Kravis Roberts & Co. L.P. (''Kohlberg Kravis Roberts'') or an affiliate of Kohlberg Kravis Roberts (collectively with its affiliates, ''KKR''), including primary offerings and secondary acquisitions of interests in alternative investment funds that pursue private equity strategies and co-investment opportunities in operating companies presented by such KKR investment funds. The Company may at any time determine to allocate its assets to investments not sponsored, issued by or otherwise linked to, KKR, or its affiliates and to strategies and asset classes not representative of private equity. The Company has a five member board of trustees (''Board''),[2] which currently includes four persons who are not ''interested persons'' of the Company within the meaning of section 2(a)(19) of the Act.

2. The Company and certain of its affiliates have previously participated in a co-investment program in connection with an exemptive order issued by the Commission on October 17, 2016 (the ''Prior Order'') [3] granting substantially the same relief as is sought in the application. On January 29, 2021, iCapital RF Adviser became the investment adviser to the Company, at which time none of the Applicants were permitted to continue to rely on the Prior Order.[4] iCapital RF Adviser was formed under Delaware law as a limited liability company on August 18, 2020, and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

3. StepStone Group is a Delaware limited partnership and is registered with the Commission as an investment adviser under the Advisers Act. StepStone Group serves as the sub-adviser to the Company.

4. Each Existing Affiliated Investor is a privately-offered fund that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An Existing StepStone Affiliated Adviser serves as the investment adviser to each Existing Affiliated Investor. Each Existing StepStone Affiliated Adviser either directly or indirectly controls, is controlled by, or is under common control with StepStone Group, and is registered as an investment adviser under the Advisers Act.

5. Applicants seek an order (''Order'') to permit one or more Regulated Entities [5] and/or one or more Affiliated Investors [6] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, ''Co-Investment Transaction'' means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.[7] The term ''Advisor'' means any iCapital Adviser or any StepStone Affiliated Adviser.

6. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Investor because it would be a company controlled by its parent Regulated Entity for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Entity were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Entity's investments and, therefore, no conflicts of interest could arise between the

[1] ''Objectives and Strategies'' means a Regulated Entity's (as defined below) investment objectives and strategies, as described in the Regulated Entity's registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Entity's reports to shareholders.

[2] The term ''Board'' refers to the board of trustees of the Company and the board of directors or trustees of any other Regulated Entity, as the context may require.

[3] *Altegris KKR Commitments Master Fund, et al.,* Investment Company Act Release No. 32265 (September 19, 2016) (notice) and 32319 (October 17, 2016) (order).

[4] In reliance on the Commission staff no-action letter issued to *Innovator Capital Management, LLC, et al.* (pub. avail. October 6, 2017) and oral discussions with the Commission staff, the Applicants intend to rely on the Prior Order as if the Prior Order extended to iCapital RF Adviser until the earlier of the receipt of the Order or 150 days from January 29, 2021. During such time, iCapital RF Adviser will comply with the terms and conditions in the Prior Order imposed on the Company's previous investment adviser as though such terms and conditions were imposed directly on iCapital RF Adviser. When and if the Order is granted by the Commission, the Applicants would then rely on the Order, with the result that no person will continue to rely on the Prior Order.

[5] ''Regulated Entity'' means the Company and any Future Regulated Entity. ''Future Regulated Entity'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an iCapital Advisor and (c) whose investment sub-adviser is a StepStone Affiliated Adviser. ''iCapital Adviser'' means iCapital RF Adviser, or any future investment adviser that (i) controls, is controlled by or is under common control with iCapital RF Adviser, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity. ''StepStone Affiliated Adviser'' means any Existing StepStone Affiliated Adviser or any future investment adviser that (i) controls, is controlled by or is under common control with StepStone Group, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

[6] ''Affiliated Investors'' means the Existing Affiliated Investors and any Future Affiliated Investor. ''Future Affiliated Investor'' means an entity (a) whose investment adviser is a StepStone Affiliated Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act and (c) that intends to participate in the Co-Investment Program.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Subsidiary'' means an entity (i) that is wholly-owned by a Regulated Entity (with such Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Entity (and, in the case of an entity that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, as amended (the ''SBA Act''), as a small business investment company (an ''SBIC''), to maintain a license under the SBA Act and issue debentures guaranteed by the Small Business Administration); (iii) with respect to which the Regulated Entity's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries participating in the Co-Investment Program will be Wholly-Owned Investment Subsidiaries and will have Objectives and Strategies that are either substantially the same as, or a subset of, their parent Regulated Entity's Objectives and Strategies. A subsidiary that is an SBIC may be a Wholly-Owned Investment Subsidiary if it satisfies the conditions in this definition.

Regulated Entity and the Wholly-Owned Investment Subsidiary. The Regulated Entity's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Entity's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Entity's place. If the Regulated Entity proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Entity and the Wholly-Owned Investment Subsidiary.

7. It is anticipated that the StepStone Affiliated Advisers will periodically determine that certain investments a StepStone Affiliated Adviser recommends for a Regulated Entity would also be appropriate investments for one or more other Regulated Entities and/or one or more Affiliated Investors as Potential Co-Investment Transactions. Such a determination may result in the Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors co-investing in certain investment opportunities. For each such investment opportunity, the Advisors to each Regulated Entity will independently analyze and evaluate the investment opportunity as to its appropriateness for such Regulated Entity taking into consideration the Regulated Entity's Objectives and Strategies.

8. Applicants state that iCapital RF Adviser serves as the Company's investment adviser and either it or another iCapital Adviser will serve in the same capacity to any Future Regulated Entity, and that StepStone Group serves as the Company's sub-adviser and either it or another StepStone Affiliated Adviser will serve in the same capacity to any Future Regulated Entity. Applicants represent that although a StepStone Affiliated Adviser will identify and recommend investments [9] for each Regulated Entity, prior to any investment by the Regulated Entity, the StepStone Affiliated Advisers will present each proposed investment to the relevant iCapital Adviser which has the authority to approve or reject all investments proposed for the Regulated Entity by a StepStone Affiliated Adviser.

9. Applicants state that StepStone Group has an investment committee through which it will carry out its obligation under condition 1 to make a determination as to the appropriateness of a Potential Co-Investment Transaction for each Regulated Entity. Applicants represent that each StepStone Affiliated Adviser has developed a robust allocation process as part of its overall compliance policies and procedures. Applicants state that, in the case of a Potential Co-Investment Transaction, the applicable StepStone Affiliated Adviser would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a).

10. Applicants state that, once the applicable StepStone Affiliated Adviser determined a proposed allocation for a Regulated Entity, such StepStone Affiliated Adviser would notify the applicable iCapital Adviser of the Potential Co-Investment Transaction and the StepStone Affiliated Adviser's recommended allocation for such Regulated Entity. Applicants further state that the applicable iCapital Adviser would review the StepStone Affiliated Adviser's recommendation for the Regulated Entity and would have the ability to ask questions of the StepStone Affiliated Adviser and request additional information from the StepStone Affiliated Adviser. Applicants further submit that if the applicable iCapital Adviser approved the investment for the Regulated Entity, the investment and all relevant allocation information would then be presented to the Regulated Entity's Board for its approval in accordance with the conditions to the application. Applicants state that they believe the investment process that will unfold between the StepStone Affiliated Adviser and iCapital Advisers, prior to seeking approval from the Regulated Entity's Board (which is in addition to, rather than in lieu of, the procedures required under the conditions of the application), is significant and provides for additional procedures and processes to ensure that the Regulated Entity is being treated fairly in respect of Potential Co-Investment Transactions.

11. If the Advisors to a Regulated Entity determine that a Potential Co-Investment Transaction is appropriate for the Regulated Entity (and the applicable iCapital Adviser approves the investment for such Regulated Entity), and one or more other Regulated Entities and/or one or more Affiliated Investors may also participate, the Advisors will present the investment opportunity to the Eligible Trustees [10] of the Regulated Entity prior to the actual investment by the Regulated Entity. As to any Regulated Entity, a Co-Investment Transaction will be consummated only upon approval by a required majority of the Eligible Trustees of such Regulated Entity within the meaning of section 57(o) of the Act (''Required Majority'').[11]

12. With respect to the pro rata dispositions and follow-on investments provided in conditions 7 and 8, a Regulated Entity may participate in a pro rata disposition or follow-on investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Entity and Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or follow-on investment, as the case may be; and (ii) each Regulated Entity's Board has approved that Regulated Entity's participation in pro rata dispositions and follow-on investments as being in the best interests of the Regulated Entity. If the Board does not so approve, any such disposition or follow-on investment will be submitted to the Regulated Entity's Eligible Trustees. The Board of any Regulated Entity may at any time rescind, suspend or qualify its approval of pro rata dispositions and follow-on investments with the result that all dispositions and/or follow-on investments must be submitted to the Eligible Trustees.

13. No Independent Trustee [12] of a Regulated Entity will have a financial interest in any Co-Investment Transaction.

14. Applicants state that if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and any Affiliated Investors (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Entity, then

[9] Applicants represent that the iCapital Advisers will not source any Potential Co-Investment Transactions under the requested Order.

[10] ''Eligible Trustees'' means the trustees or directors of a Regulated Entity that are eligible to vote under section 57(o) of the Act.

[11] In the case of a Regulated Entity that is a registered closed-end fund, the trustees or directors that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to section 57(o). As defined in section 57(o), ''required majority'' means ''both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.''

[12] The term ''Independent Trustees'' refers to the trustees or directors of any Regulated Entity that are not ''interested persons'' of the Regulated Entity within the meaning of section 2(a)(19) of the Act.

the Holders will vote such shares as required under Condition 15.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Entities that are registered closed-end investment companies. Similarly, with regard to BDCs, section 57(a)(4) of the Act makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC (or a company controlled by such BDC) is a joint or a joint and several participant with that person in contravention of rules as prescribed by the Commission. Because the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules under section 17(d) applicable to registered closed-end investment companies (*e.g.,* rule 17d–1) are, in the interim, deemed to apply to transactions subject to section 57(a). Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), as modified by rule 57b–1, from acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, unless an application regarding the joint enterprise, arrangement, or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of the plan or any modification thereof, to security holders for approval, or prior to its adoption or modification if not so submitted.

2. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that the Regulated Entities, by virtue of each having an iCapital Adviser, may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act. Section 17(d) and section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively, including the sub-adviser. Thus, a StepStone Affiliated Adviser and any Affiliated Investors that it advises could be deemed to be persons related to Regulated Entities in a manner described by sections 17(d) and 57(b) and therefore prohibited by sections 17(d) and 57(a)(4) and rule 17d–1 from participating in the Co-Investment Program. Applicants further submit that, because the StepStone Affiliated Advisers are ''affiliated persons'' of other StepStone Affiliated Advisers, Affiliated Investors advised by any of them could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

4. Applicants state that they expect that that co-investment in portfolio investments by a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors will increase favorable investment opportunities for each Regulated Entity.

5. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain dispositions or follow-on investments, as described in the conditions), and other protective conditions set forth in the application, will ensure that each Regulated Entity will be treated fairly. Applicants state that each Regulated Entity's participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants. Applicants further state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including iCapital Advisers or the StepStone Affiliated Advisers.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time a StepStone Affiliated Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies, the Advisors to the Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. a. If the Advisors to a Regulated Entity deem participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Advisors will then determine an appropriate level of investment for such Regulated Entity.

b. If the aggregate amount recommended by the Advisors to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, pro rata based on each participant's Available Capital [13] for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Advisors to each participating Regulated Entity will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Entity's investments for compliance with these allocation procedures.

c. After making the determinations required in conditions 1 and 2(a) above, the Advisors to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' participation in the Potential Co-

[13] ''Available Capital'' means (a) for each Regulated Entity, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Entity or imposed by applicable laws, rules, regulations or interpretations and (b) for each Affiliated Investor, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Investor's directors, general partners or adviser or imposed by applicable laws, rules, regulations or interpretations.

Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) the interests of the Regulated Entity's shareholders; and

(B) the Regulated Entity's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided, that if any other Regulated Entity or any Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(A) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(B) the Advisors to the Regulated Entity agree to, and do, provide periodic reports to the Regulated Entity's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may each, in turn, share its portion with its affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Advisors, any other Regulated Entity or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) and section 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(C), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. Each Regulated Entity has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Advisors will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for follow-on investments made in accordance with condition 8,[14] a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor or any affiliated person of another Regulated Entity or an Affiliated Investor is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7.a. If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

b. Each Regulated Entity will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

c. A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Regulated Entity's Board has approved as being in the best interests of the Regulated Entity the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Regulated Entity's Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Advisors will provide their written recommendation as to the Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

d. Each Regulated Entity and each Affiliated Investor will bear its own expenses in connection with the disposition.

8.a. If any Regulated Entity or Affiliated Investor desires to make a ''follow-on investment'' (*i.e.,* an additional investment in the same entity, including through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer) in a portfolio company whose securities were acquired in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity that participated in the Co-Investment

[14] This exception applies only to follow-on investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed follow-on investment, by each Regulated Entity.

b. A Regulated Entity may participate in such follow-on investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Advisors will provide their written recommendation as to such Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity's best interests.

c. If, with respect to any follow-on investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Entity is not based on the Regulated Entities' and the Affiliated Investors' outstanding investments immediately preceding the follow-on investment; and

(ii) the aggregate amount recommended by the Advisors to be invested by the Regulated Entity in the follow-on investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the Follow-On Investment opportunity will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

d. The acquisition of follow-on investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and be subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Independent Trustee of a Regulated Entity will also be a trustee, director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of any Affiliated Investor.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Advisors under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding brokers' fees contemplated by section 17(e) or section 57(k) of the Act, as applicable) [15] received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Advisor pending consummation of the transaction, the fee will be deposited into an account maintained by the Advisor at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the Advisors nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C) and (b) in the case of the Advisors, investment advisory fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

14. The Advisors to the Regulated Entities and Affiliated Investors will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisors to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within a Regulated Entity's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

15. If the Holders own in the aggregate more than 25 percent of the shares of a Regulated Entity, then the Holders will vote such shares in the same percentages as the Regulated Entity's other shareholders (not including the Holders) when voting on (1) the election of directors or trustees; (2) the removal of one or more directors or trustees; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

16. Each Regulated Entity's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Entity's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13910 Filed 6–29–21; 8:45 am]

BILLING CODE 8011–01–P

[15] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92257; File Nos. SR–CboeBYX–2021–012, SR–CboeBZX–2021–035, SRCboeEDGA–2021–011, SR–CboeEDGX–2021–025]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments No. 1, Relating to the Exchanges' Process for Re-Opening Securities Listed on Other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause Outside of Regular Trading Hours

June 24, 2021.

I. Introduction

On April 26, 2021, Cboe BYX Exchange, Inc. (''CboeBYX''), Cboe BZX Exchange, Inc. (''CboeBZX''), Cboe EDGA Exchange, Inc. (''CboeEDGA'') and Cboe EDGX Exchange, Inc. (''CboeEDGX,'' and collectively, the ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes to amend each Exchange's process for re-opening trading of securities listed on other national securities exchanges outside of regular trading hours. The proposed rule changes were published for comment in the **Federal Register** on May 14, 2021.[3] On June 21, 2021, the Exchanges each filed an Amendment No. 1 to their respective proposed rule changes (''Amendments No. 1'').[4] The Commission received no comments on the proposed rule changes. This order approves the proposed rule changes, as modified by Amendments No. 1.

II. Description of the Proposed Rule Changes, as Modified by Amendments No. 1

The Exchanges have proposed to harmonize the manner by which they re-open trading in a security listed on other national securities exchanges if the trading halt, suspension or pause in that security is lifted during one of the Exchanges' extra-hours sessions.[5] The Exchanges' respective processes for the re-opening of trading in securities listed on other national security exchanges under such circumstances vary depending on whether the securities are listed on the New York Stock Exchange LLC (''NYSE'') (''Tape A''), or are listed on exchanges other than NYSE (''Tape B'' and ''Tape C'').[6] Specifically, Tape A securities that resume trading after a halt, suspension, or pause during an extra-hours trading session will be automatically re-opened pursuant each of the Exchanges' contingent opening procedures, as described in each of the Exchanges' rules,[7] after one second has passed following an Exchange's receipt of the first NBBO following such resumption of trading.[8] As a result, when the Exchanges re-open Tape A securities during their respective extra-hours sessions today, orders are handled in time sequence and placed on each Exchange's book, routed, cancelled, or executed in accordance with the terms of the order.

With respect to Tape B and C securities, the Exchanges' rules [9] provide that the re-opening process following the resumption of trading after a trading halt, suspension, or pause during each of the Exchanges' extra-hours sessions will occur at the midpoint of 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 is 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.

The Exchanges have proposed to harmonize the different processes for re-opening Tape A, and Tape B and C securities during the extra-hours sessions by: (1) Amending the Exchanges' automated re-opening processes for Tape A securities to provide for the execution of orders at the midpoint of the NBBO; and (2) eliminating unnecessary differences between the process utilized for Tape A securities and the process used for Tape B and C securities. Thus, as proposed, each of the Exchanges' relevant rules [10] would provide that during extra-hours sessions, the re-opening process for Tape A securities will 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. In addition, the Exchanges propose to amend their respective processes for re-opening Tape B and C securities to mirror their proposed processes for Tape A securities, except that the Exchanges would require the primary listing market to have begun quoting a security before it initiates its own re-opening process. As amended, each of the Exchanges' rules [11] would provide that, during extra-hours trading sessions, the re-opening process for Tape B and C securities will 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. The Exchanges have stated that, to simplify the re-opening during these timeframes, the Exchanges are not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 91804 (May 10, 2021), 86 FR 26583 (May 14, 2021) (SR–CboeBYX–2021–012); 91801 (May 10, 2021), 86 FR 26594 (May 14, 2021) (SR–CboeBZX–2021–035); 91802 (May 10, 2021), 86 FR 26574 (May 14, 2021) (SR–CboeEDGA–2021–011) (''CboeEDGA Notice''); 91803 (May 10, 2021), 86 FR 26558 (May 14, 2021) (SR–CboeEDGX–2021–025) (''CboeEDGX Notice'') (collectively, ''Notices''). The proposed rule changes are nearly identical.

[4] In the Amendments No. 1, the Exchanges: (i) Added additional justification for the proposed rule changes, stating that the proposed re-opening process would provide certainty as to how orders will be handled across Tape A, B, and C securities and promote consistency with the re-opening process used by the Exchanges in other circumstances; (ii) stated that allowing one second to elapse prior to initiating the mid-point re-opening would ensure sufficient time for the midpoint to accurately reflect the market; and (iii) made technical and conforming edits. Because the Amendments No. 1 do not materially alter the substance of the proposed rule changes and make conforming and technical changes, the Amendments No. 1 are not subject to notice and comment. The Amendments No. 1 are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2021-012/srcboebyx2021012-8931890-245403.pdf; https://www.sec.gov/comments/sr-cboebzx-2021-035/srcboebzx2021035-8931888-245385.pdf; https://www.sec.gov/comments/sr-cboeedga-2021-011/srcboeedga2021011-8931893-245388.pdf;* and *https://www.sec.gov/comments/sr-cboeedgx-2021-025/srcboeedgx2021025-8931886-245402.pdf.*

[5] Outside of regular trading hours, the Exchanges operate certain extra-hours sessions. *See* CboeBYX Rules 1.5(c), (r), and (ee); CboeBZX Rules 1.5(c), (r), and (ee); CboeEDGA Rules 1.5(r), (s), and (ii); CboeEDGX Rules 1.5(r), (s), and (ii).

[6] The Exchanges state that Tape B securities are those listed on exchanges other than NYSE and Nasdaq and Tape C securities are those listed on Nasdaq. *See* Notices, *supra* note 3.

[7] *See* CboeBYX Rule 11.23(d); CboeBZX Rule 11.24(d); CboeEDGA Rule 11.7(d); CboeEDGX Rule 11.7(d).

[8] *See* CboeBYX Rule 11.23(e)(3); CboeBZX Rule 11.24(e)(3); CboeEDGA Rule 11.7(e)(3); CboeEDGX Rule 11.7(e)(3).

[9] *See* CboeBYX Rule 11.23(e)(1); CboeBZX Rule 11.24(e)(1); CboeEDGA Rule 11.7(e)(1); CboeEDGX Rule 11.7(e)(1).

[10] *See* proposed rules CboeBYX Rule 11.23(e)(1)(C); CboeBZX Rule 11.24(e)(1)(C); CboeEDGA Rule 11.7(e)(1)(C); CboeEDGX Rule 11.7(e)(1)(C).

[11] *See* proposed rules CboeBYX Rule 11.23(e)(1)(C); CboeBZX Rule 11.24(e)(1)(C); CboeEDGA Rule 11.7(e)(1)(C); CboeEDGX Rule 11.7(e)(1)(C).

proposing to retain a separate trigger that would allow the re-opening process to be initiated immediately when the Exchanges receive both a two-sided quotation and a trade from the listing exchange.[12]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule changes, as modified by Amendments No. 1, and finds that they are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder.[13] Specifically, the Commission finds that the proposals, as modified by Amendments No. 1, are consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

As described above, the Exchanges seek to harmonize their respective processes for re-opening trading in a security when a trading halt, suspension, or pause in that security is lifted and trading in that security resumes outside regular trading hours. In the Exchanges' view, applying their midpoint re-opening procedures in these circumstances, regardless of whether a security is a Tape A, B, or C security, would: (1) Provide greater consistency with the process currently used by the each of the Exchanges in other circumstances, (2) provide greater certainty as to how orders will be handled across security types, and (3) potentially provide executions that better reflect the applicable market for the security.[15] The Exchanges have stated that the proposal to not retain a separate trigger whereby the reopening process for Tape B and C securities would be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange would harmonize the reopening process with that for Tape A securities, simplify the re-opening process to be followed during these timeframes, and ensure that sufficient time is provided for the midpoint to accurately reflect the market in those securities.[16]

The Commission believes that the proposals are reasonably designed to facilitate a more orderly and efficient re-opening process following the resumption of trading after a trading halt, suspension, or pause during each of the Exchanges' extra-hours sessions. By providing a more consistent and harmonized approach to each of the Exchanges' re-opening procedures, the proposals should promote greater certainty, reduce the likelihood of confusion, and facilitate the resumption of orderly trading under such circumstances.

Therefore, the Commission finds that the proposals, as modified by Amendments No. 1, are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule changes (SR–CboeBYX–2021–012, SR–CboeBZX–2021–035, SR–CboeEDGA–2021–011, and SR–CboeEDGX–2021–025), as modified by Amendments No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13917 Filed 6–29–21; 8:45 am]

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[12] In addition to these proposed changes to the reopening process, the Exchanges also proposed other technical and non-substantive changes to their rules in order to facilitate the substantive changes explained above. *See* Notices, *supra* note 3. CboeEDGA and CboeEDGX also proposed non-substantive changes to conform CboeEDGA Rule 11.7 and CboeEDGX 11.7 to CboeBZX Rule 11.24. *See* CboeEDGA Notice and CboeEDGX Notice, *supra* note 3.

[13] 15 U.S.C. 78f. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Notices, *supra* note 3, and Amendments No. 1, *supra* note 4.

[16] *See* Amendments No. 1, *supra* note 4.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92249; File No. SR–DTC–2021–005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change To Modify the DTC Settlement Service Guide and the Form of DTC Pledgee's Agreement

June 24, 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 June 15, 2021, The Depository Trust Company (''DTC'') 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 primarily by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] 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[5] would modify the DTC Settlement Service Guide (''Settlement Guide'')[6] and the form of DTC Pledgee's Agreement (''Pledgee's Agreement''),[7] as described below. Specifically, the proposed rule change would revise text in the

[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).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (''Rules'') *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[6] *Available at https://www.dtcc.com/legal/rules-and-procedures.* The Settlement Guide constitutes Procedures of DTC relating to its Settlement services. Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *infra* note 7. DTC's Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner as they are bound by the Rules. *See* Rule 27, *infra* note 7.

[7] *Available at https://www.dtcc.com/legal/rules-and-procedures.* Pursuant to Rule 2, Section 3, an entity that uses DTC's Pledge services must enter into an agreement with DTC satisfactory to DTC. *See* Rule 2, Section 3, *supra* note 5. In this regard, DTC requires a Pledgee that is not a Participant to sign a Pledgee's Agreement. Participants enter into a Participant's Agreement that binds them to the Rules and Procedures (including, but not limited to, those related to Pledge activity), and are not required by DTC to enter into a separate Pledgee's Agreement. *See also* Rule 2, Section 1, *supra* note 5 (providing terms of the Participant's Agreement).

Settlement Guide and Pledgee's Agreement to clarify the text with respect to the processing of book entries of Pledge-related [8] activity at DTC. The proposed revisions would reflect in the text of the Settlement Guide and Pledgee's Agreement that Pledged Securities remain credited to a Pledgor's Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee's Agreement currently indicate that Pledged Securities are credited to a Pledgee's Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee are. The text of the proposed changes to the rules of DTC are described in greater detail below.

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

The proposed rule change of DTC would modify the Settlement Guide and the form of Pledgee's Agreement, as described below. Specifically, the proposed rule change would revise text in the Settlement Guide and Pledgee's Agreement to clarify the text with respect to the processing of book entries of Pledge-related [9] activity at DTC. The proposed revisions would reflect in the text of the Settlement Guide and Pledgee's Agreement that Pledged Securities remain credited to a Pledgor's Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee's Agreement currently indicate that Pledged Securities are credited to a Pledgee's Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee.

The following discussion is provided by DTC and includes, but is not limited to, its own analysis of applicable state law provisions that DTC believes are relevant for purposes of describing the proposed rule change.

Background

Eligibility for Pledge Services

The Pledge services of DTC are available to banks, trust companies, broker-dealers and other Persons approved by DTC, which have entered into an agreement with DTC that is satisfactory to it, for the purpose of effecting a Pledge of Deposited Securities to such banks, trust companies, broker-dealers and other Persons.[10] A Pledgee may but need not be a Participant. A Pledgee is required by DTC to sign a Pledgee's Agreement unless it is also a Participant. Participants are not required to sign a separate Pledgee's Agreement to use DTC's pledge services because the Participant's Agreement binds the Participant to DTC's Rules and Procedures, including those relating to Pledge-related activity. Only a Pledgee that is a Participant may receive a Pledge Versus Payment.[11]

Book Entry of Pledges and Legal Effect

As indicated above, the definition of a ''Security Entitlement'' in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that ''[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement.''

However, as more fully discussed below, while the Settlement Guide and the Pledgee's Agreement make reference to the movement of Securities to a Pledgee's Account, from an operational standpoint, DTC does not in fact credit a Security to an Account of a Pledgee; what the Pledgee receives is not a Security Entitlement. The Securities remain credited to the Pledgor's account until the Pledgee releases the Pledged Securities or makes a demand for the Pledged Securities, as discussed below. Rather, a notation is placed on the Account of the Pledgor that the Securities are Pledged to the Pledgee, and the Securities remain in Pledged status until the Pledgee instructs otherwise.

As described below, this bookkeeping method does not adversely impact the rights of the Pledgee in that the Pledgee maintains Control over the Pledged Securities, and the Pledged Securities cannot be used by the Pledgor for any other transaction unless the Pledgee releases the Securities from the Pledged status through an instruction to DTC.

DTC's Description of Pledge

The Settlement Guide states that:

''[w]hen pledging securities to a pledgee, the pledgor's position is moved from the pledgor's general free account to the pledgee's account which prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position would move the pledged position back to the pledgor's general free account where it

[8] Pursuant to Rule 1, the defined term ''Pledge'' in the Rules means, *inter alia,* ''creating or providing for a security interest in a Certificated or Uncertificated Security, a Securities Account or a Securities [sic] Entitlement in accordance with the NYUCC.'' *See* Rule 1, *supra* note 5. Pursuant to Rule 1, the term ''NYUCC'' means the Uniform Commercial Code of New York, as amended from time to time. *See* Rule 1, *supra* note 5. Pursuant to Rule 1, the term ''Certificated Security'' has the meaning given to the term ''certificated security'' in Section 8–102 of the NYUCC. *See* Rule 1, *supra* note 5. Pursuant to Section 8–102 of the NYUCC, ''certificated security'' means a security that is represented by a certificate. *See* NYUCC 8–102. Pursuant to Rule 1, the term ''Uncertificated Security'' has the meaning given to the term ''uncertificated security'' in Section 8–102 of the NYUCC. *See* Rule 1, *supra* note 5. Pursuant to Section 8–102 of the NYUCC, ''uncertificated security'' means a security that is not represented by a certificate. Pursuant to Rule 1, the term ''Securities Account'' (1) as used with respect to a Participant or Pledgee, means an account maintained by DTC for the Participant or Pledgee to which Securities transactions of the Participant or Pledgee effected through the facilities of DTC are debited and credited in the manner specified in the Rules and Procedures; and (2) as used with respect to DTC, means an internal account of DTC to which Securities transactions are debited and credited to DTC. *See* Rule 1, *supra* note 5. Pursuant to Rule 1, the term ''Security Entitlement'' has the meaning given to the term ''security entitlement'' in Section 8–102 of the NYUCC. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. *See id.* Pursuant to Section 8–102 of the NYUCC, ''security entitlement'' means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5. *See* NYUCC § 8–102. NYUCC § 8–501(b) provides that a person acquires a ''security entitlement'' when, *inter alia,* a securities intermediary indicates by book entry that a financial asset has been credited to the person's securities account. The absence of the crediting of a financial asset to an account of a Pledgee and the fact that an account of a Pledgee is not a securities account under Article 8 mean that the Pledgee has not acquired a security entitlement under Article 8. *See* NYUCC § 8–501(b). Pursuant to Section 8–102, ''entitlement holder'' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8–501(b)(2) or (3), that person is the entitlement holder. *See* NYUCC § 8–102.

[9] *See supra* note 8.

[10] *See* Rule 2, Section 3, *supra* note 5.

[11] *See id.*

would then be available to complete other transactions.'' [12]

Paragraph 2 of DTC's form of Pledgee's Agreement provides that:

''[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books transferring the securities from the account of such depositor to the account of Pledgee and shall maintain such securities in the account of Pledgee until instructed by Pledgee to release such securities to the account of the pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.''

The descriptions of DTC's Pledge arrangements in the (1) Settlement Guide, with respect to the text shown above, and as more fully described below, and (2) form of Pledgee's Agreement are imprecise because in practice DTC does not move or transfer the securities from an account of the Pledgor to an account of the Pledgee, as more fully described below.

The definition of a ''Security Entitlement'' in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that ''[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement.''

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, what the Pledgee receives is not a Security Entitlement.

The definition of an ''Entitlement Holder'' in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC (as to which see below) and notes that ''[a] Participant or Pledgee is an Entitlement Holder with respect to a Security credited to its Account''.

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, the Pledgee is not an Entitlement Holder. However, the Pledgee maintains Control of the Pledged Securities as more fully described below. A key to a Pledgee exercising its Control is its ability to instruct through DTC an Entitlement Order for the delivery, Pledge release or withdrawal of a security.

Entitlement Order

The definition of an ''Entitlement Order'' in the Rules incorporates the definition of such term in Article 8 of the NYUCC that ''[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order''.

Note that the definition of an Entitlement Order does not require that the Security be credited to a Securities Account of the instructor. The breadth of this definition allows permitted entities, such as Pledgees, to issue Entitlement Orders to DTC in respect of Securities credited to Securities Accounts belonging to others.

DTC Rule 9(B) [13] provides that:

''[i]f [DTC] receives an instruction from a Pledgee to effect a Delivery or Withdrawal of Pledged Securities, such instruction shall have the effect of notifying [DTC] that the Pledgee elects not to Release the Pledged Securities but, rather, to assert its Control over the Pledged Securities by the transfer of a greater interest in the Pledged Securities to itself or another Person. [DTC] shall accept such an instruction as a representation that the Pledgee is acting in accordance with applicable law, rules or regulations, agreements or any adjudication thereof.''

Under NYUCC Section 8–507(a),[14] a securities intermediary satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary. DTC satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the Entitlement Holder and the Securities Intermediary. In the case of Security Entitlements Pledged on the books of DTC, DTC satisfies its duty to comply with an Entitlement Order by complying with the Entitlement Order of the Pledgee.

Control

Under NYUCC Section 9–106(a),[15] ''[a] person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8–106''.[16]

Under NYUCC Section 8–106(d), ''[a] purchaser has ''control'' of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.''

Under NYUCC Section 1–102,[17] a purchaser is ''a person that takes by purchase'' with ''purchase'' being defined as ''taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property''.

NYUCC Section 8–106(f) further provides that ''[a] purchaser has ''control'' under subsection (c)(2) or (d)(2) even if any duty of the issuer or the securities intermediary to comply with instructions or entitlement orders originated by the purchaser is subject to any condition or conditions (other than further consent by the registered owner or the entitlement holder).''

Official Comment 4 to NYUCC Section 8–106 [18] notes that:

''[s]ubsection (d)(2) provides that a purchaser has control if the securities intermediary has agreed to act on entitlement orders originated by the purchaser if no further consent by the entitlement holder is required. Under subsection (d)(2), control may be achieved even though the original entitlement holder remains as the entitlement holder.''

Example 6 of Official Comment 4 is illustrative:

''Able & Co., a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with Clearing Corporation. Able causes Clearing Corporation to transfer the shares into a pledge account, pursuant to an agreement under which Able will continue to receive dividends, distributions, and the like, but Alpha has the right to direct dispositions. As in Example 3, Alpha has control of the 1000 shares under subsection (d)(2).''

In the case of security entitlements Pledged on the books of DTC, because DTC will comply with the instructions of a Pledgee as provided for in Rule 9(B),[19] which is an agreement between DTC and its Participants and Pledgees, a Pledgee has control of such security entitlements under NYUCC Section 8–106(d)(2) even when the Pledged Securities remain credited to the account of the Pledgor.

DTC's Pledge arrangements operate pursuant to the DTC Rules and the NYUCC. When Security Entitlements are Pledged to a Pledgee through the facilities of DTC, the Pledgee has a security interest in such Pledged

[12] *See* Settlement Guide, *supra* note 6 at 3–4.

[13] *See* Rule 9(B), *supra* note 5.

[14] NYUCC § 8–507(a).

[15] *See* NYUCC § 9–106(a).

[16] NYUCC § 8–106.

[17] *See* NYUCC § 1–102.

[18] *See* NYUCC § 8–106.

[19] *See* Rule 9(B), *supra* note 5.

Security Entitlements.[20] A Pledgee has ''control'' under Articles 8 and 9 of the NYUCC and under the DTC Rules of any Security Entitlements Pledged to it through the facilities of DTC,[21] and the Pledgee is empowered to issue Entitlement Orders [22] to DTC to direct the release, delivery or withdrawal of any such Pledged Security Entitlements.

Example of a Pledge by a Participant to a Pledgee

When Security Entitlements credited to Participant A's account at DTC are Pledged to Pledgee B through the facilities of DTC, B has a security interest in such Pledged security entitlements.[23]

B does not itself have ''security entitlements'' to the underlying securities and B is not an ''entitlement holder'' as such terms are defined in the NYUCC.

However, B as Pledgee would have ''control'' under Articles 8 and 9 of the NYUCC and under the Rules of any Security Entitlements Pledged to it through the facilities of DTC, and B is empowered to issue Entitlement Orders to DTC to direct the release, delivery or withdrawal of any such Pledged Security Entitlements.

Proposed Rule Change

Proposed Change to Text of Settlement Guide

Pursuant to the proposed rule change, DTC would revise the text of the Settlement Guide to reflect that Pledged Securities would not move to an Account of the Pledgee. As discussed above, the movement of the securities is not required to effect a Pledge and does not impact the rights of Pledgor or Pledgee under the Rules or the NYUCC. Rather Pledged Securities continue to be credited to the Pledgor's account, however with a system notation showing the status of the position as Pledged by the Pledgor to the Pledgee. This status systemically prevents the Pledged position from being used to complete other transactions, which is consistent with the Pledgee's Control over the Pledged Securities, as discussed above. Likewise, the release of a Pledged position results in the removal of the notation of the Pledge status of the position and the position would become available to the Pledgor to complete other transactions.

The changes to the Settlement Guide text are technical in nature, and while enhancing clarity with respect to the book entries performed by DTC as they relate to Pledge activity, the change would not impact the rights or obligations of Participants and Pledgees. In this regard, the applicable sections of the Settlement Guide would be revised to (1) clarify the text with respect operational aspect of book entries of Pledges, as discussed above, (2) make changes to text for readability necessary in the context of the proposed clarification, and (3) revise text for consistency related to the use of the defined terms, including, but not limited to, Delivery Versus Payment, Pledge, Pledgee, Pledgor and Pledge Versus Payment, as follows: (*italicized* text indicates additions; [bracketed] text indicates deletions):

(a) Text included in Item 3 (Collateral Loans) set forth under the heading ''Settlement Transactions'' [24] would be revised as follows:

''The collateral loan service allows a Participant (the [pledgor] *Pledgor*) to [pledge] *Pledge* securities as collateral for a loan or for other purposes and also request the release of [pledged] *Pledged* securities. This service allows such [pledges] *Pledges* and [pledge] *Pledge* releases to be made free, meaning that the money component of the transaction is settled outside of the depository, or valued, meaning that the money component of the transaction is settled through DTC as a debit/credit to the [pledgor's] *Pledgor's* and [pledgee's] *Pledgee's* DTC money settlement account. When [pledging] *Pledging* securities to a [pledgee] *Pledgee,* the [pledgor's] *Pledgor's* position [is moved from the Pledgor's general free account to the Pledgee's account] *continues to be credited to the Pledgor's account, however with a system notation showing the status of the position as Pledged by the Pledgor to the Pledgee. This status systemically* [which] prevents the [pledged] *Pledged* position from being used to complete other transactions. Likewise, the release of a [pledged] *Pledged* position [would move the pledged position back to the] *results in the removal of the notation of the Pledge status of the position and the position would become* [pledgor's general free account where it would then be] available to *the Pledgor to* complete other transactions.''

(b) Text included under the heading ''About the Product'' that appears under the heading ''Collateral Loan Program'' [25] would be revised as follows:

''The Collateral Loan Program allows you to [pledge] *Pledge* securities [from] *held in* your general free account as collateral for a loan or for other purposes (such as Letters of Credit) to a [pledgee] *Pledgee* participating in the program. You can also request the [pledgee] *Pledgee* to release [pledge] *Pledged* securities [back to your general free account]. These [pledges] *Pledges* and releases can be free (when money proceeds are handled outside DTC) or valued (when money proceeds are applied as debits and credits to the [pledgee's] *Pledgee's* and [pledgor's] *Pledgor's* money settlement accounts). A Pledgee may, but need not be, a Participant. Only a Pledgee which is a Participant may receive valued [pledges] *Pledges.*''

(c) Text included under the heading ''Pledges to the Options Clearing Corporation'' [26] would be revised as follows:

''A Participant writing an option on any options exchange may fully collateralize that option by [pledging] *Pledging* the underlying securities by book-entry through DTC to the Options Clearing Corporation (OCC). If the option is called (exercised), the securities may be released and delivered to the holder of the call. If the option contract is not exercised, OCC validates a release of the [pledged] *Pledged* securities [, which are then returned to the Participant's general free account].''

(d) Text included under the heading ''Release of Deposits with Options Clearing Corporation on Expired Options'' would be revised as follows:

''OCC automatically releases securities deposited with it to cover margin requirements on an option contract when the option contract expires. [The securities are then allocated to your general free account.] Notification of the released securities is received via the Collateral Loan Services functionality in the Settlement User Interface or automated output.''

(e) In addition to any proposed changes to apply generally with respect to the Settlement Guide text as described above, text included under

[20] The interest transferred is, however, only a security interest if the Pledgor and Pledgee have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied. The agreement is entered into by the parties outside of DTC, and DTC does not have knowledge or information on the existence of such an agreement between the parties.

[21] The definition of ''Control'' in the Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that ''[a] Pledgee has Control of Pledged Securities until they are Delivered, Released or Withdrawn by the Pledgee.'' *See* Rule 1, Section 1, *supra* note 5.

[22] The definition of an ''Entitlement Order'' in the Rules incorporates the definition of such term in Section 8–102 of the NYUCC and notes that ''[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order''. As noted above, pursuant to Section 8–102, ''entitlement order'' means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement. *See* NYUCC 8–102.

[23] As mentioned above, the interest transferred is, however, only a security interest if A and B have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied.

[24] *See* Settlement Guide, *supra* note 6 at 3–4.

[25] *See* Settlement Guide, *supra* note 6 at 8–9.

[26] *See* Settlement Guide, *supra* note 6 at 10.

the heading ''Shared Control Accounts'' [27] would be revised to delete text shown below that states ''Pledgee accounts continue to be available at DTC.'' This sentence was added to the text when Shared control account arrangements were added to the Procedures [28] to clarify that the existing Pledge-related services would continue to be offered. As both the original Pledge program and the Shared control account process are both established programs, DTC believes the sentence is no longer necessary.

About the Product

Shared control accounts are available as an alternative to ''agreement to pledge'' arrangements.

Background

When a Participant [pledges] *Pledges* securities to [the pledgee account of] a [pledge] *Pledgee* at DTC (sometimes called a ''hard pledge''), the securities are under the sole control of the [pledgee] *Pledgee.* Only the [pledgee] *Pledgee* can redeliver or release the securities. [Pledgee accounts continue to be available at DTC.]

Shared control accounts are available at DTC as an alternative to agreement to [pledge] *Pledge* (sometimes called ''agreement to deliver'') arrangements. A [pledgee] *Pledgee* has control over securities delivered by a Participant to the Participant's shared control account at DTC since the [pledge] *Pledgee* has the ability to redeliver the securities without further consent by the Participant. Until the [pledgee] *Pledgee* redelivers the securities, the Participant has the flexibility to redeliver or make substitutions for the securities without obtaining the [pledgee's] *Pledgee's* release of the securities.

Shared controls are separately identified in DTC's Reference Directory. Participants interested in establishing a shared control account should contact their Relationship Manager.

Procedures for DTC Shared Control Accounts

The following procedures are an addition to DTC's Procedures for Pledgees.

1. Any Participant may establish a shared control account at DTC and may designate any DTC [pledgee] *Pledgee* to be the [pledgee] *Pledgee* for that shared control account. A Participant may deliver securities (or other financial assets) by a [free pledge] *Free Pledge* from any of its DTC accounts (the ''original account'') to its shared control account in order to grant a security interest or other interest in the securities to the [pledgee] *Pledgee.* The shared control account is an account of the Participant and is identified with a separate account number from any other account of the Participant. A Participant may establish multiple shared control accounts, but only one [pledge] *Pledge* can be designated for each shared control account.

2. Except as modified by these procedures, the operation of a shared control account is identical to the operation of a DTC [pledge] *Pledge* [*account*] and all DTC procedures applicable to [pledge] *Pledge* [*accounts*] are applicable to shared control accounts. No [deliveries vs. payment] *Deliveries Versus Payment,* [pledges vs. payment] *Pledges Versus Payment,* or physical deposits can be made to a shared control account and no [deliveries vs. payment] *Pledges Versus Payment,* [pledges vs. payment] *Pledges Versus Payment,* or physical withdrawals can be made from a shared control account. A Participant should not deliver securities to another Participant's shared control account. In the instructions for a delivery of securities to a shared control account, the mandatory hypothecation code field should be completed in the same manner as it is for a *Pledge made without the use of a shared control* [delivery to a pledge] account. The DTC fees and charges for a transaction involving a shared control account are the same as the fees and charges for a *Pledge* transaction *that does not* [involving] *involve* a [pledge] *Pledge* account. The DTC monthly account usage charges applicable to a shared control account are charged to the Participant. The DTC reports and statements to the Participant and the [pledge] *Pledge* for a transaction involving a shared control account are the same as the reports and statements for a transaction involving a [pledge] *Pledge that does not involve a shared control* account.

3. [As with a pledge account, voting]*Voting* rights on the securities credited to a shared control account are assigned to the Participant. Cash dividend and interest payments and other cash distributions on such securities are credited to the original account. Distribution of securities for which the ex-distribution date is on or prior to the payable date or in which the distribution is payable in a different security are also credited to the original account. Any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date are credited to the shared control account.

4. The securities credited to a shared control account cannot be designated as or included in the collateral for any obligation of the Participant or the [pledgee] *Pledgee* to DTC. DTC has no lien or other interest in any securities credited to a shared control account.''

Proposed Change to Text of the Pledgee's Agreement

Pursuant to the proposed rule change, DTC would revise the text of the Pledgee's Agreement to reflect that Pledged Securities do not move to a Pledgee account. The change is technical in nature and while enhancing clarity with respect to the book entries performed by DTC as they relate to Pledge activity, the change would not impact the rights or obligations of Participants and Pledgees pursuant to the Rules, Settlement Guide and/or the Pledgee's Agreement. In this regard, the applicable text of the Pledgee's Agreement would be revised as follows: (*italicized* text indicates additions; [bracketed] text indicates deletions):

''[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books *to indicate the pledge of* [transferring] the securities from [the account of] such depositor to the [account of] Pledgee and shall maintain such securities [in the account of] *with a notation that the securities are pledged by the depositor to the* Pledgee until instructed by Pledgee to release such securities to the [account of the] pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.''

Effective Date

The proposed rule change would become effective upon filing.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act,[29] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act for the reasons described below.

As described above, the proposed rule change would allow Participants and

[27] *See* Settlement Guide, *supra* note 6 at 15–16.

[28] *See* Securities Exchange Act Release No. 40191 (July 10, 1998), 63 FR 38444 (July 16, 1998) (SR–DTC–98–5).

[29] 15 U.S.C. 78q–1(b)(3)(F).

Pledgees to more readily understand the Rules and Procedures relating to the processing of book entries of Pledges at DTC by (1) clarifying text to more accurately reflect the operational process of how book entries of Pledges are entered on DTC's system, and (2) making changes to text for readability necessary in the context of the proposed clarification. By clarifying the Rules to facilitate Participants' and Pledgees' ability to understand the operational processes relating to Pledge services, and in particular with respect to how book-entries are made on DTC's system with respect to Pledge transactions, DTC believes that the proposed changes would facilitate Participants' and Pledgees' ability to process Pledge transactions by enhancing their understanding of how Securities subject to a Pledge transaction are credited to and held in a Pledgee's Account pending either their release from Pledge or the exercise of a demand for the Pledged Securities by the Pledgee. Therefore, by facilitating the ability of Participants to understand how book-entries of Securities movements are performed and how Pledged Securities are held, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(f) of the Act.[30]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition because it would merely make technical clarifying changes and changes for enhanced readability to the text of the Settlement Guide and the Pledgee's Agreement that would not otherwise affect Participants' and Pledgees' rights or obligations.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change were received by DTC and were filed as an Exhibit 2 to the proposal, as required by the Form 19b–4 and the General Instructions thereto.

The proposed rule change was originally filed with the Commission in April 2021 and posted to the website of DTC's parent company, The Depository Trust and Clearing Corporation (''DTCC''). However, because the filing did not satisfy a regulatory formatting requirement, the Commission had to reject the filing and it was subsequently removed from the DTCC website.

In the time it has taken for DTC to refile the proposal, DTC has received several written comments, which, again, were filed as an Exhibit 2 to the proposal. Although DTC understands those comments to be generally supportive of the proposed changes, based on DTC's review of each of the comments, DTC believes there is a general misunderstanding of the purpose of this proposed rule change.

For the sake of clarity, and as more fully described above, this proposed rule change will not alter DTC's current practices. Rather, it will merely clarify how securities Pledged through DTC are recorded in DTC's system. More specifically, and as more fully described above, the Settlement Guide currently states that Securities Pledged through DTC are held in an account of the Pledgee. However, in practice, the Securities remain in the Pledgor's account but are marked as Pledged. This is the existing practice today and will not change. Rather, the proposed change will clarify the text of the Settlement Guide to better reflect the current practice. The change will not affect the legal rights or obligations of the parties involved in the pledge.

DTC will notify the Commission of any additional written comments received by DTC.

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)[31] of the Act and paragraph (f)[32] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–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–DTC–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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2021–005 and should be submitted on or before July 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

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[30] *Id.*

[31] 15 U.S.C 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92255; File No. SR–BOX–2021–16]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7300 (Preferenced Orders)

June 24, 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 June 11, 2021, BOX Exchange LLC (''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7300 (Preferenced Orders). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

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 self-regulatory organization 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 self-regulatory organization 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 BOX Rule 7300 to provide greater clarification about the Exchange's current allocation process for Preferenced Orders. Specifically, the Exchange proposes to add Rule 7300(c)(4) (Remaining Preferred Market Maker Interest) to more accurately describe the Preferenced Order allocation methodology. The Exchange notes that the allocation as described by the proposed rule text is consistent with the Exchange's current allocation methodology.

As background, a Preferenced Order is any order (single leg or complex) submitted by a Participant to the Exchange for which a specific Market Maker is designated (a ''Preferred Market Maker'') to receive execution priority, with respect to a portion of the Preferenced Order.[3] Except as described in further detail below, Preferenced Orders are treated the same as other orders submitted to the Exchange and executed in price/time priority according to the existing matching algorithm on the Exchange.[4] For each price level at which all order quantities on the BOX Book are fully executable against a Preferenced Order on a single options series, all such orders at that price will be filled and the balance of the Preferenced Order, if any, will be executed, to the extent possible, against orders at the next best price level.[5] However, at the final price level, where the remaining quantity of the Preferenced Order is insufficient to match the total quantity of orders on the BOX Book, the allocation algorithm for orders executable against the remaining quantity of the Preferenced Order will differ from the regular price/time priority algorithm by allocating executions in the following order: (1) To Public Customers, (2) a preferred percentage to the Preferred Market Maker (subject to certain conditions explained in Rule 7300), (3) to all remaining quotes and orders on single option series and (4) to any Legging Order.[6]

The Exchange's proposal seeks to further clarify the allocation process.[7] The current rule text does not specify what happens to the Preferred Market Maker's remaining quote quantity that exceeds the size of their preferred percentage allocation pursuant to 7300(c)(2). The Exchange notes although such an allocation rarely occurs, the Exchange believes this proposal will improve market participant's understanding of the BOX trading system and will continue to conform with the Exchange's existing rules to treat Legging Orders last in priority. Therefore, the Exchange is proposing additional rule text detailing that if after the allocation of all orders and quotes in 7300(c)(1) through (3), there still remains an unallocated quantity of the Preferenced Order, the remaining quantity of the Preferenced Order will be allocated to any Preferred Market Maker quote size exceeding the preferred allocation percentage in 7300(c)(2). Additionally, if at the end of the proposed Remaining Preferred Market Maker Interest allocation, any interest remains, the balance of the Preferenced Order will be allocated to Legging Orders, thereby maintaining their existing designation as last in priority.

Lastly, the Exchange proposes a technical amendment to Rule 7300(c)(2) to include the word ''Preferred'' in order to more accurately describe the allocation to the Preferred Market Marker.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is 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 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.

The Exchange's proposal to amend Rule 7300 is consistent with the Act because it adds more context to the Exchange's current Rulebook and coincides with the Exchange's original proposal to give Legging Orders last priority under Rule 7300. Specifically, when the Exchange first adopted Rule 7300 (Preferenced Order Rule) the Exchange explained that Legging Orders would be given last priority which preserved the established priority of Legging Orders since they had last priority under the then existing allocation algorithm.[10] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BOX Rule 7300(a).

[4] *See* BOX Rule 7300(b).

[5] *See* BOX Rule 7300(c).

[6] *See id.* A Legging Order is a Limit Order on the BOX Book that represents one side of a Complex Order that is to buy or sell an equal quantity of two options series resting on the Complex Order Book.

[7] The Exchange notes, no system changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Release No. 34–74210 (February 5, 2015), 80 FR 7663 (February 11, 2015) (SR–BOX–2014–28) (Commission Order Approving BOX Rule 7300).

notes this is still true today.[11] When the Exchange originally adopted Legging Orders it noted that Legging Orders would only execute after all other executable interest on the BOX Book at the same price was executed in full, and therefore would not negatively impact the regular market.[12] The Exchange notes the current proposal continues to uphold this priority scheme by ensuring all interest on the BOX Book executes before Legging Orders.

In addition, the Exchange believes the proposal brings greater clarity to its rules and helps foster coordination with persons engaged in facilitating transactions in securities because the proposal codifies how part of the trading system currently functions. The Exchange's proposal, which more clearly explains how the system allocates Preferenced Orders, protects investors and the public interest because it adds specificity to the rules with respect to current system functionality. Specifically, the proposed change will further clarify the current rule to more specifically describe the order in which the system handles Preferenced Order allocation on BOX. The additional detail makes it clear that after the allocation of all orders and quotes in 7300(c)(1) through (3), there remains any unallocated quantity of the Preferenced Order, that remaining quantity will be allocated to any Preferred Market Maker quote size exceeding the preferred allocation percentage. The Exchange believes adding additional language detailing what happens to the remaining quantity of Preferred Market Maker quotes promotes transparency and reduces ambiguity within the Exchange's Rules which ultimately benefits and protects investors. As noted above, this is not a change to how the Preferenced Order allocation currently operates, but merely a clarification of the allocation process.

Furthermore, the Exchange notes the current proposal to treat Legging Orders last in priority is in line with another priority allocation scheme within its Rulebook.[13] Specifically, under BOX Price Improvement Period (''PIP'') Rule 7150, Legging Orders are subject to the same priority. BOX Rule 7150 provides that only after all other orders and quotes have been allocated, if there remains any unallocated quantity of a PIP Order, then an allocation to Legging Orders will be made.[14] Therefore, the Exchange believes the current proposal provides consistency within its rulebook, reduces the potential for investor confusion, and meets investor expectations of treating Legging Orders last in priority for trade allocations. Additionally, the Exchange notes at least one other exchange also designates Legging Orders for last priority and explicitly holds that Legging Orders are last in priority for one of its execution algorithms.[15] Specifically, similar to the Exchange's current Legging Orders Rule 7240(c), Nasdaq ISE, LLC (''ISE'') Options 3, Section 7(k)(2) maintains that legging orders are executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. Further, under ISE's Size Pro-Rata Execution Algorithm, ISE holds that only after all other remaining interest has been fully executed will Legging Orders be allocated.[16] Therefore, the Exchange believes the proposal further aligns its rulebook with at least one other exchange within the industry and thereby fosters cooperation and coordination with persons engaged in facilitating transactions in securities.

The Exchange believes its current proposal is in line with the original intent behind the allocation methodology for BOX Rule 7300 and conforms to the Exchange's established priority of giving Legging Orders last priority. The Exchange continues to believe that providing priority for single option orders or quotes over Legging Orders is reasonable as it preserves the established priority of single option orders when executing with Complex Orders. In addition, the Exchange notes that the Exchange's Legging Order rule explicitly states ''[a] Legging Order is executed only after all other executable orders and quotes at the same price are executed in full.'' [17] Therefore, the Exchange believes the proposal contributes to harmonizing the Exchange's Rulebook and will help avoid investor confusion when executing orders on the Exchange.

Lastly, the proposed non-substantive addition of the word ''Preferred'' in Rule 7300(c)(2) is a more precise description which better articulates the current allocation process. The Exchange believes this technical amendment will improve the rules readability, promote consistent terminology in the rule and thereby further protect investors and the public interest because it makes the rule easier for Participants to comprehend.

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. As indicated above, no system changes to existing functionality/priority are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the allocation methodology for Preferenced Orders presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook. Furthermore, the Exchange believes the proposed rule change will not impose any unnecessary burden on competition because it coincides with the Exchange's existing rules and allocation methodologies by treating Legging Orders last in priority.

As such, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

[11] See BOX Rule 7240(c)(3) (A Legging Order is executed only after all other executable orders and quotes at the same price are executed in full).

[12] *See* Securities Exchange Release No. 34–69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (SR–BOX–2013–01) (Commission Order Approving BOX Rule Change Relating to Complex Orders).

[13] See BOX Rule 7150(g)(7) (Exchange's Price Improvement Period auction allocates Legging Orders last in priority).

[14] *See id.*

[15] See ISE Rulebook Options 3, Section 7(k)(2) and Options 3, Section 10(c)(1)(E), respectively.

[16] ISE Rulebook Options 3, Section 10(c)(1)(E).

[17] *See* BOX Rule 7240(c)(3) (Legging Orders).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [21] 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 so that the proposed rule change may become operative immediately upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to clarify its rule text without delay while continuing to maintain the Exchange's existing rules designating Legging Orders for last priority. For this reason, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[22]

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–BOX–2021–16 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–BOX–2021–16. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such 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–BOX–2021–16 and should be submitted on or before July 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13915 Filed 6–29–21; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] 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).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92256; File No. SR–NASDAQ–2021–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing Primary Offering

June 24, 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 June 11, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify certain pricing limitations for companies listing in connection with a Direct Listing primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently adopted Listing Rule IM–5315–2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise''); [3] created a new order type (the ''CDL Order''), which is used during the Nasdaq Halt Cross (the ''Cross'') for the shares offered by the company in a Direct Listing with a Capital Raise; and established requirements for disseminating information, establishing the opening price and initiating trading through the Cross in a Direct Listing with a Capital Raise.[4] For a Direct Listing with a Capital Raise, Nasdaq rules currently require that the actual price calculated by the Cross be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement (the ''Pricing Range Limitation'').

Nasdaq now proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price that is at or above the price that is 20% below the lowest price and at or below the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement.[5] In addition, Nasdaq proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price above the price that is 20% above the highest price of such price range, provided that the company has certified to Nasdaq that such price would not materially change the company's previous disclosure in its effective registration statement. Nasdaq also proposes to make related conforming changes.

Listing Rule IM–5315–2 requires that securities listing in connection with a Direct Listing with a Capital Raise must begin trading on Nasdaq following the initial pricing through the Cross, which is described in Rules 4120(c)(9) and 4753. Rule 4120(c)(9) requires that in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade.

Currently, in the case of the Direct Listing with a Capital Raise, a security is not released for trading by Nasdaq unless the actual price calculated by the Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.[6] Specifically, under Rule 4120(c)(9)(B) Nasdaq shall release the security for trading only if: (i) All market orders will be executed in the Cross; and (ii) the actual price calculated by the Cross complies with the Pricing Range Limitation.

If there is insufficient buy interest to satisfy the CDL Order and all other market orders, as required by the rule, or if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement, the Cross would not proceed and such security would not begin trading. Nasdaq shall postpone and reschedule the offering only if either or both such conditions are not met. In such event, because the Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms.

Proposed Change to Rule 4120(c)(9)

While many companies are interested in alternatives to the traditional IPOs, based on conversations with companies and their advisors Nasdaq believes that there may be a reluctance to use the existing Direct Listing with a Capital Raise rules because of concerns about the Pricing Range Limitation.

One potential benefit of a Direct Listing with a Capital Raise as an alternative to a traditional IPO is that it could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors. Unlike an IPO where the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering, in a Direct Listing with a Capital Raise the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. In that regard, in the Approval Order the Commission stated that:

> The opening auction in a Direct Listing with a Capital Raise provides for a different price discovery method for IPOs which may reduce the spread between the IPO price and subsequent market trades, a potential benefit to existing and potential investors. In this way, the proposed rule change may result in additional investment opportunities while providing companies more options for becoming publicly traded.[7]

A successful initial public offering of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. The Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of such a failed offering because the offering cannot proceed without some delay not only for the lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated. In the Approval Order, the Commission noted a frequent academic observation of traditional firm commitment underwritten offerings that the IPO price, established through negotiation between the underwriters and the issuer, is often lower than the price that the issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading.[8] Nasdaq believes that the price range in a company's effective registration statement for a Direct Listing with a Capital Raise would similarly be determined by the company and its advisors and, therefore, there may be instances of offerings where the price determined by the Nasdaq opening auction will exceed the highest price of the price range in the company's effective registration statement.

As explained above, under the existing rule a security subject to a

[3] A Direct Listing with a Capital Raise includes situations where either: (i) Only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

[4] *See* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (the ''Approval Order'').

[5] References in this proposal to the price range established by the issuer in its effective registration statement are to the price range disclosed in the prospectus in such registration statement. Separately, as explained in more details below, Nasdaq proposes to prescribe that the 20% threshold will be calculated using the high end of the price range in the prospectus at the time of effectiveness and may be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range.

[6] *See* Rule 4120(c)(9)(B).

[7] *See* Approval Order, 86 FR at 28177.

[8] *See* Approval Order, footnote 91.

Direct Listing with a Capital Raise cannot be released for trading by Nasdaq if the actual price calculated by the Cross is above the highest price of the price range established by the issuer in its effective registration statement. In this case, Nasdaq would have to cancel or postpone the offering until the company amends its effective registration statement. At a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event. In addition, as explained above, the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in Nasdaq's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits.

Accordingly, Nasdaq proposes to modify the Pricing Range Limitation such that in the case of the Direct Listing with a Capital Raise, a security shall not be released for trading by Nasdaq unless the actual price at which the Cross would occur is at or above the price that is 20% below the lowest price of the price range established by the issuer in its effective registration statement and at or below the price that is 20% above the highest price of the price range. In other words, Nasdaq would release the security for trading, provided all other necessary conditions are satisfied, even if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement; provided however that the actual price cannot be more than 20% below the lowest price or more than 20% above the highest price of such range; and the company specified the quantity of shares registered, as permitted by Securities Act Rule 457, as explained below. In addition, there would be no limitation on releasing the security for trading at a price above the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement if the company has certified to Nasdaq that such offering price would not materially change the company's previous disclosure in its effective registration statement.

Nasdaq believes that this approach is consistent with SEC Rule 430A and question 227.03 of the SEC Staff's Compliance and Disclosure Interpretations, which generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[9] Nasdaq believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure. Accordingly, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus. Consistent with the Commission's Staff guidance on Rule 430A, Nasdaq proposes to prescribe that this 20% threshold will be calculated using the high end of the price range in the prospectus at the time of effectiveness and may be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range.

Finally, given that, as proposed, there may be a Direct Listing with a Capital Raise that could price outside the price range of the company's effective registration statement and that there may be no upside limit above which the Cross could not proceed, in each instance of a Direct Listing with a Capital Raise, Nasdaq will issue an industry wide trader alert[10] to inform the market participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above. If there is no upside limit, Nasdaq will caution the market participants about the use of market orders explaining that unlike a limit order a market order can be executed at any price determined by the Cross.

Proposed Conforming Changes to Listing Rule IM–5315–2

Listing Rule IM–5315–2 allows a company that has not previously had its common equity securities registered under the Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange.

Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares[11] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million).

Listing Rule IM–5315–2 further provides that, for this purpose, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.

Because Nasdaq proposes to allow the opening auction to price up to 20% below the lowest price of the price range established by the issuer in its effective registration statement, Nasdaq proposes to make a conforming change to Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the Market Value of Unrestricted Publicly Held Shares is the price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement as this is the minimum price at which the company could qualify to be listed. Nasdaq will determine that the company has met the applicable bid

[9] Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. Nasdaq expects that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See also* Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at *https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

[10] Trader alert is an industry wide subscription based free service provided by Nasdaq.

[11] *See* Listing Rules 5005(a)(23) and 5005(a)(45).

price and market capitalization requirements based on the same per share price.

Any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[12]

Proposed Conforming Changes to Rules 4753(a)(3)(A) and 4753(b)(2)

Nasdaq proposes to amend Rules 4753(a)(3)(A) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the price range established by the issuer in its effective registration statement.

Specifically, Nasdaq proposes changes to Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, in the case of a Direct Listing with a Capital Raise and for how the price at which the Cross will execute. These rules currently provide that where there are multiple prices that would satisfy the conditions for determining a price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement.

To conform these rules to the modification of the Pricing Range Limitation change, as described above, Nasdaq proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise, to use the price closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq believes that the proposed amendment to modify the Pricing Range Limitation is consistent with the protection of investors because this approach is not substantively different from pricing of an IPO where an issuer is permitted to price outside of the price range disclosed by the issuer in its effective registration statement in accordance with the SEC's Staff guidance, as described above. Specifically, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus. As a result, Nasdaq will allow the Cross to take place as low as 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement, but no lower, and so this is the minimum price at which the company could be listed. In addition, to better inform investors and market participants, Nasdaq will issue an industry wide trader alert to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above. If there is no upside limit, Nasdaq will caution the market participants about the use of market orders explaining that unlike a limit order a market order can be executed at any price determined by the Cross.

Nasdaq believes that the Commission Staff has already concluded that such pricing is appropriate for a company conducting an initial public offering notwithstanding it being outside of the range stated in an effective registration statement, and investors have become familiar with this approach at least since the Commission Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.[15]

Nasdaq believes that the proposed amendments to Listing Rule IM–5315–2 and Rules 4753(a)(3)(A) and 4753(b)(2) to conform these rules to the modification of the Pricing Range Limitation is consistent with the protection of investors. These amendments would simply substitute Nasdaq's reliance on the price equal to the lowest price of the price range disclosed by the issuer in its effective registration statement to the price that is 20% below such lowest price. In the case of Listing Rule IM–5315–2, a company listing in connection with a Direct Listing with a Capital Raise would still need to meet all applicable initial listing requirements based on the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. In the case of the Rules 4753(a)(3)(A) and 4753(b)(2) such price, which is the minimum price at which the Cross will occur, will serve as the fourth tie-breaker where there are multiple prices that would satisfy the conditions for determining the auction price, as described above.

Nasdaq also believes that the proposal, by eliminating an impediment to companies using a Direct Listing with a Capital Raise, will help removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition. Nasdaq believes that allowing listing venues to improve their rules enhances competition among exchanges. Nasdaq also believes that this proposed change will give issuers interested in this

[12] *See* Listing Rules 5315(f)(1), (e)(1) and (2), respectively. Rule 5315(f)(1) requires a security to have: (A) At least 550 total holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (B) at least 2,200 total holders; or (C) a minimum of 450 round lot holders and at least 50% of such round lot holders must each hold unrestricted securities with a market value of at least $2,500.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.*

pathway to access the capital markets additional flexibility in becoming a public company, and in that way promote competition among service providers, such as underwriters and other advisors, to such companies.

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

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–NASDAQ–2021–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–045. 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 the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–045, and should be submitted on or before July 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13916 Filed 6–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92254; File No. SR–NYSEAMER–2021–31]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31E To Add a Retail Order Modifier and the NYSE American Equities Price List and Fee Schedule To Cross Reference the Retail Order Modifier

June 24, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 21, 2021, NYSE American LLC (''NYSE American'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to add new subparagraph (i)(4) to Rule 7.31E and amend the NYSE American Equities Price List and Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to add new subparagraph (i)(4) to Rule 7.31E (Orders and Modifiers) to add a description of a Retail Order modifier and to amend the Price List to add a cross-reference to Rule 7.31E(i)(4).

Proposed Rule Change

The Exchange proposes to amend Rule 7.31E to add new subparagraph (i)(4) to provide for ETP Holders[4] to designate an order with a retail modifier (''Retail Order''). An order designated as a ''Retail Order'' pursuant to proposed Rule 7.31E(i)(4) would be eligible for the Retail Order Rates specified on the Exchange's Price List.

Proposed Modifier for ''Retail Orders''

To define ''Retail Orders,'' the Exchange proposes to amend Rule 7.31E (Orders and Modifiers) to add a new subsection (i)(4), titled ''Retail Modifier'' to establish requirements for Retail Orders on the Exchange. These requirements are based on the requirements to enter orders with ''retail'' modifiers for purposes of rates

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rules 1.1E(m) (definition of ETP) & (n) (definition of ETP Holder).

available for such orders on the Exchange's affiliates, New York Stock Exchange, LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'').[5]

Proposed Rule 7.31E(i)(4)(A) would define ''Retail Order'' as an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

Proposed Rule 7.31E(i)(4)(B) would specify that in order for an ETP Holder to access the proposed Retail Order pricing, the ETP Holder would be required to designate an order as a Retail Order in the form and/or manner prescribed by the Exchange.

Proposed Rule 7.31E(i)(4)(C) would specify that in order to submit a Retail Order, an ETP Holder must submit an attestation, in a form prescribed by the Exchange, that substantially all orders designated as ''Retail Orders'' would meet the requirements set out in the definition above.

Proposed Rule 7.31E(i)(4)(D) would specify that an ETP Holder must have written policies and procedures reasonably designed to assure that it would only designate orders as ''Retail Orders'' if all requirements of a Retail Order are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements specified by the Exchange, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If an ETP Holder represents Retail Orders from another broker-dealer customer, the ETP Holder's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The ETP Holder must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders would be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. Proposed Rule 7.31E(i)(4)(E) would specify that an ETP Holder that fails to abide by the requirements specified in paragraphs (i)(4)(A)–(D) of Rule 7.31E would not be eligible for the Retail Order rates for orders it designates as ''Retail Orders.''

Proposed Cross-Reference in the Price List to Rule 7.31E(i)(4)

The Price List currently contains a subheading ''b. Retail Order Rates *,'' with text at the asterisk as follows: ''See section III under 'General' at the end of this Price List for information on designating orders as 'Retail Orders.' '' The Exchange proposes to amend that text to also include a reference to Rule 7.31E(i)(4).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment to Rule 7.31E(i) to add a Retail Modifier would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed requirements are based on existing requirements for orders designated as ''retail'' on NYSE and NYSE Arca for purposes of fees and credits on those exchanges, and therefore are not novel. In addition, the proposed designation, attestation, and written policies and procedures are also based on existing procedures for similarly-defined orders on NYSE and NYSE Arca, and therefore are not novel.[8] The Exchange believes that the proposed requirements to submit attestations and to maintain written policies and procedures are not unfairly discriminatory, because they apply equally to all ETP Holders that wish to receive the Retail Order Rates. The Exchange further believes that the proposed addition of a cross-reference to proposed Rule 7.31E(i)(4) in the Price List would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would enhance the clarity and transparency of the Price List and reduce any potential customer confusion.

The proposed retail modifier for purposes of providing different rates for ''Retail Orders'' is also based in part on the availability of such modifiers on the Nasdaq Stock Market LLC (''Nasdaq'') and Cboe EDGX Exchange, Inc. (''EDGX''), which both offer pricing for orders designated as ''retail'' under their respective rules, even in the absence of a retail price improvement program. For example, Nasdaq defines the term ''Designated Retail Order'' on its Price List as:

> [A]n agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as ''Designated Retail Orders'' comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.[9]

[5] *See* NYSE Rule 13 regarding Retail Modifiers and the NYSE Arca procedures for designating orders with a retail modifier for purposes of fee rates. *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77). These requirements are distinct from, but related to, the requirements for a ''Retail Order'' on the Retail Liquidity Programs available on NYSE and NYSE Arca. *See* NYSE Rule 7.44 and NYSE Arca Rule 7.44–E. The Exchange does not offer a ''Retail Liquidity Program.''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] As noted above (*see supra* note 11[sic]), the proposed changes are based not on the Retail Liquidity Programs available on NYSE and NYSE Arca, but on the availability of retail fees on those exchanges for orders properly designated as ''retail'' orders. *See* NYSE Rule 13; Securities Exchange Act Release No. 72253 (May 27, 2014), 79 FR 31353 (June 2, 2014) (SR–NYSE–2014–26) (approving the addition of ''retail'' order modifier at NYSE Rule 13(f)); and Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77) (approving the addition of ''retail'' order modifier on NYSE Arca).

[9] Nasdaq Equity 7, section 118; *see also* Cboe EDGX Rule 11.21 (defining ''Retail Order'' and

Nasdaq does not have a corresponding definition of ''Designated Retail Order'' in its trading rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would promote competition because it is based on the availability of similar ''retail'' modifiers on NYSE, NYSE Arca, Nasdaq, and EDGX. More specifically, multiple other cash equity exchanges offer pricing for orders designated as ''retail'' orders, even in the absence of a retail price improvement program on those exchanges.[11] The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may 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 so that the proposal may become operative immediately upon filing. The Commission notes that the proposal is based on the rules of other national securities exchanges and finds that the proposal presents no legal or novel regulatory questions.[17] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[19] of the Act 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–NYSEAMER–2021–31 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–NYSEAMER–2021–31. 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–NYSEAMER–2021–31 and should be submitted on or before July 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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establishing attestation requirement to access preferential pricing for such orders).

[10] 15 U.S.C. 78f(b)(8).

[11] *See supra* note 17 [sic].

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 5.

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34318; File No. 812–15176]

Investcorp Credit Management BDC, Inc., et al.

June 24, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.

APPLICANTS: InvestCorp Credit Management BDC, Inc. (the ''Existing Regulated Fund''), CM Finance SPV Ltd. (''CMSPV1), CM Finance SPV LLC (''CMSPV2''), CM Investment Partners LLC (''CMIP''), Investcorp Credit Management US LLC (''ICMUS''), Investcorp Credit Management EU (''ICMEU'', and together with ICMUS, the ''Existing Advisers''), and each of the Existing Affiliated Funds set forth on Exhibit B on the application.

FILING DATES: The application was filed on October 30, 2020, and amended on February 16, 2021, and June 7, 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 July 19, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *PMaloney@Investcorp.com.*

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, at (202) 551–6908 or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

2. The Order sought by the applicants would supersede a prior order [4] (''Prior Order'') with the result that no person will continue to rely on the Prior Order if the Order is granted.

Applicants

3. The Existing Regulated Fund is an externally-managed, non-diversified, closed-end management investment company incorporated in Maryland that has elected to be regulated as a BDC under the Act.[5] The Board [6] of the

[1] ''Regulated Funds'' means the Existing Regulated Fund, the Future Regulated Funds and the BDC Downstream Funds (defined below). ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) are an Adviser, and (c) that intends to participate in the co-investment program (''Co-Investment Program'').

''Adviser'' means the Existing Advisers and any future investment adviser that (i) controls, is controlled by, or is under common control with Investcorp Holdings B.S.C (''Investcorp Holdings''), (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act, and that controls, is controlled by, or is under common control with Investcorp Holdings, or (c) is an exempt reporting adviser pursuant to rule 203(m) of the Advisers Act (''Exempt Reporting Adviser''), and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund, any Investcorp Proprietary Account (as defined below) and any entity (a) whose investment adviser (and sub-adviser(s), if any) are Advisers, (b) that either (i) would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (ii) relies on rule 3a–7 under the Act, (c) that is not a BDC Downstream Fund, and (d) that intends to participate in the Co-Investment Program.

''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a business development company (''BDC''), an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program (defined below).

Affiliated Funds may include funds that are ultimately structured as collateralized loan obligation funds (''CLOs''). Such CLOs would be investment companies but for the exception provided in section 3(c)(7) of the Act or their ability to rely on rule 3a–7 of the Act. During the investment period of a CLO, the CLO may engage in certain transactions customary in CLO formations with another Affiliated Fund on a secondary basis at fair market value. For purposes of the Order, any securities that were acquired by an Affiliated Fund in a particular Co-Investment Transaction that are then transferred in such customary transactions to an Affiliated Fund that is or will become a CLO (an ''Affiliated Fund CLO'') will be treated as if the Affiliated Fund CLO acquired such securities in the Co-Investment Transaction. For the avoidance of doubt, any such transfer from an Affiliated Fund to an Affiliated Fund CLO will be treated as a Disposition and completed pursuant to terms and conditions of the application, though Applicants note that the Regulated Funds would be prohibited from participating in such Disposition by section 17(a)(2) or section 57(a)(2) of the Act, as applicable. The participation by any Affiliated Fund CLO in any such Co-Investment Transaction will remain subject to the Order.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

[4] CM Finance Inc., et al. (File No. 812–14850) Investment Company Act Rel. Nos. 33377 (February 19, 2019) (notice) and 33401 (March 19, 2019) (order).

[5] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[6] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

Existing Regulated Fund currently consist of four directors, three of whom are Independent Directors.[7]

4. CMIP is organized as a limited liability company under the laws of the state of Delaware. CMIP is controlled by ICMUS. CMIP has registered as an investment adviser with the Commission pursuant to section 203 of the Advisers Act. ICMUS is organized as a limited liability company under the laws of the state of Delaware. ICMUS is controlled by Investcorp International Holdings Inc. ICMUS has registered with the Commission pursuant to section 203 of the Advisers Act. ICMEU is organized as an English private limited company under the laws of the United Kingdom and is an Exempt Reporting Adviser. ICMEU is controlled by Investcorp S.A.

5. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(7) of the Act.

6. Any Adviser, in a principal capacity, and any direct or indirect, wholly- or majority-owned subsidiary of Investcorp Holdings or any Adviser, may hold various financial assets in a principal capacity (the ''Investcorp Proprietary Accounts'').

7. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants state that each of CMSPV1 and CMSPV2 is a Wholly-Owned Investment Sub of the Existing Regulated Fund, whose sole business purpose is to hold one or more investments on behalf of the Existing Regulated Fund. Applicants further state that CMSPV1 and CMSPV2 are each a separate and distinct legal entity. Applicants state that CMSPV1 and CMSPV2 are each exempt from registration under section 3(c)(7) of the Act.

Applicants' Representations

A. Allocation Process

8. Applicants represent that the Advisers have established processes for ensuring compliance with the Prior Order and for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

9. Opportunities for Potential Co-Investment Transactions may arise when investment advisory personnel of an Adviser becomes aware of investment opportunities that may be appropriate for a Regulated Fund and one or more other Regulated Funds and/or one or more Affiliated Funds. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies[9] and any Board-Established Criteria[10] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

10. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[7] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and in the case of an SBIC Subsidiary, maintain a license under the Small Business Investment Act of 1958 (''SBA Act'') and issue debentures guaranteed by the Small Business Administration (''SBA'')); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that (A) would be an investment company but for section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a real estate investment trust within the meaning of section 856 of the Internal Revenue Code because substantially all of its assets would consist of real properties. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act as a small business investment company.

[9] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

Investment Transaction, the Adviser's investment committee will approve an investment amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the applicable Advisers' written allocation policies and procedures, by the applicable Adviser's investment committee.[11] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

11. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

B. Follow-On Investments

12. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

13. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

14. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

15. Applicants propose that Dispositions[19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[12] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

[14] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

16. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [21] or (ii) the securities are Tradable Securities [22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

17. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

18. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under the Condition.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) an Adviser or Advisers manage each of the Existing Affiliated Funds and may be deemed to control the Existing Affiliated Funds, and an Adviser will advise (and sub-advise, if applicable) and will control any future Affiliated Fund, (ii) an Adviser serves or will serve as investment adviser (and sub-adviser, if applicable) to each of the Regulated Funds and may be deemed to control the Regulated Funds, (iii) each BDC Downstream Fund will be deemed to be controlled by its BDC parent and/or its BDC parent's Adviser; and (iv) the Advisers are under common control. Thus, each Regulated Fund and each Affiliated Fund could be deemed to be a person related to a Regulated Fund, or BDC Downstream Fund, in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Further, because the BDC Downstream Funds and Wholly-Owned Investment Subs are controlled by the Regulated Funds, the BDC Downstream Funds and Wholly-Owned Investment Subs are subject to section 57(a)(4) (or section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act) and thus also subject to the provisions of rule 17d–1. In addition, because the Investcorp Proprietary Accounts will be controlled by Investcorp Holdings, which is the parent company of the Existing Advisers and, therefore, may be under common control with the Existing Regulated Fund, the Advisers, and any Future Regulated Funds, the Investcorp Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 17(d) or section 57(b) and also prohibited from participating in the Co-Investment Program.

4. In passing upon applications under rule 17d–1, the Commission considers

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [23] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in

[23] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[24] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[25]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund[26] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;[27] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds

[24] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[25] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[26] Any Investcorp Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[27] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [28] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[29] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

[28] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[29] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[30] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds

[30] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DesLesDernier,

Assistant Secretary.

[FR Doc. 2021–13911 Filed 6–29–21; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36521]

Fortress Investment Group LLC—Acquisition and Continuance in Control Exemption—Ohio River Partners Shareholder LLC, Katahdin Railcar Services, LLC, DesertXpress Enterprises, LLC, Union Railroad Company, Gary Railway Company, Delray Connecting Railroad Company, Texas & Northern Railroad Company, and Lake Terminal Railroad Company

Fortress Investment Group LLC (Fortress), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for the benefit of Fortress Transportation and Infrastructure Investors LLC (FTAI) and Percy Acquisition LLC (PALLC), which are managed by an affiliate of Fortress, to acquire control of five common carrier railroads (collectively, the Transtar Railroads) [1] that are currently owned by Transtar, LLC (Transtar), and to continue in control of both the Transtar Railroads and certain rail carriers (the Fortress Railroads) owned by companies or investment funds managed by affiliates of Fortress.[2]

The verified notice states that on June 7, 2021, PALLC and United States Steel Corporation, Transtar's current owner, entered into a purchase agreement pursuant to which PALLC will acquire 100% of the equity interests of Transtar. Upon consummation of the transaction contemplated by the purchase agreement, PALLC, a non-carrier, will control the Transtar Railroads. PALLC is owned and controlled by FTAI which is managed by an affiliate of Fortress. Following the transaction, FTAI will continue to indirectly own 50.1% of the equity interests of ORPS and all of the equity interests of KRS, and investment funds managed by affiliates of Fortress will continue to indirectly own a majority of the equity interests of DXE. According to Fortress, ORPS, KRS, and DXE may each be deemed to be controlled by Fortress for purposes of 49 U.S.C. 11323, because ORPS and KRS are indirectly controlled by FTAI, DXE is indirectly controlled by Brightline Holdings LLC, and FTAI and Brightline Holdings LLC are managed by affiliates of Fortress.

The transaction may be consummated on or after July 14, 2021, the effective date of the exemption (30 days after the verified notice was filed).

Fortress represents that: (1) None of the Transtar Railroads or Fortress Railroads connect with each other or will connect with each other following the transaction; (2) the transaction is not part of a series of anticipated transactions that would connect any of those carriers; and (3) none of the Transtar Railroads or Fortress Railroads is a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 7, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36521, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on Fortress's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to Fortress, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 25, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021–13987 Filed 6–29–21; 8:45 am]

BILLING CODE 4915–01–P

[1] The Transtar Railroads are Union Railroad Company, Gary Railway Company, Delray Connecting Railroad Company, Texas & Northern Railroad Company, and Lake Terminal Railroad Company. Fortress states that all of the Transtar Railroads are Class III rail carriers.

[2] The Fortress Railroads are Ohio River Partners Shareholder LLC (ORPS), Katahdin Railcar Services LLC (KRS), and DesertXpress Enterprises, LLC (DXE). Fortress states that DXE is authorized by the Board to construct high-speed passenger rail service in California, ORPS is a non-operating carrier, and KRS is a Class III rail carrier.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub-No. 345X)]

Union Pacific Railroad Company—Abandonment Exemption—in Riverside and San Bernardino Counties, CA

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.54-mile portion of the Crestmore Industrial Lead in Crestmore, Cal., between milepost 7.06 and milepost 7.6, in Riverside and San Bernardino Counties, Cal. (the Line). The Line traverses U.S. Postal Service Zip Codes 92509 and 92316.[1]

[1] UP initially filed its verified notice on September 18, 2020. After submitting the filing, UP discovered that it inadvertently omitted that the Line extends into U.S. Postal Zip Code 92316 and into San Bernardino County. At the request of UP, the proceeding was held in abeyance by a decision served on October 6, 2020. UP now has corrected those omissions. UP filed its revised verified notice on June 2, 2021.

UP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years (and thus there is no need to reroute any overhead traffic); (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) and 1105.8 (notice of environmental and historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on July 30, 2021, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 12, 2021.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 20, 2021.

All pleadings, referring to Docket No. AB 33 (Sub-No. 345X), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on UP's representative, Jeremy M. Berman, 1400 Douglas St., #1580 Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by July 2, 2021. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by UP's filing of a notice of consummation by June 30, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 25, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–13979 Filed 6–29–21; 8:45 am]

BILLING CODE 4915–01–P

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Disposal of Aeronautical Property at Cincinnati/Northern Kentucky International Airport, Hebron, KY (CVG)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by Kenton County Airport Board, to release of land (4.44 acres) at Cincinnati/Northern Kentucky International Airport from federal obligations.

DATES: Comments must be received on or before July 30, 2021.

ADDRESSES: Comments on this notice may be emailed to the FAA at the following email address: FAA/Memphis Airports District Office, Attn: Jamal Stovall, Community Planner, *Jamal.Stovall@faa.gov.*

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Candace S. McGraw, CEO, Kenton County Airport Board at the following address: 77 Comair Blvd., Erlanger, KY 41018.

FOR FURTHER INFORMATION CONTACT: Jamal Stovall, Community Planner, Federal Aviation Administration, Memphis Airports District Office, 2600, Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482, *Jamal.Stovall@faa.gov,* (901) 322–8185. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property for disposal at Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, KY 41048, under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at Cincinnati/Northern Kentucky International Airport (CVG) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of these properties does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The request consists of the following:

The Kenton County Airport Board is proposing the release of airport property totaling 4.44 acres, more or less. The Kenton County Airport Board proposes to sell six parcels of airport land totaling 6.032 acres located on the northwest side of CVG along Petersburg Road, KY20 in Boone County, Kentucky. Three of the six parcels (referenced on the current Exhibit A as 8013 Lot 14, 8077 Lot 15, and 8088 Lots 17&18) were purchased with Airport Improvement Plan (AIP) funds and are subject to this release. The three aforementioned AIP funded parcels account for approximately 4.44 acres of the 6.032 acres being sold by the Board. The future use of the property is an access road for an industrial development to the north of the subject parcels. Portions of the parcels were previously

exchanged with the State of Kentucky as part of the relocation of Petersburg Road, KY 20 during the construction of Runway 18R/36L. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at Cincinnati/Northern Kentucky International Airport (CVG) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for aviation facilities at CVG. The proposed use of this property is compatible with airport operations.

This request will release this property from federal obligations. This action is taken under the provisions of 49 U.S.C. 47107(h)(2).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on June 24, 2021.

Duane Leland Johnson,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2021–13981 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No.—2022–2085]

Petition for Exemption; Summary of Petition Received; American Airlines, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 20, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0494 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0494.

Petitioner: American Airlines, Inc.

Sections of 14 CFR Affected: 21.197(a)(1) and (c).

Description of Relief Sought: American Airlines, Inc. (American) petitions for an exemption from Title 14, Code of Regulations § 21.197(a)(1) and (c) to allow a ferry under American's D084 Operations Specifications of unairworthy aircraft, but safe for point of storage.

[FR Doc. 2021–13958 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2021–2079]

Petition for Exemption; Summary of Petition Received; United States Marine Corps

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 20, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0162 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0162.

Petitioner: United States Marine Corps.

Section(s) of 14 CFR Affected: 91.205 & 91.209.

Description of Relief Sought: The United States Marine Corps seeks relief for Marine Unmanned Aerial Squadron Three (VMU–3) to operate the RQ–21A Blackjack unmanned aircraft system (UAS) for national defense requirements with relief from the required lighting equipage and lighting needed to conduct UAS night operations in the Marine Corps Air Station (MCAS) Kaneohe Bay Class D and delegated Class E airspace to include the airspace over Marine Corps Training Area Bellows (MCTAB).

[FR Doc. 2021–13961 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2022–2081]

Petition for Exemption; Summary of Petition Received; K&S Aviation Services, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 20, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0388 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Heidi L. Hunt 202–267–7806, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0388.

Petitioner: K&S Aviation Services, Inc.

Section(s) of 14 CFR Affected: § 61.156(a).

Description of Relief Sought: K&S Aviation Services is an approved training provider of the airline transport pilot certification training program (ATP CTP) under title 14, Code of Federal Regulations (14 CFR) part 142. It is seeking an exemption from 14 CFR 61.156(a) to use video teleconferencing technology in lieu of classroom instruction to teach the academic portion of the ATP CTP.

[FR Doc. 2021–13962 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No.—2021–2077]

Petition for Exemption; Summary of Petition Received; Sikorsky Aircraft Corporation

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 20, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0351 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West

Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0351.

Petitioner: Sikorsky Aircraft Corporation.

Section(s) of 14 CFR Affected: §§ 91.225(b) and 91.227(d)(18).

Description of Relief Sought: Sikorsky Aircraft Corporation (Sikorsky) seeks relief from §§ 91.225(b) and 91.227(d)(18) to conduct research and development, market survey, and customer training flights for two S–70i type aircraft (N8034M and N8048X) that are not type certified. Sikorsky operates these aircraft with a special airworthiness certificate under experimental category. The requested exemption will allow Sikorsky to operate in airspace that requires Automatic Dependent Surveillance–Broadcast (ADS–B) out equipment utilizing a system which enhances the aircraft capabilities and increases situational awareness in the interest of public safety.

[FR Doc. 2021–13960 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0052]

Hours of Service (HOS) of Drivers; Application for Renewal of American Pyrotechnics Association Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemptions.

SUMMARY: FMCSA announces its decision to grant, in part, the application of the American Pyrotechnics Association (APA) for renewal of exemptions from certain hours of service (HOS) regulations that expired on July 8, 2020. The request is being made on behalf of 60 APA member companies. The exemptions will allow drivers for these companies to exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit and to use paper records of duty status (RODS) in lieu of electronic logging devices (ELD) during the 2021 Independence Day period. FMCSA has analyzed the application for exemptions and the public comments and has determined that the exemptions, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemptions.

DATES: These exemptions are effective June 28 through July 8, 2021.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets operations.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–4225; *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0052'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0052'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying commercial motor vehicle (CMV) from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. Drivers required to prepare RODS must do so using ELDs. However, under 49 CFR 395.8(a)(1)(iii)(*1*), a motor carrier may allow its drivers to record their duty status manually, rather than use an ELD, if the driver is operating a CMV ''[i]n a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period.''

Applicant's Requests

APA requests temporary relief from both provisions discussed above because employees for its member companies need to drive CMVs after the end of the 14-hour period and because the proposed exemption period from June 28 through July 8 is 11 days long, which exceeds the exception from the ELD requirement (up to 8 days in a 30 consecutive-day period). APA explains that without the extra time each day provided by the exemption from the 14-hour rule, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. Without the exemption from the ELD rule, these companies would be required to purchase/lease ELD systems for a limited period of 11 days.

APA requests renewal of its HOS exemptions from the 14-hour rule for 58 of 61 member-companies included in the 2016 through 2020 waivers or exemptions and from the ELD rule for the same member companies included in the 2019 through 2020 waivers or exemptions. The HOS exemptions or waivers for 61 of its members expired on July 8, 2020. The current applications cover 58 members that previously held exemptions and 2 additional member companies not previously covered by the exemptions. APA has removed 3 member companies previously included in the 14-hour and ELD relief from the list, leaving 60 of its member companies applying for exemptions from the 14-hour rule and the ELD rule. Copies of the 2021 requests are included in the docket referenced at the beginning of this notice.

Various APA members have held waivers or exemptions during Independence Day periods from 2005 through 2014. On May 9, 2016, the current exemption for APA members was extended to July 8, 2020, pursuant to section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act. Copies of the initial request for an exemption from the 14-hour rule, subsequent renewal requests, and all public comments received may be reviewed at *www.regulations.gov* under docket numbers FMCSA–2005–21104 and FMCSA–2007–28043.

FMCSA granted APA's application for relief from the ELD rule on February 19, 2019, covering the Independence Day celebrations for 2019 and 2020. A copy of that request and the public comments received are located at *www.regulations.gov* under docket number FMCSA–2018–0140.

V. Method To Ensure an Equivalent or Greater Level of Safety

APA believes an equivalent level of safety will be achieved because the fireworks are transported over relatively short routes from distribution points to the site of the fireworks display, and normally in the morning when traffic is light. APA also believes that fatigued driving is reduced and/or eliminated because drivers spend considerable time installing, wiring, and safety-checking the fireworks displays at the site, followed by several hours off duty in the late afternoon and early evening prior to the event; during this time, the drivers are allowed to rest or take a nap. Additionally, these drivers would continue to use paper RODS in lieu of an ELD during the designated Independence Day periods. The scheduled off duty time and use of RODS will ensure that fatigued driving is managed.

VI. Public Comments

On May 4, 2021, FMCSA published notice of this application and requested public comments (86 FR 23779). The Agency received three comments, all opposing the exemptions. Miner's Inc. said ''No need to extend hours of service. Team drivers can keep the load moving. This can also be used for livestock.'' Another commenter, John Koglman, wrote, ''14 hr. Mandatory ELD, one or the other. Truckers are not children, no safer highways [since] both rules have been in place. Too much money being allocated for enforcement, not much spent to make truck driving bearable . . .'' The third commenter, Joshua Hilton, asked, ''What part of shall not be infringed do you not understand?''

VII. FMCSA Response and Decision

FMCSA has determined that granting these exemptions to APA member-companies will likely achieve a level of safety equivalent to or greater than the level that compliance with the HOS rules would ensure. The Agency agrees with the APA that the operational demands of this unique industry minimize the risk of CMV crashes. Generally, the CMV drivers covered by the exemption transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the morning hours when drivers are less likely to encounter heavy traffic and congestion. When the drivers arrive at the work site, they spend most of their time setting up the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During the off-duty breaks, drivers are able to rest and nap, thereby reducing the risk of fatigue towards the end of the work shift. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers. FMCSA notes that the individuals spend very little time driving during any given work shift and they must adhere to the weekly hours-of-service limits which prohibit operating a CMV after accumulating 60 hours on duty within 7 consecutive days, or 70 hours on duty within 8 consecutive days.

FMCSA anticipates, and understands from discussions with APA, that drivers will be unable to exceed the 14-hour limit every night and yet still have time to take 10 consecutive hours off duty. But drivers may work long days followed by short days, alternating back and forth. Such arrangements will likely vary from company to company, depending on event schedules. In any case, drivers and motor carriers operating under the exemption remain subject to the requirement for 10 consecutive hours off duty, and they must maintain records of duty status.

With regard to ELDs, the current regulations include an exception for motor carriers that are required to prepare records of duty status for 8 days or less during a 30 consecutive day period. However, the APA members in question would need relief from the requirements for 11 days. Therefore, the exemption would only provide 3 additional days of relief beyond the existing rule. The Agency does not believe safety will be decreased through the use of paper RODS and supporting documents during the 3 additional days. The carriers will be subject to the current record retention requirement,

for the records generated during the timeframe of this exemption and the Agency will have access to the RODS for 6 months from the date the records were prepared including corresponding supporting documents. The carriers also could be subject to civil penalties for failure to maintain the RODS and supporting documents for the entire period of the exemption and 6 months thereafter.

In addition, FMCSA has ensured that each motor carrier possesses an active USDOT registration, minimum required levels of insurance as required by 49 CFR part 387, and is not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. The Agency conducted a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies. The motor carriers have ''satisfactory'' safety ratings and valid Hazardous Materials Safety Permits. The member carriers may be subject to investigations prior to future renewal of the exemption.

FMCSA acknowledges the concerns of commenters and has decided to limit the exemption to the 2021 Independence Day season, rather than granting a multi-year exemption as requested by APA. The Agency will review the impact of the exemption following the 2021 Independence Day Celebration and seek public comment whether similar relief should be granted in future years, if requested by APA.

VIII. Terms and Conditions of the Exemptions

Period of the Exemption

The requested HOS exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) are effective from June 28 through July 8, 2021, 11:59 p.m. local time.

Terms and Conditions of the Exemptions

The exemptions are limited to drivers employed by the 58 motor carriers previously covered by the exemptions, and drivers employed by the two additional carriers identified by an asterisk in the appendix table of this notice. Drivers covered by these exemptions will be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. Drivers will be able to use paper RODs in lieu of ELDs to record their HOS. The conditions of these are as follows:

- Drivers must not drive more than 11 hours after accumulating 14 hours on duty prior to beginning a new driving period;
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period;
- Drivers must use paper RODs, maintain RODS for 6 months from the date the record is prepared, and make RODS accessible to law enforcement upon request;
- Drivers subject to the ELD requirements prior to June 28 must continue to use ELDs, maintain ELD data for 6 months from the date the electronic record is generated, and make ELD data accessible to law enforcement upon request; and
- The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period these exemptions would be in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

Notification to FMCSA

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under these exemptions. The notification must be made by email to *MCPSD@DOT.GOV* and include the following information:

a. Identifier of the Exemptions: ''APA'';

b. Date of the accident;

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;

d. Driver's name and driver's license State, number, and class;

e. Co-Driver's name and driver's license State, number, and class;

f. Vehicle company number and power unit license plate State and number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Meera Joshi,

Deputy Administrator.

APPENDIX TO NOTICE OF APPLICATIONS FOR RENEWAL OF APA EXEMPTIONS FROM THE 14-HOUR AND ELD HOS RULES FOR INDEPENDENCE DAY PERIODS JUNE 28, 2021 THROUGH JULY 8, 2021 FOR 60 MOTOR CARRIERS

Motor carrier	Street address	City, state, zip code	DOT No.
1. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2. American Fireworks Display, LLC	105 County Route 7	McDonough, NY 13801	2115608
3. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
4. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
5. Artisan Pyrotechnics, Inc	82 Grace Road	Wiggins, MS 39577	1898096
6. *Atlas Importers, Inc	1570 S Hwy. 501	Marion, SC 29571	449827
7. Atlas PyroVision Entertainment Group, Inc.	136 Sharon Road	Jaffrey, NH 03452	789777
8. Celebration Fireworks, Inc	7911 7th Street	Slatington, PA 18080	1527687
9. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
10. *Dominion Fireworks, Inc	669 Flank Road	Petersburg, VA 23805	540485
11. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
12. Fireworks & Stage FX America	12650 Hwy 67S, Suite B	Lakeside, CA 92040	908304

APPENDIX TO NOTICE OF APPLICATIONS FOR RENEWAL OF APA EXEMPTIONS FROM THE 14-HOUR AND ELD HOS RULES FOR INDEPENDENCE DAY PERIODS JUNE 28, 2021 THROUGH JULY 8, 2021 FOR 60 MOTOR CARRIERS—Continued

Motor carrier	Street address	City, state, zip code	DOT No.
13. Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490
14. Legal Aluminum King Mfg., Ltd. dba Flashing.	700 E Van Buren Street	Mitchell, IA 50461	420413
15. Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
16. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17. Hale Artificier, Inc	3185 East US Highway 64	Lexington, NC 27292	981325
18. Hamburg Fireworks Display, Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
19. Hawaii Explosives & Pyrotechnics, Inc.	17–7850 N Kulani Road	Mountain View, HI 96771	1375918
20. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
21. Mike Eicher, dba Homeland Fireworks, Inc.	5235 John Day Hwy	Jamieson, OR 97909	1377525
22. International Fireworks Mfg. Company.	242 Sycamore Road	Douglassville, PA 19518	385065
23. J&J Computing dba Fireworks Extravaganza.	174 Route 17 North	Rochelle Park, NJ 07662	2064141
24. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
25. Johnny Rockets Fireworks Display Company.	3240 Love Rock	Steger, IL 60475	1263181
26. Lantis Fireworks, Inc	130 Sodrac Dr., Box 229	N Sioux City, SD 57049	534052
27. Las Vegas Display Fireworks, Inc	4325 West Reno Ave	Las Vegas, NV 89118	3060878
28. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
29. Magic in the Sky, LLC	27002 Campbellton Road	San Antonio, TX 78264	2134163
30. Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.O. Box 322	Hallowell, ME 04347	734974
31. Miand Inc. dba Planet Productions (Mad Bomber) bBoBBomberBomber).	P.O. Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
32. Melrose Pyrotechnics, Inc	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
33. Montana Display Fireworks, Inc	9480 Inspiration Road	Missoula, MT 59808	1030231
34. Pyro Shows, Inc	115 N 1st Street	LaFollette, TN 37766	456818
35. Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005	2859710
36. Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd.	Fort Worth, TX 76135	2432196
37. Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
38. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
39. Pyrotechnic Display, Inc	8450 W St. Francis Rd.	Frankfort, IL 60423	1929883
40. Pyrotecnico Fireworks Inc	299 Wilson Rd	New Castle, PA 16105	526749
41. Pyrotecnico FX, LLC	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
42. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
43. RES Specialty Pyrotechnics dba RES Pyro.	21595 286th St	Belle Plaine, MN 56011	523981
44. RKM Fireworks Company	27383 May St	Edwardsburg, MI 49112	1273436
45. Rozzi's Famous Fireworks, Inc	118 Karl Brown Way	Loveland, OH 45140	0483686
46. Santore's World Famous Fireworks, LLC.	846 Stillwater Bridge Road	Schaghticoke, NY 12154	2574135
47. Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
48. Sorgi American Fireworks Michigan, LLC.	935 Wales Ridge Rd	Wales, MI 48027	02475727
49. Southern Sky Fireworks, LLC	6181 Denham Rd	Sycamore, GA 31790–2603	3168056
50. Spielbauer Fireworks Co, Inc	1976 Lane Road	Green Bay, WI 54311	046479
51. Spirit of 76, LLC	6401 West Hwy 40	Columbia, MO 65202	2138948
52. Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
53. Vermont Fireworks Co., dba Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
54. Wald & Company All American Display Fireworks Company.	16004 South State 291 Highway	Greenwood, MO 64034	87079
55. Western Display Fireworks, Ltd	10946 S New Era Rd	Canby, OR 97013	498941
56. Western Enterprises, Inc	13513 W Carrier Rd	Carrier, OK 73727	203517
57. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
58. Young Explosives Corp	2165 New Michigan Rd	Canandaigua, NY 14618	450304
59. Zambelli Fireworks MFG, Co., Inc	120 Marshall Drive	Warrendale, PA 15086	033167
60. ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc.	1014 Slocum Road	Wapwallopen, PA 18660	2149202

[FR Doc. 2021–13892 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2021 Competitive Funding Opportunity: Areas of Persistent Poverty Program

SUMMARY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

SUMMARY: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $16,259,614 in funding from Fiscal Year (FY) 2020 ($39,614) and FY 2021 ($16,220,000) for the Areas of Persistent Poverty Program (Federal Assistance Listing: 20.505). As required by law, funds will be awarded competitively for planning, engineering, or development of technical or financing plans for projects that assist areas of persistent poverty. FTA may award additional funds if they are made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern Time on August 30, 2021. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website immediately to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *http://transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is FTA–2021–005–TPE. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Tonya P. Holland, FTA Office of Planning and Environment, 202–493–0283, or *tonya.holland@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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A. Program Description

The Areas of Persistent Poverty Program provides funds to eligible recipients or subrecipients under Title 49 U.S.C. Sections 5307, 5310, or 5311 located in areas of persistent poverty. Funding to implement the Areas of Persistent Poverty Program was appropriated by the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, Dec. 20, 2019) and the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, Dec. 27, 2020), and will be awarded through a competitive process, as described in this notice. This funding opportunity is occurring under Federal Assistance Listing number 20.505.

FTA will award grants to eligible applicants for planning, engineering, or development of technical or financing plans for projects eligible under Chapter 53 of title 49, United States Code. Applicants are encouraged to work with non-profits or other entities of their choosing to develop an eligible project. An eligible project for this NOFO is defined as a planning study (including a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process), an engineering study, a technical study, or a financial plan.

This program supports FTA's strategic goals and objectives through the timely and efficient investment in public transportation. This program also supports the Biden-Harris Administration's agenda to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. By supporting increased transit access for environmental justice (EJ) populations (see FTA Circular 4703.1), equity-focused community outreach, public engagement of underserved communities, adoption of equity-focused policies, reducing greenhouse gas emissions, and addressing the effects of climate change, FTA's Areas of Persistent Poverty Program advances the goals of Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad.

FTA seeks to use the Areas of Persistent Poverty Program to encourage racial equity in two areas: (1) Planning and policies related to racial equity and barriers to opportunity; and (2) engineering, or development of technical or financing plans, for project investments that either proactively addresses racial equity and barriers to opportunity, including automobile dependence as a form of barrier, or redress prior inequities and barriers to opportunity.

B. Federal Award Information

FTA intends to award all available funding (approximately $16.26 million) in the form of grants to selected applicants responding to this NOFO. Additional funds made available for this program prior to project selection may be allocated to eligible projects. Funds will remain available for obligation for four fiscal years, not including the year in which the funds are allocated to projects.

Only proposals from eligible recipients for eligible activities will be considered for funding. FTA anticipates a maximum grant award not to exceed $850,000.

In response to a NOFO that closed on May 4, 2020, FTA received applications for 28 eligible projects requesting a total of $11,062,307. Of the 28 projects, 25 projects were selected and funded for a total of $8.46 million.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants include States, tribes, and designated or direct recipients eligible under 49 U.S.C. 5307, 49 U.S.C. 5310, or 49 U.S.C. 5311 that are located in areas of persistent poverty. State departments of transportation may apply on behalf of eligible applicants within their States. Applicants are also encouraged to work with non-profit organizations.

For the funding made available in FY 2021, eligible projects must be located: (1) In a county that had greater than or equal to 20 percent of the population living in poverty over the 30-year period preceding the date of enactment of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, December 27, 2020), as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates, or (2) in a census tract with a poverty rate of at least 20 percent as measured by the 2014–2018 five-year data series available from the American Community Survey of the Bureau of the Census; or (3) in any territory or possession of the United States. Use this link to confirm that your proposed project is in an Area of Persistent Poverty and document that in the Supplemental Form to the application—*https://datahub.transportation.gov/stories/s/tsyd-k6ij.*

For the funding made available in FY 2020, eligible projects must be located: (1) In a county that consistently had 20 percent or more of the population living in poverty over the 30-year period preceding the date of enactment of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, Dec. 20, 2019), as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates, or (2) in a census tract with a poverty rate of at least 20 percent as measured by the 2013–2017 five-year data series available from the American Community Survey of the Bureau of the Census.

Given the small amount of FY 2020 funding available, eligible applicants for FY 2020 funds must also meet the eligibility requirements for funding in FY 2021 in order to receive available FY 2020 funding. Eligible applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

As described in the Appropriations Acts, applicants are encouraged to work with non-profits or other entities of their choosing to develop planning, technical, engineering, or financing plans, and applicants are encouraged to partner with non-profits that can assist with making projects low or no emissions. If an application that involves such a partnership is selected for funding, the selection process for the non-profit or other nongovernmental partners must satisfy the requirements for a competitive procurement under 49 U.S.C. 5325(a). A competitive selection process conducted by the applicant prior to applying for an Area of Persistent Poverty award will be deemed to satisfy the requirements of 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership will require written FTA approval, must be consistent with the scope of the approved project, and may necessitate a competitive procurement.

2. Cost Sharing or Matching

The minimum Federal share for projects selected under the Areas of Persistent Poverty Program is 90 percent of the net total project cost (*i.e.,* the local share will be no more than 10 percent of the net total project cost, not 10 percent of the requested grant amount).

Eligible sources of local match include the following: Cash from non-Government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; or funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; or new capital. In addition, transportation development credits or documentation of in-kind match may be used as local match if identified and documented in the application.

3. Eligibility Criteria

i. Eligible Activities

Under the Areas of Persistent Poverty Program, eligible projects are planning, engineering, or development of technical or financing plans for projects eligible under Chapter 53 of title 49, United States Code. For example, these activities may include planning, engineering, or development of technical or financing plans for improved transit services; new transit routes; engineering for transit facilities and improvements to existing facilities; innovative technologies; low or no emission buses or a new bus facility or intermodal center that supports transit services; integrated fare collections systems; or coordinated public transit human service transportation plans to improve transit service in an area of persistent poverty or to provide new service such as transportation for services to address the opioid epidemic, as well as increase access to environmental justice populations, while reducing greenhouse gas emissions and the effects of climate change. An eligible project also may be a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process.

ii. Ineligible Activities

It is important to note that capital, maintenance, or operating costs of any type are, not eligible for funding under the Areas of Persistent Poverty Program. Procurement of vehicles or equipment and support of the operation and maintenance of systems also are ineligible activities.

D. Application and Submission Information

1. Address To Request Application Package

The application package may be obtained from *GRANTS.GOV*. Applications must be submitted electronically through *GRANTS.GOV*. General information for submitting applications through *GRANTS.GOV* can be found at *https://www.grants.gov/web/grants/applicants.html,* along with specific instructions for the forms and attachments required for submission. The Standard Form 424 (SF–424), Application for Federal Assistance, which must be included with every application, can be downloaded from *GRANTS.GOV*. Mail and fax submissions will not be accepted.

A complete proposal submission consists of two forms: The SF–424 Application for Federal Assistance (downloaded from *GRANTS.GOV*) and the Supplemental Form for the FY 2021 Areas of Persistent Poverty Program (downloaded from *GRANTS.GOV* or the FTA website at *https://www.transit.dot.gov*). Failure to submit the information as requested can delay review or disqualify the application.

2. Content and Form of Application Submission

Proposals must include a completed SF–424 Application for Federal Assistance form and the following attachments to the completed SF–424:

i. A completed Applicant and Proposal Profile supplemental form for the Areas of Persistent Poverty Program (Supplemental Form) found on the FTA website at *https://www.transit.dot.gov.* The information on the Supplemental Form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice;

ii. A map of the proposed study area with which to confirm alignment between the proposed study area and areas of persistent poverty;

iii. Documentation of any partnerships between the applicant and other organizations to carry out the proposed activities. Documentation may consist of a memorandum of agreement or letter of intent signed by all parties that describes the parties' roles and responsibilities in the proposed project; and

iv. Documentation of any funding commitments for the proposed work.

FTA will accept only one Supplemental Form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single Supplemental Form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and Supplemental Form.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet

status reports, or excerpts from relevant planning documents. Supporting documentation must be described and referenced by file name in the appropriate response section of the Supplemental Form, or it may not be reviewed.

Information such as the applicant's name, Federal amount requested, local match amount, and description of the study area are requested in varying degrees of detail on both the SF–424 form and Supplemental Form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' buttons on both forms to check all required fields and to ensure that the Federal and local amounts specified are consistent. In the event of errors with the Supplemental Form, FTA recommends saving the form on your computer and ensuring that JavaScript is enabled in your PDF editor. The information listed below MUST be included on the SF–424 and Supplemental Form for Areas of Persistent Poverty Program funding applications.

The SF–424 Mandatory Form and the Supplemental Form will prompt applicants for the following items:

1. Provide the name of the lead applicant and, if applicable, the specific co-sponsors submitting the application.
2. Provide the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number.
3. Provide contact information including: Contact name, title, address, phone number, and email address.
4. Specify the Congressional district(s) where the planning project will take place.
5. Identify the project title and project scope to be funded, including anticipated substantial deliverables and the milestones for when they will be provided to FTA.
6. Identify and describe the eligible project that meets the requirements of Section C, subsection 3 of this notice, including a detailed description of the need for planning, engineering, or development of technical, or financial planning activities.
7. Address each evaluation criterion separately, demonstrating how the project responds to each criterion as described in Section E and how the project will support the Areas of Persistent Poverty Program objectives.
8. Provide a line-item budget for the project, with enough detail to indicate the various key components of the project.
9. Identify the Federal amount requested.
10. Document the matching funds, including the amount and source of the match (may include local or private sector financial participation in the project). Describe whether the matching funds are committed or planned, and include documentation of the commitments.
11. Provide an explanation of the scalability of the project.
12. Address whether other Federal funds have been sought or received for the comprehensive planning project.
13. Provide a schedule and process for the project that includes anticipated dates for incorporating the project into the region's unified planning work program, completing major tasks and substantial deliverables, and completing the project.
14. Describe how the proposed project advances the metropolitan transportation plan of the metropolitan planning organization or the statewide long-range plan prepared by the State department of transportation.
15. Propose performance criteria for the development and implementation of the proposed activities funded under the Areas of Persistent Poverty Program.
16. Identify potential State, local, or other impediments to the deliverables of the Areas of Persistent Poverty-funded work and their implementation, and how the impediments will be addressed.
17. Describe how the proposed activities address climate change. Applicants should identify any air quality nonattainment or maintenance areas under the Clean Air Act in the planning or study area. Nonattainment or maintenance areas should be limited to the following applicable National Ambient Air Quality Standards criteria pollutants: Carbon monoxide, ozone, and particulate matter 2.5 and 10. The U.S. Environmental Protection Agency's Green Book (available at *https://www.epa.gov/green-book*) is a publicly-available resource for nonattainment and maintenance area data. This consideration will further the goals of Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad.
18. Describe how the proposed activities address environmental justice populations, racial equity, and barriers to opportunity.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifiers and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant is an individual or has an exemption approved by FTA or the U.S. Office of Management and Budget pursuant to 2 CFR 25.110(c) or (d). SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *https://www.sam.gov.*

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS) to ensure registration information is current and to comply with federal requirements. Applicants should refer to 2 CFR 200.113 for more information.

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. eastern time August 30, 2021. *GRANTS.GOV* attaches a timestamp to each application at the time of submission. Proposals submitted after the deadline will be considered only under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV:* (1) Confirmation of successful transmission to *GRANTS.GOV*; and (2) confirmation of successful validation by *GRANTS.GOV*. FTA will then validate the application and will attempt to notify any applicants whose applications could not be validated. If the applicant does not receive confirmation of successful validation or a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the

submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated, and check the box on the Supplemental Form indicating this is a resubmission. An application that is submitted at the deadline and cannot be validated will be marked as incomplete, and such applicants will not receive additional time to re-submit.

FTA urges applicants to submit their applications at least 96 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled maintenance or outages.

Applicants are encouraged to begin the registration process on the *GRANTS.GOV* site well in advance of the submission deadline. Registration in *GRANTS.GOV* is a multi-step process, which may take several weeks to complete before an application can be submitted. Applicants who are already registered in *GRANTS.GOV* may be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the System for Award Management (SAM) is renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

See Section C of this NOFO for detailed eligibility requirements. Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to an FTA award of a grant agreement unless FTA has issued pre-award authority for selected projects. Refer to Section C.3 of this NOFO (Eligible Projects) for information on activities that are eligible for funding under this grant program. Allowable direct and indirect expenses must be consistent with the government-wide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

The minimum Federal share for projects selected under the Areas of Persistent Poverty Program is 90 percent of the net total project cost (*i.e.,* the local share will be no more than 10 percent of the net total project cost, not 10 percent of the requested grant amount). Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide either (1) a minimum Federal funding amount (not less than 90 percent of the net total project cost); or (2) a reduced net total project cost and minimum Federal funding amount (not less than 90 percent of the reduced net total project cost) that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project would be affected by a reduced award. FTA may award a lesser amount whether a scalable option is provided.

All applications must be submitted via the *GRANTS.GOV* website. FTA does not accept applications on paper, by fax machine, email, or other means. For information on application submission requirements, please see Section D.1., Address to Request Application, and Section D.4., Submission Dates and Times.

E. Application Review Information

1. Criteria

Project proposals will be evaluated primarily on the responses provided in the Supplemental Form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the Supplemental Form, including the file name where the additional information can be found. Applications will be evaluated based on the quality and extent to which the following evaluation criteria are addressed.

a. Demonstration of Need

Applications will be evaluated based on the quality and extent to which they demonstrate how the proposed activities will support planning, engineering, or development of technical or financing plans that would result in a project eligible for funding under Chapter 53 of Title 49, United States Code.

b. Demonstration of Benefits

Applications will be evaluated based on how well they describe how the proposed planning, engineering, or development of technical or financing plans address the existing condition of the transit system, improve the reliability of transit service for its riders, enhance access and mobility within the service area, accelerate innovation in areas of persistent poverty to serve unmet needs, promote emissions reductions, reduce barriers to affordable housing, address racial equity and reduce barriers to opportunity, and support environmental justice populations. The following factors will be considered:

i. System Condition. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to lead to an improvement in the condition of the transit system in areas of persistent poverty.

ii. Service Reliability. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to lead to a reduction in the frequency of breakdowns or other service interruptions caused by the age and condition of the agency's transit vehicle fleet, and improve system reliability.

iii. Enhanced Access and Mobility. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to lead to improved access and mobility for the transit riding public, such as through increased reliability, improved headways, creation of new transportation choices, or eliminating gaps in the current route network.

iv. Accelerating Innovation. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to accelerate the introduction of innovative technologies or practices such as integrated fare payment systems permitting complete trips or advancements to propulsion systems. Innovation can also include practices such as new public transportation operational models, financial or procurement arrangements, or value capture strategies.

v. Emissions Reductions. FTA will evaluate the potential for the planning study, engineering study, or development of technical or financing plans to identify proposed actions that will reduce greenhouse gas and other harmful pollutants and/or improve resilience to climate change.

vi. Barriers to Low Income Housing. FTA will evaluate the degree to which the planning study, engineering study, or development of technical or financial plans identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.

vii. Racial Equity and Barriers to Opportunity. FTA will evaluate the extent to which the planning study, engineering study, or development of technical or financial plans either

proactively address racial equity and barriers to opportunity, including automobile dependence as a form of barrier, or redress prior inequities and barriers to opportunity. FTA also will consider the extent to which applications incorporate such activities as equity-focused community outreach and public engagement of underserved communities in the planning process, and adoption of an equity and inclusion program/plan or equity-focused policies.

viii. Environmental Justice. FTA will evaluate the extent to which the planning study, engineering study, or development of technical or financial plans will support increased access to transit for environmental justice populations and engages such populations in plan or study development. *See* FTA Circular *4703.1,* ''Environmental Justice Policy Guidance For Federal Transit Administration Recipients.''

ix. Regional Support. Applicants should provide evidence of regional or local support for the proposed project. Documentation may include support letters from local and regional planning organizations, local governmental officials, public agencies, and/or non-profit or private sector partners attesting to the need for the project.

c. Funding Commitments

Applicants must identify the source of the non-Federal cost-share and describe whether such funds are currently available for the project, or will need to be secured if the project is selected for funding. FTA will consider the availability of the local cost-share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which local funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project (*e.g.,* by including a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of non-Federal funds).

d. Project Implementation Strategy

FTA will evaluate the strength of the work plan, schedule, and process included in an application based on the following factors:

i. Extent to which the schedule contains sufficient detail, identifies all steps needed to implement the work proposed, and is achievable;

ii. Extent of partnerships, including with non-public sector entities; and

iii. The partnerships' technical capability to develop, adopt, and implement the plans, based on FTA's assessment of the applicant's description of the policy formation, implementation, and financial roles of the partners, and the roles and responsibilities of proposed staff.

e. Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal, and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project. Applicants with unresolved legal, technical or financial compliance issues from an FTA compliance review or Federal grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the proposed project.

2. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will verify each proposal's eligibility and evaluate proposals based on the published evaluation criteria. Members of the technical evaluation committee and other FTA staff may request additional information from applicants, if necessary. Taking into consideration the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding.

Among the factors in determining the allocation of program funds, FTA may consider geographic diversity and the applicant's receipt of other competitive awards. FTA may also consider capping the amount a single applicant may receive.

3. Federal Awardee Performance and Integrity Information System Check

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206 Federal awarding agency review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notice

The FTA Administrator will announce the final project selections on the FTA website. Project recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the Areas of Persistent Poverty Program.

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and even then, there are Federal requirements that must be met before costs are incurred. Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement until FTA has issued pre-award authority for selected projects, or unless FTA has issued a ''Letter of No Prejudice'' for the project before the expenses are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice at: *https://www.transit.dot.gov.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of Areas of Persistent Poverty Program funds are subject to the grant requirements of the Section 5303 Metropolitan Planning program, including those of FTA Circular 8100.1D and Circular 5010.1E. All competitive grants, regardless of the award amount, will be subject to the Congressional Notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

When applying for an award under this Program, eligible applicants and sub-recipients who are not direct recipients, or who have limited experience or access to FTA's Transit Award Management System (TrAMS), must secure the commitment of an active FTA direct recipient to apply for funding on their behalf through TrAMS if they are selected for an Areas of Persistent Poverty funding award. Documentation of such a commitment must be included in the application.

2. Administrative and National Policy Requirements

i. Planning

FTA encourages applicants to notify the appropriate metropolitan planning organizations in areas likely to be served by the funds made available under this program. Selected projects must be incorporated into the unified planning work programs of metropolitan areas before they are eligible for FTA funding or pre-award authority.

ii. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

iii. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, and/or operating assistance that will award prime contracts exceeding $250,000 in FTA funds in a Federal fiscal year comply with Department of Transportation Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). Applicants should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting their overall DBE goal.

3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system on a quarterly basis. Applicants should include any goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Awardees must also submit copies of the substantial deliverables identified in the work plan to the FTA regional office at the corresponding milestones.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed $10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For program-specific questions, please contact Tonya P. Holland, Office of Planning and Environment, (202) 493–0283, email: *Tonya.Holland@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FRS). Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties. FTA staff may also conduct briefings on the FY 2021 competitive grants selection and award process upon request. Contact information for FTA's regional offices can be found on FTA's website at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

H. Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

For assistance with *GRANTS.GOV* please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.*

Nuria I. Fernandez,

Administrator.

[FR Doc. 2021–13980 Filed 6–29–21; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Claim Against the United States for the Proceeds of a Government Check

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Claim Against the United States for the Proceeds of a Government Check.

DATES: Written comments should be received on or before August 30, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim Against the United States for the Proceeds of a Government Check.

OMB Number: 1530–0010.

Form Number: FS Form 1133 and FS Form 1133–A.

Abstract: The forms are used to collect information needed to process an individual's claim for non-receipt of proceeds from a U.S. Treasury check. Once the information is analyzed, a determination is made and a recommendation is submitted to the program agency to either settle or deny the claim.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 51,640.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 8,609.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 25, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021–13991 Filed 6–29–21; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Agency Information Collection Activity Under OMB Review: Contract for Training and Employment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0677''.

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. 2900–0677'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501(a) and 38 U.S.C. 3104.

Title: Contract for Training and Employment (Chapter 31, Title 38, U.S. Code).

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to gather the necessary information to develop formal training agreements with an institution, training establishment, or employer for training and rehabilitation under 38 U.S.C. Chapter 31. Additionally, the information is used to authorize a claimant's participation in a program with a training vendor or facility under 38 U.S.C. 3104.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: 86 FR 70, on April 14, 2021, page 19697.

Affected Public: Private Sector.

Estimated Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,600.

By direction of the Secretary:

Dorothy Glasgow,

VA PRA Clearance Officer, (Alternate) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–13959 Filed 6–29–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activity: Interest Rate Reduction Refinancing Loan; Veterans Benefits Administration (VBA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a Notice that published in the **Federal Register** on March 10, 2021 under the Paperwork Reduction Act (PRA) of 1995.

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. 2900–0386'' in any correspondence.

SUPPLEMENTARY INFORMATION: On Wednesday, March 10, 2021, at 86 FR 13789, VA published a Notice which VA Form 26–8923 is used to determine Veterans eligible for an exception to pay a funding fee in connection with a VA-guaranteed loan. Lenders are required to complete VA Form 26–8923 on all interest rate reduction refinancing loans and submit the form to the Veteran no later than the third business day after receiving the Veteran's application.

Correction

The abstract is corrected to state the following:

The major use of this form is to determine the maximum permissible loan amount for interest rate reduction refinancing loans. Lenders are required to complete VA Form 26–8923, Interest Rate Reduction Refinancing Loan Worksheet, on all interest rate reduction refinancing loans and submit the form in the loan file when selected by VA for quality review.

Dated: June 24, 2021.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alternate), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–13902 Filed 6–29–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0752]

Agency Information Collection Activity: uSPEQ® Consumer Experience Survey (Rehabilitation)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 30, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.*

Please refer to ''OMB Control No. 2900–0752'' 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. 2900–0752'' 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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: uSPEQ® Consumer Experience Survey (Rehabilitation), VA Form 10–0467.

OMB Control Number: 2900–0752.

Type of Review: Reinstatement of a previously approved collection.

Abstract: The Department of Veterans Affairs (VA) rehabilitation programs are committed to adopting the uSPEQ® Consumer Experience 2.0 Universal Questionnaire to assess outcome measures related to patient perceptions and perspectives regarding rehabilitation experiences. The uSPEQ® (pronounced *you speak*) is a confidential, anonymous, and scientifically tested consumer reporting system that gives persons served a voice in their services. A majority of VA rehabilitation program offices serving special emphasis populations have indicated an interest in using the uSPEQ® document as a survey of rehabilitation consumer experiences in their local, regional, and national programs. The uSPEQ survey will be used to gather input from veterans regarding their satisfaction with VA's rehabilitation programs. VA will use the data collected to continue quality improvement, informed programmatic development, and to identify rehabilitation program strengths and weaknesses.

Affected Public: Individuals and households.

Estimated Annual Burden: 32,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 384,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alternate), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–14001 Filed 6–29–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activity: Interest Rate Reduction Refinancing Loan; Veterans Benefits Administration (VBA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a Notice that published in the **Federal Register** on May 17, 2021 under the Paperwork Reduction Act (PRA) of 1995.

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. 2900–0386'' in any correspondence.

SUPPLEMENTARY INFORMATION: On Monday, May 17, 2021 at 86 FR 26781, VA published a Notice which VA Form 26–8923 is used to determine Veterans eligible for an exception to pay a funding fee in connection with a VA-guaranteed loan. Lenders are required to complete VA Form 26–8923 on all interest rate reduction refinancing loans and submit the form to the Veteran no later than the third business day after receiving the Veteran's application.

Correction

The abstract is corrected to state the following:

The major use of this form is to determine the maximum permissible loan amount for interest rate reduction refinancing loans. Lenders are required to complete VA Form 26–8923, Interest Rate Reduction Refinancing Loan Worksheet, on all interest rate reduction refinancing loans and submit the form in the loan file when selected by VA for quality review.

Dated: June 24, 2021.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alternate), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–13903 Filed 6–29–21; 8:45 am]

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Part II

Department of Consumer Financial Protection

12 CFR Part 1024

Protection for Borrowers Affected by the COVID–19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

[Docket No. CFPB–2021–0006]

RIN 3170–AB07

Protections for Borrowers Affected by the COVID–19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to amend Regulation X to assist mortgage borrowers affected by the COVID–19 emergency. The final rule establishes temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages. In addition, the final rule would temporarily permit mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID–19-related hardship based on the evaluation of an incomplete application. The Bureau is also finalizing certain temporary amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.

DATES: This final rule is effective on August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Spring, Program Manager, Office of Mortgage Markets; Willie Williams, Paralegal; Angela Fox or Ruth Van Veldhuizen, Counsels; or Brandy Hood or Terry J. Randall, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

To provide relief for mortgage borrowers facing financial hardship due to the COVID–19 pandemic, the Bureau is finalizing amendments to Regulation X's mortgage servicing rules.[1] As described in more detail in part II, the COVID–19 pandemic has had a devastating economic impact in the United States, making it difficult for some borrowers to stay current on their mortgage payments. To help struggling borrowers, various Federal and State protections have been established throughout the last 16 months, including the forbearances made available by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)[2] and various Federal and State foreclosure moratoria.[3] These protections will begin to phase out over the summer. A large number of borrowers remain seriously delinquent and will be at risk of foreclosure initiation this fall. This final rule will help ensure a smooth and orderly transition as the other Federal and State protections end by providing borrowers with a meaningful opportunity to explore ways to resume making payments and avoid foreclosure. This final rule will also help promote housing security by preventing avoidable foreclosures and keeping borrowers on the path to wealth creation through homeownership. The Bureau recognizes that some foreclosures are unavoidable and that not every borrower will be able to stay in their home indefinitely.

Borrowers who are in forbearance, or behind on their mortgages and not in forbearance, are disproportionately Black and Hispanic, just as those workers whose re-employment continues to lag are disproportionately Black and Hispanic.[4] Black and Hispanic borrowers also are disproportionately likely to have less equity in their homes. Thus, Black and Hispanic borrowers, and the communities in which they live, are especially likely to benefit from this rule.[5] As homeownership plays the primary role in wealth creation in the United States,[6] a wave of foreclosures due to the current crisis may have a lasting impact on these borrowers' ability to maintain and accumulate wealth.

Since last spring when the CARES Act was passed, servicers placed over 7 million borrowers into forbearance programs.[7] During this same period, servicers have adapted to rapidly changing guidance and transitioned their own workforces to remote work. The Bureau recognizes the effort that took, and the challenge that still lies before the industry. While forbearance numbers have continued to drop,[8] those borrowers still in forbearance are increasingly many months, even more than a year, behind on their mortgage payments. At the same time, increasing numbers of borrowers are exiting forbearance while delinquent without loss mitigation in place.[9] The ways servicers may have handled loss mitigation in the past, including the allocation of resources and communication methods used, may not be as effective in these unprecedented circumstances.

The Bureau is concerned that a potentially historically high number of borrowers will seek assistance from their servicers at approximately the same time this fall, which could lead to delays and errors as servicers work to process a high volume of loss mitigation inquiries and applications. In addition, the Bureau is concerned that the circumstances facing borrowers due to the COVID–19 emergency, which may involve potential economic hardship, health conditions, and extended periods of forbearance or delinquency, may interfere with some borrowers' ability to obtain and understand important information that the existing rule aims to provide borrowers regarding the foreclosure avoidance options available to them.

Final Rule

To address these concerns, this final rule includes five key amendments to Regulation X, all of which encourage borrowers and servicers to work together to facilitate review for foreclosure avoidance options. First, to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation, this final rule establishes temporary special COVID–19 procedural safeguards that must be met for certain mortgages before the servicer can make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency. This requirement generally is applicable only if (1) the borrower's mortgage loan obligation became more than 120 days

[1] This final rule finalizes the proposed amendments to Regulation X that the Bureau issued on April 5, 2021, with revisions as discussed herein. 86 FR 18840 (Apr. 9, 2021).

[2] The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (2020) (CARES Act).

[3] *Id.*

[5] Bureau of Consumer Fin. Prot., *Characteristics of Mortgage Borrowers During the COVID–19 Pandemic* at 5 (May 2021), *https://files.consumerfinance.gov/f/documents/cfpb_characteristics-mortgage-borrowers-during-covid-19-pandemic_report_2021-05.pdf* (CFPB Mortgage Borrower Pandemic Report).

[6] Nat'l Ass'n of Home Builders, *Homeownership Remains Primary Driver of Household Wealth,* NAHB Now Blog (Feb. 18, 2021), *https://nahbnow.com/2021/02/homeownership-remains-primary-driver-of-household-wealth/.*

[7] Black Knight Mortg. Monitor, *April 2021 Report* at 10 (Apr. 2021), *https://cdn.blackknightinc.com/wp-content/uploads/2021/06/BKI_MM_Apr2021_Report.pdf* (Black Apr. 2021 Report).

[8] *Id.* at 7.

[9] *Id.* at 10.

delinquent on or after March 1, 2020, and (2) the statute of limitations applicable to the foreclosure action being taken in the laws of the State or municipality where the property securing the mortgage loan is located expires on or after January 1, 2022. This provision expires on January 1, 2022, meaning that the procedural safeguards are not applicable if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022. A procedural safeguard has been met, and the servicer may proceed with foreclosure, if: (1) The borrower submitted a completed loss mitigation application and § 1024.41(f)(2) permits the servicer to make the first notice or filing; (2) the property securing the mortgage loan is abandoned under State or municipal law; or (3) the servicer has conducted specified outreach and the borrower is unresponsive.

Second, the final rule permits servicers to offer certain streamlined loan modification options made available to borrowers with COVID–19-related hardships based on the evaluation of an incomplete loss mitigation application. Eligible loan modifications must satisfy certain criteria that aim to establish sufficient safeguards to help ensure that a borrower is not harmed if the borrower chooses to accept an offer of an eligible loan modification based on the evaluation of an incomplete application. First, to be eligible, the loan modification may not cause the borrower's monthly required principal and interest payment to increase and may not extend the term of the loan by more than 480 months from the date the loan modification is effective. Second, if the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by the Federal Housing Administration (FHA), the mortgage insurance terminates, those amounts must not accrue interest. Third, the loan modification must be made available to borrowers experiencing a COVID–19-related hardship. Fourth, the borrower's acceptance of an offer of the loan modification must end any preexisting delinquency on the mortgage loan or the loan modification must be designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification. Finally, the servicer may not charge any fee in connection with the loan modification and must waive all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification. If the borrower accepts an offer made pursuant to this new exception, the final rule excludes servicers from certain requirements with regard to any loss mitigation application submitted prior to the loan modification offer, including exercising reasonable diligence to complete the loss mitigation application and sending the acknowledgement notice required by § 1024.41(b)(2). However, if the borrower fails to perform under a trial loan modification plan offered pursuant to the proposed new exception or requests further assistance, the final rule requires servicers to immediately resume reasonable diligence with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the trial loan modification plan and to provide the borrower with the acknowledgement notice required by § 1024.41(b)(2) with regard to the most recent loss mitigation application the borrower submitted prior to the offer that the servicer made under the new exception, unless the servicer has already provided that notice to the borrower.

Third, the final rule amends the early intervention obligations to help ensure that servicers communicate timely and accurate information to borrowers about their loss mitigation options during the current crisis. In general, the final rule requires servicers to discuss specific additional COVID–19-related information during live contact with borrowers established under existing § 1024.39(a) in two circumstances: (1) If the borrower is not in a forbearance program and (2) if the borrower is near the end of a forbearance program made available to borrowers experiencing a COVID–19-related hardship. Specifically, if the borrower is not in a forbearance program at the time the servicer establishes live contact with the borrower pursuant to § 1024.39(a) and the owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID–19-related hardship, the servicer must inform the borrower that forbearance programs are available for borrowers experiencing such a hardship. Unless the borrower states they are not interested, the servicer must also list and briefly describe to the borrower those forbearance programs made available at that time and the actions the borrower must take to be evaluated. The servicer must also identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement. If the borrower is in a forbearance program made available to borrowers experiencing a COVID–19-related hardship, then during the live contact made pursuant to § 1024.39(a) that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program, the servicer must provide certain information to the borrower. The servicer must inform the borrower of the date the borrower's current forbearance program is scheduled to end. In addition, the servicer must provide a list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available by the owner or assignee of the borrower's mortgage loan at that time, and the actions the borrower must take to be evaluated for such loss mitigation options. Finally, the servicer must identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement. This provision is temporary and will end on October 1, 2022.

Fourth, the final rule clarifies servicers' reasonable diligence obligations when the borrower is in a short-term payment forbearance program made available to a borrower experiencing a COVID–19-related hardship based on the evaluation of an incomplete application. Specifically, the final rule specifies that a servicer must contact the borrower no later than 30 days before the end of the forbearance period if the borrower remains delinquent to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance program period.

Finally, the final rule defines COVID–19-related hardship to mean a financial hardship due, directly or indirectly, to the national emergency for the COVID–19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)).

II. Background

A. The Bureau's Regulation X Mortgage Servicing Rules

In January 2013, the Bureau issued a final mortgage servicing rule to implement the Real Estate Settlement Procedures Act of 1974 (RESPA) (2013 RESPA Servicing Final Rule),[10] and included these rules in Regulation X.[11] The Bureau later clarified and revised Regulation X's servicing rules through several additional notice-and-comment rulemakings.[12] In part, these rulemakings were intended to address deficiencies in servicers' handling of delinquent borrowers and loss mitigation applications during and after the 2008 financial crisis.[13] When the housing crisis began, servicers were faced with historically high numbers of delinquent mortgages, loan modification requests, and in-process foreclosures in their portfolios.[14] Many servicers lacked the infrastructure, trained staff, controls, and procedures needed to manage effectively the flood of delinquent mortgages they were obligated to handle.[15] Inadequate staffing and procedures led to a range of reported problems with servicing of delinquent loans, including some servicers misleading borrowers, failing to communicate with borrowers, losing or mishandling borrower-provided documents supporting loan modification requests, and generally providing inadequate service to delinquent borrowers.[16]

The Bureau's mortgage servicing rules address these concerns by establishing procedures that mortgage servicers generally must follow in evaluating loss mitigation applications submitted by mortgage borrowers [17] and requiring certain communication efforts with delinquent borrowers.[18] The mortgage servicing rules also provide certain protections against foreclosure based on the length of the borrower's delinquency and the receipt of a complete loss mitigation application.[19] For example, Regulation X generally prohibits a servicer from making the first notice or filing required for foreclosure until the borrower's mortgage loan is more than 120 days delinquent.[20] These requirements are discussed more fully in the section-by-section analysis in part IV.

The Bureau published an assessment of the 2013 RESPA Servicing Final Rule in 2019.[21] The assessment analyzed the effects of the rule on borrowers and servicers. Among other things, the assessment concluded that loans that became delinquent were less likely to proceed to a foreclosure sale during the months after the rule's effective date compared to months before the effective date.[22] Moreover, the assessment found that delinquent borrowers were somewhat more likely than they were pre-rule to start applying for loss mitigation earlier in delinquency.[23] Also, the assessment found that loans that became delinquent were more likely to recover from delinquency (that is, to return to current status, including through a modification of the loan terms) after the rule's effective date.[24] The assessment also determined that the rule's general prohibition on initiating foreclosure within the first 120 days of delinquency prevented rather than delayed foreclosures.[25] Finally, the assessment also found that servicing costs increased substantially between 2008 and 2013.[26]

The COVID–19 pandemic was declared a national emergency on March 13, 2020, and the emergency declaration was continued in effect on February 24, 2021.[27] As described in more detail below, the pandemic has had a devastating economic impact in the United States. In June of 2020, the Bureau issued an interim final rule (June 2020 IFR) amending Regulation X.[28] The June 2020 IFR aimed to make it easier for borrowers to transition out of financial hardship caused by the COVID–19 pandemic and for mortgage servicers to assist those borrowers. With certain exceptions, Regulation X prohibits servicers from offering a loss mitigation option to a borrower based on evaluation of an incomplete application.[29] The June 2020 IFR amended Regulation X to allow servicers to offer certain loss mitigation options to borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency based on an evaluation of an incomplete loss mitigation application. Eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by the FHA, the mortgage insurance terminates.

B. Forbearance Programs Offered Under CARES Act

The CARES Act was signed into law on March 27, 2020. Under the CARES Act, a borrower with a federally backed loan may request a 180-day forbearance that may be extended for another 180

[10] Real Estate Settlement Procedures Act of 1974, Public Law 93–533, 88 Stat. 1724 (codified as amended at 12 U.S.C. 2601 *et seq.*).

[11] 78 FR 10695 (Feb. 14, 2013) (2013 RESPA Servicing Final Rule). In February 2013, the Bureau also published separate ''Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)'' (2013 TILA Servicing Final Rule). *See* 78 FR 10902 (Feb. 14, 2013). The Bureau conducted an assessment of the RESPA mortgage servicing rule in 2018–19 and released a report detailing its findings in early 2019. Bureau of Consumer Fin. Prot., *2013 RESPA Servicing Rule Assessment Report,* (Jan. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf* (Servicing Rule Assessment Report).

[12] Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 44686 (July 24, 2013); Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 FR 60382 (Oct. 1, 2013); Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 62993 (Oct. 23, 2013); Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016) (2016 Mortgage Servicing Final Rule); Amendments to the 2013 Mortgage Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 30947 (July 5, 2017); Mortgage Servicing Rules Under RESPA (Regulation X), 82 FR 47953 (Oct. 16, 2017). The Bureau also issued notices providing guidance on the Rule and soliciting comment on the Rule. *See, e.g.,* Applicability of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest, 79 FR 41631 (July 17, 2014); Safe Harbors from Liability Under the Fair Debt Collections Practices Act for Certain Actions in Compliance with Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 71977 (Oct. 19, 2016); Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance With the 2016 Amendments to the 2013 Mortgage Servicing Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 29713 (June 30, 2017).

[13] *See generally* 2013 RESPA Servicing Final Rule, *supra* note 11, at 10699–701.

[14] *See* 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 37–60.

[15] 2013 RESPA Servicing Final Rule, *supra* note 11, at 10700.

[16] *See* U.S. Gov't Accountability Off., *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Actions,* GAO–10–634, at 14–16 (2010), *https://www.gao.gov/assets/310/305891.pdf; Problems in Mortgage Servicing from Modification to Foreclosure: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs,* 111th Cong. 54 (2010) (statement of Thomas J. Miller, Att'y Gen. State of Iowa), *https://www.banking.senate.gov/imo/media/doc/MillerTestimony111610.pdf.*

[17] *See generally* 12 CFR 1024.41. Small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), are generally exempt from these requirements. 12 CFR 1024.30(b)(1).

[18] 12 CFR 1024.39.

[19] 12 CFR 1024.41(f) through (g).

[20] 12 CFR 1024.41(f)(1)(i).

[21] 2013 RESPA Servicing Rule Assessment Report, *supra* note 11.

[22] *Id.* at 9.

[23] *Id.* at 11.

[24] *Id.* at 8.

[25] *Id.* at 12.

[26] *Id.* at 8.

[27] 86 FR 11599 (Feb. 26, 2021).

[28] 85 FR 39055 (June 30, 2020).

[29] *See* 12 CFR 1024.41(c)(2).

days at the request of the borrower if the borrower attests to having a COVID-related financial hardship. Servicers must grant these forbearance programs to borrowers with federally backed mortgages, which are mortgage loans purchased or securitized by Fannie Mae or Freddie Mac (the GSEs) and loans made, insured, or guaranteed by FHA, VA, or USDA. Through its mortgage market monitoring throughout the pandemic, the Bureau understands that servicers of mortgage loans that are not federally backed offer similar forbearance programs to borrowers affected by the COVID–19 emergency.

In February of 2021, FHA, the Federal Housing Finance Agency (FHFA), Department of Agriculture (USDA), and Department of Veterans Affairs (VA) announced they were expanding their forbearance programs beyond the minimum required by the CARES Act. The agencies extended the length of COVID–19 forbearance programs for up to an additional six months for a maximum of up to 18 months of forbearance for borrowers who requested additional forbearance by a date certain.[30] In addition to the expansion of the programs, on June 24, 2021, FHA, USDA, and VA extended the period for borrowers to be approved for a forbearance program from their mortgage servicer through the end of September.[31] FHFA has not announced a deadline to request initial forbearance for loans purchased or securitized by the GSEs. To date, data on borrowers reentering or requesting forbearance suggests borrower are still using these programs.

While forbearance has been a resource for many borrowers, not all borrowers will be able to recover from such severe delinquency. As discussed more fully in part VII, historical data suggests that many borrowers with who are delinquent a year or longer have trouble resuming payments successfully and are more likely to experience foreclosure than borrowers with shorter delinquencies. Additionally, long-term forbearance can erode equity, which may make selling the home as an alternative to foreclosure less viable. The risks of extended forbearance and severe delinquency are more pronounced in some communities. For example, Bureau research found that, during the pandemic, mortgage forbearance and delinquency rates have been significantly more common in communities of color and lower-income areas.[32] Since homeownership rates vary significantly by race and ethnicity, if borrowers of these communities are not able to recover and are displaced from their homes, as a result of foreclosure, it will make homeownership more unattainable in the future, thus widening the divide for this population of borrowers. For example, in 2019, the homeownership rate among white non-Hispanic Americans was approximately 73 percent, compared to 42 percent among Black Americans. The homeownership rate was 47 percent among Hispanic or Latino Americans, 50 percent among American Indians or Alaska Natives, and 57 percent among Asian or Pacific Islander Americans.[33] Given the racial inequities in homeownership and disproportionately higher mortgage forbearance and delinquency in communities of color and lower income areas, the Bureau anticipates that these communities are especially likely to benefit from the protections of this rule.

C. Borrowers With Loans in Forbearance

There is a lot of uncertainty about the number of borrowers who will exit forbearance this fall. The volume of borrowers exiting forbearance programs is expected to fluctuate throughout the summer as borrowers' forbearance periods end and borrowers either exit forbearance or extend their forbearance for another three-month period. June 2021 presents a substantial period of potential exits of early forbearance entrants, who reached 15 months of forbearance in June. Black Knight estimates there could be slightly fewer than 400,000 exits in June if current trends continue.[34] This will be the last review for exit or extension before the review in September for borrowers who entered forbearance in March of 2020 and who will reach the maximum 18 months of forbearance that month. While a significant number of early entrants exited forbearance in the last 60 days,[35] an estimated 900,000 borrowers could still exit forbearance by the end of 2021.[36] As a result, this fall, servicers may need to assist a significant number of borrowers with post-forbearance loss mitigation review. As of May 18, 2021, Black Knight reports 5 percent of borrowers remain past due on their mortgage but are in active loss mitigation.[37] This number may also fluctuate as borrowers who remain in forbearance may not be able to cure their delinquency when they exit forbearance and many borrowers may need a more permanent reduction in their mortgage payment amount through a loan modification.

As of May 25, 2021, forbearance program starts hit their highest level in several weeks.[38] The increase in forbearance program starts can be attributed to elevated volume of borrowers who were previously in forbearance during the COVID–19 emergency reentering or restarting forbearance.[39] A similar scenario was observed after a spike in exits in early October 2020 as restart activity increased then as well. This was when the first wave of forbearance entrants reached their six-month review for extension and removal.[40] There was also a slight increase in new forbearance plan starts. This may be an indication that many borrowers continue to experience mortgage payment uncertainty.

D. Post-Forbearance Options for Borrowers Affected by the COVID–19 Emergency

Since the beginning of the COVID–19 emergency, investors and servicers have implemented several post-forbearance repayment options and other loss mitigation options to assist borrowers experiencing a COVID–19-related

[30] FHA, VA, and USDA permit borrowers who were in a COVID–19 forbearance program prior to June 30, 2020 to be granted up to two additional three-month payment forbearance programs. FHFA stated that the additional three-month extension allows borrowers to be in forbearance for up to 18 months. Eligibility for the extension is limited to borrowers who are in a COVID–19 forbearance program as of February 28, 2021, and other limits may apply. *Id.*

[31] The Bureau recognizes that the government agencies may adjust their programs further in the coming months, and the Bureau will continue to coordinate with the agencies.

[32] CFPB Mortgage Borrower Pandemic Report, *supra* note 5.

[33] USAFacts, *Homeownership rates show that Black Americans are currently the least likely group to own homes* (Oct. 16, 2020), *https://usafacts.org/articles/homeownership-rates-by-race/.*

[34] *Id.* at 8.

[35] An estimated 413,000 borrowers exited forbearance in May. *Id.* at 9.

[36] *Id.*

[37] Black Apr. 2021 Report, *supra* note 7, at 10.

[38] Andy Walden, *Forbearance Volumes Increase Again Moderate Opportunity for Additional Improvement in June,* Black Knight Mortg. Monitor Blog (May 28, 2021), *https://www.blackknightinc.com/blog-posts/forbearance-volumes-increase-again-moderate-opportunity-for-additional-improvement-in-early-june/?utm_term=Forbearance%20Volumes%20Increase%20Again%2C%20Moderate%20Opportunity%20for%20Additional%20Improvement%20in%20Early%20June&utm_campaign=An%20Update%20from%20Vision%20%5Cu2013%20Black%20Knight%27s%20Blog&utm_content=email&utm_source=Act-On_Software&utm_medium=RSS%20Email* (Black May 2021 Blog).

[39] A borrower that ''restarts'' a forbearance program is a borrower whose loan was previously in forbearance, who formally exited the forbearance program, arranged to pay-off any delinquent amounts, but ultimately reentered into a forbearance program.

[40] Black Apr. 2021 Report, *supra* note 7, at 8.

hardship. For example, servicers have offered borrowers repayment plans, payment deferral programs or partial claims programs, and loan modification programs. There are additional options for borrowers who find themselves unable to stabilize their finances or do not wish to remain in their home; servicers also offer short sales or deed-in-lieu of foreclosure as an alternative to foreclosure.

E. Loans Exiting Forbearance

As of April 2021, there were 1.9 million borrowers 90 days or more delinquent on their mortgage payments.[41] Of those borrowers, 90 percent are either in forbearance or are involved in other loss mitigation discussions with their servicers.[42] This includes loans that reentered or restarted forbearance previously. For loans that became seriously delinquent after the COVID–19 emergency, 97 percent of these loans are either in forbearance programs or other loss mitigation options.[43]

While the industry seems to have recovered from the peak periods of forbearance, many factors in the market suggest that overall risk is still elevated. Since January 2020,[44] there have been approximately 7.2 million loans that have entered a forbearance program.[45] Of the subset of loans that that exited forbearance and have either cured or received a workout solution, such as loss mitigation, approximately 3.3 million borrowers are reperforming as of May 2021.[46] Another 1.2 million have paid-off their mortgage in full most likely through refinancing or selling their home.[47] In addition, as of May 18, 2021, there were an estimated 365,000 borrowers who have exited forbearance and were in an active loss mitigation option.[48] As the population of borrowers exiting after 18 months of forbearance (and possibly as many missed payments) grows, the Bureau expects the number of borrowers who will not be able to bring their mortgage current will also grow. Many of these borrowers will need to be evaluated for permanent loss mitigation, such as loan modifications, which can decrease their monthly payment, to avoid foreclosure.

Also noted earlier, there is a high volume of borrowers who remain in prolonged forbearance that are FHA and VA borrowers. The programs offered by these borrowers may be more complicated to navigate or streamlined products may not be available resulting in the need for higher-touch communication with their servicer.

If borrowers who are currently in an eligible forbearance program request an extension to the maximum time offered by the government agencies, those loans that were placed in a forbearance program early on in the pandemic (March and April 2020) will reach the end of their maximum 18-month forbearance period in September and October of 2021. Black Knight data suggested as of mid-March, there would be an estimated 475,000 programs on track to remain active and reach their 18-month expirations at the end of September, with another 275,000 at the end of October.[49] However, due to recent forbearance exits, those estimates have now fallen to approximately 385,000 and 225,000.[50] These numbers are expected to fluctuate depending on exit volume of early forbearance entrants, especially near the end of June 2021 during the 15-month review. However, even with the recent exits, there could be nearly 900,000 borrowers exiting forbearance by the end of the year.[51] This could pose challenges for servicers.

This potentially historically high volume of borrowers exiting forbearance within a short period of time could strain servicer capacity, possibly resulting in delays or errors in processing loss mitigation requests. It remains unclear how many borrowers in a forbearance program will exit forbearance at 15 months in June rather than exercising any additional remaining 3-month extensions.

The Bureau is not aware of another time when this many mortgage borrowers were in forbearances of such long duration at once, or another time when as many mortgage borrowers were forecast to exit forbearance within a relatively short period of time. This lack of historical precedent creates uncertainty. The Bureau anticipates that many borrowers who continue to be adversely affected by the COVID–19 emergency will utilize the maximum allowable months of forbearance and most will exit in the fall.

F. Delinquent Loans Not in a Forbearance Program or Loss Mitigation

Even though millions of borrowers have received assistance through forbearance programs, there are still thousands of borrowers who are delinquent or in danger of becoming delinquent and are not in a forbearance program or in some type of loss mitigation.

As of end of April 2021, there were an estimated 158,000 seriously delinquent borrowers who were delinquent before the pandemic started and are not in a forbearance program. There are another 33,000 borrowers who became seriously delinquent after the pandemic began and had not entered a forbearance program and were not in active loss mitigation.[52]

In addition, as of May 18, 2021, there were 168,000 forbearance program exits by borrowers who are not yet in loss mitigation and remain delinquent.[53] However, more than an estimated 110,000 of those loans were already delinquent before the COVID–19 emergency.[54]

G. Loans at Heightened Risk of Avoidable Foreclosure

Since the CARES Act took effect in March of 2020, various Federal and State foreclosure moratoria have been established. As of June 24, 2021, FHFA, FHA, VA, and USDA had emergency foreclosure moratoria in effect until July 31, 2021.[55] Most foreclosure proceedings have been halted as a result of the moratoria, and therefore foreclosures are at historic lows.[56] In April 2021, there were 3,700 foreclosures initiated and the

[41] Black Apr. 2021 Report, *supra* note 7, at 5.

[42] *Id.*

[43] *Id.*

[44] Black Knight's Mortgage Monitoring forbearance data started January 2020. *See* Black Knights Mortg. Monitor, *January 2021 Report* (Jan. 2021), *https://cdn.blackknightinc.com/wp-content/uploads/2021/03/BKI_MM_Jan2021_Report.pdf* (Black Jan. 2021 Report).

[45] *Supra* note 7, at 10.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.* at 9.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 11.

[53] *Id.* at 10.

[54] *Id.*

[55] *See* Press Release, The White House, *FACT SHEET: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures* (June 24, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/* (the Department of Housing and Urban Development (HUD), Department of VeteransAffairs (VA), and Department of Agriculture (USDA)—will extend their respective foreclosure moratorium for one, final month, until July 31, 2021). Furthermore, the Bureau recognizes that these government agencies may adjust their programs further in the coming months, and the Bureau will continue to coordinate with these agencies.

[56] ATTOM Data Solutions, *Q3 2020 U.S. Foreclosure Activity Reaches Historical Lows as the Foreclosure Moratorium Stalls Filings* (Oct. 15, 2020), *https://www.attomdata.com/news/market-trends/foreclosures/attom-data-solutions-september-and-q3-2020-u-s-foreclosure-market-report/.*

foreclosure inventory was down 26 percent from the same time last year.[57]

In addition, before the pandemic, foreclosure activity was at half the normal rate.[58] Typically, about 1 percent of loans are in some stage of foreclosure annually.[59] In early 2020, the foreclosure rate was below average at about 0.5 percent.[60] In January 2020, there were about 245,000 loans in the foreclosure process when the pandemic started.

Since the Federal and State moratoria have been in place, most of these borrowers have been protected but are at heightened risk of referral to foreclosure or foreclosure soon after the moratoria end if they do not resolve their delinquency or reach a loss mitigation agreement with their servicer. The Bureau's mortgage servicing rules generally prohibit servicers from making the first notice or filing required for foreclosure until the borrower's mortgage loan obligation is more than 120 days delinquent.[61] Even where forbearance programs pause or defer payment obligations, they do not necessarily pause delinquency.[62] A borrower's delinquency may begin or continue during a forbearance period if a periodic payment sufficient to cover principal, interest, and, if applicable, escrow is due and unpaid during the forbearance. Because the forbearance programs offered as a result of the COVID-emergency generally do not pause delinquency and borrowers may be delinquent for longer than 120 days, it is possible that a servicer may refer the loan to foreclosure soon after a borrower's forbearance program ends unless a foreclosure moratorium or other restriction is in place.

As of April 2021, there were still an estimated 1.9 million borrowers in forbearance programs who were more than 90 days behind on their mortgage payments.[63] While the national delinquency rate fell to 4.66 percent in April, it remains about 1.5 percent above its pre-pandemic level.[64]

The Bureau remains focused on borrowers who might be at heightened risk of avoidable foreclosure. The Bureau issued on May 4, 2021, a research brief titled, *Characteristics of Mortgage Borrowers During the COVID–19 Pandemic,* which showed that some borrowers and communities are more at risk than others. The data from the brief showed that borrowers in forbearance or delinquent are disproportionately Black and Hispanic.[65] For example, 33 percent of borrowers in forbearance (and 27 percent of delinquent borrowers) are Black or Hispanic, while only 18 percent of the total population of mortgage borrowers are Black or Hispanic.[66]

Forbearance and delinquency are significantly more common in communities of color (defined as majority minority census tracts) and lower-income communities (defined by census tract income quartiles).[67] If borrowers are displaced from their homes as a result of avoidable foreclosure, it will make homeownership more unattainable in the future, thus potentially widening the wealth divide for this population of borrowers.

H. Borrower and Servicer Engagement During the Pandemic

The Bureau is closely monitoring mortgage servicers to determine how they are working with borrowers to achieve positive outcomes for borrowers during the current crisis.

Among other things, the Bureau has utilized its supervisory authority to obtain current information about servicer activities. For example, in May of 2020, the Bureau began conducting high-level Prioritized Assessments (PA) in response to the pandemic.[68] The PAs were designed to obtain real-time information from an expanded group of supervised entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues. The Bureau, through its supervision program, analyzed pandemic-related market developments to determine where issues were most likely to pose risk to consumers. Supervision currently is conducting follow-up on the issues covered in the 2020 Prioritized Assessments as well as the current issues related to economic hardships consumers are facing in the ongoing pandemic. This work may be conducted as part of ongoing monitoring, in a supervisory inquiry apart from a scheduled examination, in a scheduled examination, or in some cases, through enforcement. For example, Supervision is reviewing instances where servicers did not implement the CARES Act properly, such as charging fees that are not charged if the borrower made all contractual payments on time, failing to process CARES Act forbearances where borrowers made proper requests for the forbearances, or failing to comply with the Fair Credit Reporting Act's requirements to report the credit obligation or account appropriately. Supervision is conducting oversight to ensure these servicers take timely action to reverse fees, provide full remediation to affected borrowers, and implement processes to promote compliance moving forward.

In March 2021, the volume of overall mortgage complaints to the Bureau increased to more than 3,400 complaints, the greatest monthly mortgage complaint volume since April 2018.[69] Mortgage complaints mentioning forbearance or related terms peaked in April 2020. Since this initial spike and subsequent decrease in May and June 2020, the volume of mortgage forbearance complaints remained steady

[57] Black Apr. 2021 Report, *supra* note 7, at 3.

[58] Statista, *Foreclosure rate in the United States from 2005–2020,* (Apr. 15, 2021), *https://www.statista.com/statistics/798766/foreclosure-rate-usa/.*

[59] *Id.*

[60] *Id.*

[61] 12 CFR 1024.41(f). *See also* 12 CFR 1024.30(c)(2) (limiting the scope of this provision to a mortgage loan secured by a property that is the borrower's principal residence).

[62] For purposes of Regulation X, a preexisting delinquency period could continue or a new delinquency period could begin even during a forbearance program that pauses or defers loan payments if a periodic payment sufficient to cover principal, interest, and, if applicable, escrow is due and unpaid according to the loan contract during the forbearance program. 12 CFR 1024.31 (defining delinquency as the ''period of time during which a borrower and a borrower's mortgage loan obligation are delinquent'' and stating that ''a borrower and a borrower's mortgage obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.''). However, it is important to note that Regulation X's definition of delinquency applies only for purposes of the mortgage servicing rules in Regulation X and is not intended to affect consumer protections under other laws or regulations, such as the Fair Credit Reporting Act (FCRA) and Regulation V. The Bureau clarified this relationship in the Bureau's 2016 Mortgage Servicing Final Rule. 81 FR 72160, 72193 (Oct. 19, 2016). Under the CARES Act amendments to the FCRA, furnishers are required to continue to report certain credit obligations as current if a consumer receives an accommodation and is not required to make payments or makes any payments required pursuant to the accommodation. *See* Bureau of Consumer Fin. Prot., *Consumer Reporting FAQs Related to the CARES Act and COVID–19 Pandemic* (Updated June 16, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf* (for further guidance on furnishers' obligations under the FCRA related to the COVID–19 pandemic).

[63] *Supra* note 7 (1.77 million 90-day delinquencies plus 153k active foreclosures).

[64] *Id.* at 3.

[65] CFPB Mortgage Borrower Pandemic Report, *supra* note 5.

[66] *Id.*

[67] *Id.*

[68] Bureau of Consumer Fin. Prot., *Supervisory Highlights COVID–19 Prioritized Assessments Special Edition,* Issue 23, (January 2021), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf.*

[69] Bureau of Consumer Fin. Prot., *Complaint Bulletin: Mortgage forbearance issues described in consumer complaints* (May 2021), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-forbearance-issues_complaint-bulletin_2021-05.pdf.*

until increasing again in March 2021. The number of borrowers selecting the struggling to pay mortgage issue increased in March and April 2020. That number decreased in the following months. It increased again in 2021 but has only just regained pre-pandemic levels.[70] The Bureau is continuing to monitor complaint data about mortgage servicers.

The Bureau encourages servicers to use all available tools to reach struggling homeowners and to do so in advance of the end of the forbearance period and expects servicers to handle inquiries promptly, to evaluate income fairly, and to work with borrowers throughout the loss mitigation process.

III. Summary of the Rulemaking Process

On April 5, 2021, the Bureau issued a proposed rule to encourage servicers and borrowers to work together on loss mitigation before the servicer can initiate the foreclosure process. The comment period closed on May 10, 2021.

In response to the proposal, the Bureau received over 200 comments from individual consumers, consumer advocate commenters, State Attorneys General, industry, and others. Many commenters expressed general support for the proposed rule, articulating, for example, the importance of providing clear and consistent information to delinquent borrowers about all of their options. Some commenters expressed general support for the proposed rule and stated that they believed the proposal would give time for borrowers to recover economically and explore loss mitigation options to avoid foreclosure. Some commenters expressed concern about the proposal generally, citing, for example, the proposal's potential economic impact on the housing market and specific industries. The Bureau also received requests from commenters to alter, clarify, or remove specific provisions of the proposed rule, with some focusing on issues relating to current industry practices and capacity and some highlighting the need to ensure consumers have the best information and resources available to them at the most appropriate times. As discussed in more detail below, the Bureau has considered comments that address issues within the scope of the proposed rule in adopting this final rule.

In addition, some commenters expressed the view that the statement that the Bureau, along with other Federal and State agencies, issued on April 3, 2020 (Joint Statement), and that announced certain supervisory and enforcement flexibility for mortgage servicers in light of the national emergency[71] may undermine the proposed amendments and urged the Bureau to revoke the Joint Statement. The Joint Statement provides that the agencies do not intend to take supervisory or enforcement action against servicers for specified delays in sending certain notices and taking certain actions required by Regulation X. The Joint Statement merely expresses the agencies' intent regarding enforcement and supervision priorities and does not alter existing legal requirements, including a borrower's private right of action under § 1024.41. The Bureau also issued FAQs on April 3, 2020 as a companion to the Joint Statement to provide mortgage servicers with enhanced clarity about existing flexibility in the mortgage servicing rules that they can use to help consumers during the COVID–19 pandemic.[72] Those FAQs state unequivocally that servicers must comply with Regulation X during the COVID–19 pandemic emergency.

In addition, the Bureau recently released a Compliance Bulletin and Policy Guidance (Bulletin) announcing the Bureau's supervision and enforcement priorities regarding housing insecurity in light of heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID–19 foreclosure moratoriums and forbearances end.[73] The Bureau specified that the Bureau intends to continue to evaluate servicer activity consistent with the Joint Statement, provided servicers are demonstrating effectiveness in helping consumers, in accord with the Bulletin.[74] The Bulletin makes clear that the Bureau intends to consider a servicer's overall effectiveness in communicating clearly with consumers, effectively managing borrower requests for assistance, promoting loss mitigation, and ultimately reducing avoidable foreclosures and foreclosure-related costs. It reiterates that the Bureau intends to hold mortgage servicers accountable for complying with Regulation X with the aim of ensuring that homeowners have the opportunity to be evaluated for loss mitigation before the initiation of foreclosure.

The Bureau believes that the flexibility provided in the Joint Statement and the clarity provided by the FAQs enable servicers to provide borrowers with timely assistance. The Bulletin reinforces the Bureau's expectation that all borrowers are treated fairly and have the opportunity to get the assistance they need. The Bureau believes that these statements of supervisory and enforcement policy are consistent with the final rule. The Bureau will continue to engage in supervisory and enforcement activity to ensure that mortgage servicers are meeting the Bureau's expectations regarding the provision of effective assistance to borrowers and prevention of avoidable foreclosures.

IV. Legal Authority

The Bureau is finalizing this rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[75] including the authorities, discussed below. The Bureau is issuing this final rule in reliance on the same authority relied on in adopting the relevant provisions of the 2013 RESPA Servicing Final Rule,[76] as discussed in detail in the Legal Authority and Section-by-Section Analysis of the 2013 RESPA Servicing Final Rule.

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, section 6(k)(1)(E) of RESPA, and 12 U.S.C. 2605(k)(1)(E) and authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection

[70] *Id.*

[71] Bureau of Consumer Fin. Prot., *Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID–19 Emergency and the CARES Act* (Apr. 3, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf.*

[72] Bureau of Consumer Fin. Prot., *Bureau's Mortgage Servicing Rules FAQs related to the COVID–19 Emergency* (Apr. 3, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.*

[73] 86 FR 17897 (Apr. 7, 2021).

[74] News Release, Bureau of Consumer Fin. Prot., *CFPB Compliance Bulletin Warns Mortgage Servicers: Unprepared is Unacceptable* (Apr. 21, 2021), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-compliance-bulletin-warns-mortgage-servicers-unprepared-is-unacceptable/.*

[75] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[76] 2013 RESPA Servicing Final Rule, *supra* note 11.

purposes. The consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers prevent avoidable costs and fees, and facilitating review for foreclosure avoidance options. The amendments to Regulation X in this final rule are intended to achieve some or all these purposes.

Specifically, and as described below, during the COVID pandemic, borrowers have faced unique circumstances including potential economic hardship, health conditions, and extended periods of forbearance. Because of these unique circumstances, the procedural safeguards under the 2013 RESPA Servicing Final Rule and subsequent amendments to date, may not have been sufficient to facilitate review for foreclosure avoidance. Specifically, the Bureau is concerned that the present circumstances may interfere with these borrowers' ability to obtain and understand important information that the existing rule aims to provide borrowers regarding the foreclosure avoidance options available to them. As a result, the Bureau believes that a substantial number of borrowers will not have had a meaningful opportunity to pursue foreclosure avoidance options before exiting their forbearance or the end of current foreclosure moratoria.

The Bureau is also concerned that based on the unique circumstances described above, there exists a significant risk of a large number of potential borrowers seeking foreclosure avoidance options in a relatively short time period. Such a large wave of borrowers could overwhelm servicers, potentially straining servicer capacity and resulting in delays or errors in processing loss mitigation requests.[77] These strains on servicer capacity coupled with potential fiduciary obligations to foreclose could result in some servicers failing to meet required timeline and accuracy obligations as well as other obligations under the existing rule with resulting harm to borrowers.

In light of these unique circumstances, the Bureau's interventions are designed to provide advance notice to borrowers about foreclosure avoidance options and forbearance termination dates, as well as to provide new procedural safeguards. The interventions aim to help borrowers understand their options and encourage them to seek available loss mitigation options at the appropriate time while also allowing sufficient time for servicers to conduct a meaningful review of borrowers for such options in the present circumstances that the existing rules were not designed to address.

B. Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' RESPA is a Federal consumer financial law.

The authority granted to the Bureau in Dodd-Frank Act section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the ''features'' of consumer financial protection products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. In addition, section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' 12 U.S.C. 5532(c). Accordingly, in developing the final rule under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.[78]

In addition, section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

V. Section-by-Section Analysis

Section 1024.31 Definitions

COVID–19-Related Hardship

The Bureau proposed to define a new term, ''a COVID–19-related hardship,'' for purposes of subpart C. The proposal defined COVID–19-related hardship to mean a financial hardship due, directly or indirectly, to the COVID–19 emergency as defined in the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C.

[77] The Bureau recognizes that other Federal agencies may take steps to protect borrowers from avoidable foreclosures in the aftermath of the pandemic in light of the number of borrowers exiting forbearance and an associated increased need for loss mitigation assistance. The Bureau believes that these efforts would be focused on federally backed mortgage loans. In that event, the final rule may have less impact on those loans. Nevertheless, even in that circumstance, the Bureau believes that the rule is necessary to serve the purposes of RESPA with respect to private mortgage loans.

[78] The Bureau is unaware of research that explicitly investigates the link between COVID–19-related stress and comprehension of information about forbearance and foreclosure and solicited comment on available evidence. No commenters provided additional evidence. However, previous research demonstrates that prolonged or excessive stress can impair decision-making and may be associated with reduced cognitive control, including in financial contexts. *See, e.g.,* Katrin Starcke & Matthias Brand, *Effects of stress on decisions under uncertainty: A meta-analysis,* 142 Psych. Bulletin 909 (2016), *https://doi.apa.org/doi/10.1037/bul0000060.* Further research has shown that thinking that one is or could get seriously ill can lead to stress that negatively affects consumer decision-making. *See, e.g.,* Barbara Kahn & Mary Frances Luce, *Understanding high-stakes consumer decisions: mammography adherence following false-alarm test results,* 22 Marketing Sci. 393 (2003), *https://doi.org/10.1287/mksc.22.3.393.17737.* Additionally, research conducted in the last year has identified substantial variability in (1) COVID–19-related anxiety and traumatic stress, which has been linked to consumer behavior including panic-buying; and (2) perceived threats to physical and psychological well-being. *See, e.g.,* Steven Taylor *et al., COVID stress syndrome: Concept, structure, and correlates,* 37 Depression & Anxiety 706 (2020), *https://doi.org/10.1002/da.23071;* Frank Kachanoff *et al., Measuring realistic and symbolic threats of COVID–19 and their unique impacts on well-being and adherence to public health behaviors,* Soc. Psych. & Personality Sci. 1 (2020), *https://journals.sagepub.com/doi/pdf/10.1177/1948550620931634.* Taken together, the available evidence suggests that experiencing heightened stress and anxiety can impair decision-making in financial contexts, and this association may be particularly strong during the COVID–19 pandemic. In addition, the Bureau's assessment of the 2013 RESPA Servicing Final Rule in 2019 analyzed the effects of the early intervention disclosures and found that after the effective date of the early intervention requirements, delinquent borrowers were somewhat more likely than they were pre-Rule to start applying for loss mitigation earlier in delinquency. 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 113.

9056(a)(1)). The Bureau solicited comment on this proposed definition.

A few commenters, including some industry commenters and individuals, stated that the definition was too broad and would include individuals with hardships that commenters alleged were not due to the COVID–19 emergency. Others urged the Bureau to adopt a definition that more precisely detailed the amount of financial loss sufficient to constitute a financial hardship.

The Bureau declines to narrow the definition as requested. The Bureau modeled this definition after section 4022 of the CARES Act, which established the forbearance program made available for borrowers with federally backed mortgages. Servicers have utilized this definition since March 23, 2020 when the CARES Act took effect and have experience with its application. A new more tailored definition would be harder for servicers to implement before the rule takes effect.

The Bureau also received a suggestion during its interagency consultation process that the Bureau should tie the definition to the national emergency itself rather than the national emergency as defined in section 4022 of the CARES Act because the covered period of section 4022 of the CARES Act is undefined and the reference to that section may cause confusion. In addition, the March 13, 2020 national emergency referenced in section 4022 of the CARES Act was continued on February 24, 2021.[79] Even though the CARES Act section referenced in the proposal refers to the national emergency declared on March 13, 2020, it is possible that the lack of clarity about the covered period in section 4022 itself may create confusion. The Bureau is revising the definition for clarity.

For the reasons discussed above, the Bureau is finalizing the definition of COVID–19-related hardship to mean a financial hardship due, directly or indirectly, to the national emergency for the COVID–19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1,2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)).

[79] Presidential Action, The White House, *Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic* (Feb. 24, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/.*

Section 1024.39 Early Intervention

39(a) Live Contact

Currently, § 1024.39(a) provides that a servicer must make good faith efforts to establish live contact with delinquent borrowers no later than the borrower's 36th day of delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent.[80] Promptly after establishing live contact, the servicer must inform the borrower about the availability of loss mitigation options, if appropriate.[81] Current comment 39(a)–4.i clarifies that the servicer has the discretion to determine whether it is appropriate to inform the borrower of loss mitigation options.[82] Current comment 39(a)–4.ii, in part, clarifies that if the servicer determines it is appropriate, the servicer need not notify borrowers of specific loss mitigation options, but rather may provide a general statement that loss mitigation options may apply.[83] The servicer is not required to establish or make good faith efforts to establish live contact with the borrower if the servicer has already established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41.[84]

As discussed below in the section-by-section analysis of § 1024.39(e), the Bureau proposed to add temporary additional early intervention live contact requirements for servicers to provide specific information about forbearances and loss mitigation options during the COVID–19 emergency. The Bureau proposed conforming amendments to § 1024.39(a) and related comments 39(a)–4–i and –ii [85] to incorporate references to proposed § 1024.39(e).

[80] Small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), are not subject to these requirements. 12 CFR 1024.30(b)(1).

[81] 12 CFR 1024.39(a).

[82] 12 CFR 1024.39(a); Comment 39(a)–4.i.

[83] 12 CFR 1024.39(a); Comment 39(a)–4.ii.

[84] 12 CFR 1024.39(a); Comment 39(a)–6.

[85] When amending commentary, the Office of the **Federal Register** requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions and related text. The sections of commentary text included in this document show the language of those sections with the changes as adopted in this final rule. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes this final rule makes to the regulatory and commentary text of Regulation X. This redline is posted on the Bureau's website with the final rule. If any conflicts exist between the redline and the text of Regulation X or this final rule, the documents published in the **Federal Register** and the Code of Federal Regulations are the controlling documents.

As discussed in more detail below and in the section-by-section analysis for § 1024.39(e), generally the comments received on proposed § 1024.39(a) supported the changes to § 1024.39(a) and (e). Among those comments, the Bureau received a couple of comments specific to the proposed amendments to § 1024.39(a). A consumer advocate commenter suggested the Bureau should include additional amendments to § 1024.39(a) commentary to further the goals of and properly incorporate proposed § 1024.39(e). The commenter encouraged the Bureau to amend comment 39(a)–3, which addresses good faith efforts to establish live contact, in light of proposed § 1024.39(e). They also encouraged the Bureau to further amend comment 39(a)–4.ii, which clarifies when the servicer must promptly inform a borrower about the availability of loss mitigation options, to address when the written notice required under § 1024.39(b)(2) may be an alternative for live contact during the period § 1024.39(e) is effective. Additionally, an industry commenter discussed how § 1024.39(e) intersects with the guidance provided in existing comment 39(a)–6, indicating that it felt the Bureau should not require § 1024.39(e) under the circumstances described in comment 39(a)–6.

For the reasons discussed below, the Bureau is adopting the amendments to § 1024.39(a) and commentary as proposed, with additional revisions to comments 39(a)–3 and 39(a)–6 to address certain suggestions raised by commenters or points of clarity, and to make certain conforming changes given the revisions to the foreclosure review period in § 1024.41(f)(3). Currently, comment 39(a)–3 clarifies that good faith efforts to establish live contact for purposes of § 1024.39(a) consist of reasonable steps, under the circumstances, to reach a borrower. Those steps may depend on factors, such as the length of the borrower's delinquency, as well as the borrower's failure to respond to a servicer's repeated attempts at communication. The commentary provides examples illustrating these factors, including that good faith efforts to establish live contact with an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication.

Given the length of forbearance programs during the pandemic, the Bureau is revising comment 39(a)–3 to specify that if a borrower is in a

situation such that the additional live contact information is required under § 1024.39(e) or if a servicer plans to rely on the temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3)(ii)(C)(1), servicers doing no more than including a sentence in written or electronic communications encouraging the borrower to establish live contact are not taking reasonable steps under the circumstances to make good faith efforts to establish live contact. When making good faith efforts to establish live contact with borrowers in the circumstances described in § 1024.39(e), generally, reasonable steps to make good faith efforts to establish live contact must include telephoning the borrower on one or more occasion at a valid telephone number, although they can include sending written or electronic communications encouraging the borrower to establish live contact with the servicer, in addition to those telephone calls. While the Bureau believes that it should be apparent that if either § 1024.39(e) or § 1024.41(f)(3)(ii)(C) apply, these unique circumstances present factors that differ from the existing guidance in comment 39(a)–3 such that the example would not apply in those cases, the Bureau is persuaded that the revision is necessary to ensure clarity.

The Bureau also believes this clarification as to good faith efforts is appropriate during the unique circumstances presented by the COVID–19 pandemic emergency. As discussed more fully in part II above, the Bureau estimates that a large number of borrowers will be more than a year behind on their mortgage payments, including those in 18-month forbearance programs, and many will have benefited from temporary foreclosure protections due to various State and Federal foreclosure moratoria. As explained in the proposal, to encourage these borrowers to obtain loss mitigation to prevent avoidable foreclosures and given the length of delinquency during these unique circumstances, the Bureau believes that additional efforts are necessary to reach borrowers at this time. Additionally, for the reasons discussed more fully in the section-by-section analysis of § 1024.41(f)(3)(ii)(C), because compliance with § 1024.39(a) during a certain timeframe is one of several temporary procedural safeguards that servicers may rely on to comply with the temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3)(ii)(C), the Bureau has concluded that it must be explicitly clear that servicers are required to do more than provide a sentence encouraging unresponsive borrower contact to prove they have completed the temporary special COVID–19 loss mitigation procedural safeguards. To achieve the goals of § 1024.39(e) discussed in the proposal to Regulation X and the goals of new § 1024.41(f)(3)(ii)(C), in these circumstances presented by the COVID–19 pandemic, good faith efforts to establish live contact require a higher standard of conduct.

For similar reasons, the Bureau is also amending comment 39(a)–6. As identified by a commenter, without revision, current comment 39(a)–6 might be interpreted to allow for a lower standard of ongoing contact than is necessary to assist borrowers in these circumstances. Existing comment 39(a)–6 says, in part, that if the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. The Bureau is revising this comment to add that if a borrower is in a situation such that the additional live contact information is required under § 1024.39(e) or if a servicer plans to rely on the temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3)(ii)(C)(1), then certain loss mitigation related communications alone are not enough for compliance with § 1024.39(a). The Bureau is revising the comment to specify that, in these circumstances, the servicer is not maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41 in a way that would comply with § 1024.39(a) if the servicer has only sent the notices required by § 1024.41(b)(2)(i)(B) and § 1024.41(c)(2)(iii) and has had no further ongoing contact with the borrower concerning the borrower's loss mitigation application.

As discussed above, the Bureau believes this higher standard of conduct, which it notes some servicers are already holding themselves to, is necessary under the current circumstances presented by COVID–19 emergency to help ensure that additional efforts are taken to reach delinquent borrowers, including those that are unresponsive. In line with the goals discussed in the proposal for § 1024.39(e), the Bureau believes this revision will help clarify and ensure that borrowers in these circumstances are receiving ongoing communication about loss mitigation options, whether it be through live contact communications or through completion of a loss mitigation application and reasonable diligence requirements. The Bureau believes this revision will help to prevent instances where borrowers miss opportunities to submit loss mitigation applications because they only receive loss mitigation information at the beginning of their forbearance program, and no other contact until foreclosure is imminent. However, the Bureau is not removing this guidance altogether. As discussed by the commenter and explained in the 2014 RESPA Servicing Proposed Rule [86], the Bureau believes when done properly, established and ongoing loss mitigation communication that is maintained can work as well as live contact to encourage and help borrowers file loss mitigation applications earlier in the forbearance program or delinquency, timing which is beneficial to both the servicer and the borrower under the current circumstances.

The Bureau is not further revising comment 39(a)–4.ii as suggested by a consumer advocate commenter. Comment 39(a)–4.ii provides, in part, that, if appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact. The existing requirement in § 1024.39(a) to inform a borrower about the availability of loss mitigation options that this comment references is separate from the new information requirements in § 1024.39(e). Nothing in the existing rule would prevent compliance with both the option to inform these borrowers about the availability of loss mitigation options as provided in comment 39(a)–4.ii and the requirement to provide these borrowers the specified additional information in § 1024.39(e) promptly after establishing live contact.

39(e) Temporary COVID–19-Related Live Contact

As discussed more fully above in the section-by-section analysis of § 1024.39(a), currently, a servicer must make good faith efforts to establish live contact with delinquent borrowers no later than the borrower's 36th day of delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent.[87] Promptly after establishing live contact, the servicer

[86] 79 FR 74175, 74199–74200 (Dec. 15, 2014).

[87] Small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), are not subject to these requirements. 12 CFR 1024.30(b)(1).

must inform the borrower about the availability of loss mitigation options, if appropriate.[88]

The Bureau's Proposal

The Bureau proposed to add § 1024.39(e) to require temporary additional actions in certain circumstances when a servicer establishes live contact with a borrower during the COVID–19 emergency. These temporary requirements would have applied for one year after the effective date of the final rule. In general, proposed § 1024.39(e)(1) would have required servicers to ask whether borrowers not yet in a forbearance program at the time of the live contact were experiencing a COVID–19-related hardship and, if so, to list and briefly describe available forbearance programs to those borrowers and the actions a borrower must take to be evaluated. In general, for borrowers in forbearance programs at the time of live contact, proposed § 1024.39(e)(2) would have required servicers to provide specific information about the borrower's current forbearance program and list and briefly describe available post-forbearance loss mitigation options and the actions a borrower would need to take to be evaluated for such options during the last required live contact made before the end of the forbearance period. For the reasons discussed below, the Bureau is finalizing § 1024.39(e) generally as proposed, with some revisions to address certain comments received, including revisions to the sunset date of this provision, adding a requirement to provide certain housing counselor information, revising the requirement that the servicer ask the borrower to assert a COVID–19-related hardship, and revising the applicable time period when the servicer must provide the additional information to borrowers who are in a forbearance program.

Comments Received

In response to proposed § 1024.39(e), the Bureau received comments from trade associations, financial institutions, consumer advocate commenters, government entities, and individuals. Some commenters opposed the provision entirely. A few industry commenters asserted the proposal was unnecessary, stating that servicers were already performing the proposed requirements and the proposal duplicated most GSE and FHA requirements. Additionally, a few industry commenters asserted that, instead of adding § 1024.39(e), the Bureau should rely on existing § 1024.39(a) requirements and provide COVID–19-specific examples in the commentary to explain how those provisions apply under the current circumstances.

However, in general, a majority of commenters that addressed proposed § 1024.39(e) supported the proposed amendments. Some industry commenters provided general support. Other commenters, industry and otherwise, supported proposed § 1024.39(e) but requested certain revisions. Below is a discussion of comments received on the overall proposed requirements in § 1024.39(e). See the section-by-section analyses of § 1024.39(e)(1) and (2) for a discussion of comments received relating to each of those specific proposed provisions.

Concerns about balancing borrower access to information and servicer discretion. Several commenters discussed how proposed § 1024.39(e) would affect the balance between borrower access to information as they make loss mitigation decisions and servicer discretion in how to facilitate borrower understanding and prevent confusion. Several industry commenters and trade groups expressed the desire that the Bureau continue to provide servicers with discretion as to which forbearance options and other loss mitigation options are listed and described to borrowers promptly after live contact is established, even as it applies to the information required under § 1024.39(e). The commenters expressed concern that if servicers provided information about all available forbearance options or other loss mitigation options, it may be overwhelming. Additionally, those commenters indicated that providing information about all available forbearance options and loss mitigation options may cause borrower frustration during the loss mitigation application process. For example, commenters asserted that, while certain loss mitigation options may be available, review processes, such as investor ''waterfall'' requirements, may mean not all available options are offered to the borrower. Further, the commenters indicated eligibility and availability of forbearance options and other loss mitigation options may change after the live contact, particularly if the borrower is on the cusp of certain criteria, such as delinquency length, at the time of the live contact.

In contrast, several consumer advocate commenters and an industry commenter indicated that borrowers would benefit from receiving a list and brief description of all available forbearance options and other loss mitigation options during early intervention and requested that the Bureau require additional information in some cases. For example, a couple of commenters asserted that, not only should servicers be required to provide all forbearance and loss mitigation options available to the borrower, they should also be required to provide all possible forbearance and loss mitigation options, regardless of availability to the borrower. The commenters that supported requiring servicers to provide all available forbearance options and other loss mitigation options during early intervention cited concerns that servicer staff may not be properly trained to accurately identify which loss mitigation options are appropriate for the borrower, and provided qualitative evidence of servicer staff providing inaccurate forbearance and other loss mitigation information. These commenters also indicated that unless borrowers receive information about all available loss mitigation options, if not all loss mitigation options, they may not have all necessary information to determine and advocate for the best loss mitigation solution for their particular situation.

Both sets of comments reiterate concerns discussed in the section-by-section analysis of proposed § 1024.39(e). The Bureau is aware of evidence supporting assertions that some servicers are providing consistent and accurate information, but also evidence that some borrowers are not receiving consistent and accurate information as they seek loss mitigation assistance during the pandemic.[89] The Bureau is not persuaded that providing the borrower with information on all possible loss mitigation options, regardless of whether those options are available to the borrower, is beneficial. The Bureau agrees that it is essential at this time to provide the borrower with as much loss mitigation information as possible to support borrowers in their decisions as to how to address their delinquency in a way that is best for their situation. Nevertheless, the Bureau believes providing all possible loss mitigation options, even those that are not applicable to the borrower, would increase borrower confusion.

However, the Bureau is also not persuaded that allowing complete servicer discretion as to which, if any, specific loss mitigation options are discussed is sufficient in the current crisis. The concerns about servicers sometimes providing inconsistent and inaccurate information during this

[88] 12 CFR 1024.39(a).

[89] 86 FR 18840 at 18851 (Apr. 9, 2021).

critical period for loss mitigation assistance seem only more likely to continue or increase as the expected volume of borrowers needing the assistance increases. Further, the anticipated forthcoming expiration of many COVID–19-related programs may also contribute to these concerns, as fast-paced or frequent changes in loss mitigation program availability or criteria have been noted to cause some consistency and accuracy issues with some servicers. For these reasons, the Bureau concludes that the information required under final § 1024.39(e)(1) and (2), as discussed in more detail in the section-by-section analyses of those provisions below, strikes the correct balance during of the pandemic.

Require information in a written disclosure. Certain consumer advocate commenters, industry commenters, and State government commenters requested the Bureau consider requiring new written disclosures as part of the proposed early intervention amendments. A consumer advocate commenter and a State government group suggested the Bureau require the additional content in proposed § 1024.39(e) to be provided in a written notice or added to the existing 45-day written notice requirements in § 1024.39(b). An industry group and a State government group suggested that the Bureau add written pre-foreclosure notice requirements, similar to those in New York, Iowa, and Washington.

The Bureau is not finalizing any new written disclosures or amendments to existing written disclosure requirements. Given the expedited timeframe and urgent necessity for this rulemaking, there is not sufficient time to complete consumer testing to help ensure any new or updated required disclosures would sufficiently assist borrowers, rather than contributing to any confusion. Additionally, the Bureau believes adding new written disclosure requirements at this time could be harmful to borrowers during the unique circumstances presented by the COVID–19 emergency, as servicers would need to spend time and resources implementing those disclosures, rather than focusing their time and resources on assisting borrowers quickly. Given the upcoming expected surge in borrowers exiting forbearance, the Bureau believes those resources are better spent assisting borrowers. The Bureau notes that nothing in the rule prevents servicers from listing and briefly describing specific loss mitigation options available to the borrower in the existing 45-day written notice or from adding any additional information to the notice.[90] In addition, the rule does not prevent a servicer from following-up on its live contact with specific information in a written communication.[91]

Require provision of HUD homeownership counselors or counseling organizations list. Several consumer advocate commenters and State Attorneys General commenters suggested the Bureau should require servicers to provide information to borrowers about the Department of Housing and Urban Development (HUD) homeownership counseling as part of the additional information required by proposed § 1024.39(e). Commenters stated that homeownership counselors are often able to assist borrowers that mistrust their servicer, or have difficulty understanding their options or how to submit a loss mitigation application.

The Bureau is persuaded that some borrowers may benefit from homeownership counselor assistance during the pandemic. However, given commenter concerns about the amount of information required by § 1024.39(e) that servicers must convey promptly after establishing a live contact, the Bureau does not believe provision of detailed homeownership counselor contact information during the live contact would be beneficial to borrowers in these circumstances. Instead, the Bureau is persuaded that borrowers may benefit from a reference to where they can access homeownership counselor contact information. Thus, as discussed more fully in the section-by-section analyses of § 1024.39(e)(1) and (2), the Bureau is adding a requirement that the servicer must identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement. Other examples servicers may choose to reference include, for example, the Bureau's website, HUD's website, or the 45-day written notice required by § 1024.39(b), but the servicer need only include one reference. By requiring that servicers identify at least one way that the borrower can find contact information for homeownership counseling services, the Bureau believes it will remind borrowers, especially those who believe they would benefit from homeownership counselor assistance, of where this information is located and how they may access it. Additionally, this requirement may help address concerns about servicer resource capacity, as discussed in the proposal, given that homeownership counselors can help answer borrower's questions regarding their loss mitigation options. The Bureau notes that servicers are already required to provide certain information about homeownership counseling to borrowers,[92] and that servicers may comply with this provision by referencing existing disclosures, further minimizing servicer burden.

Exempt federally backed mortgages. One industry trade group requested the Bureau exempt ''federally backed'' mortgage loans from proposed § 1024.39(e). The commenter indicated that these mortgages are already subject to Federal investor or other Federal guarantor requirements that are similar to or more extensive than those proposed.

The Bureau is not persuaded that exempting federally backed mortgages from the § 1024.39(e) requirements is necessary. The Bureau believes final § 1024.39(e) does not conflict with GSE or FHA requirements and does not add additional burdens on servicers of those loans. Further, the Bureau also believes exempting federally backed mortgages from this provision may add unnecessary implementation complexity that may affect the ability of servicers to provide critical assistance to borrowers at this time.

Require translation for limited English proficiency borrowers. A consumer advocate commenter and a State Attorney General commenter advocated for adding a translation requirement to proposed § 1024.39(e) to assist limited English proficiency borrowers. The Bureau is not revising § 1024.39(e) to require translation for limited English proficiency borrowers. In the interest of issuing the final rule on an expedited basis to bring relief as soon as possible to the largest number of borrowers, the Bureau did not undertake to incorporate a requirement to provide disclosures in languages other than English or to incorporate model forms in other languages. This does not mean the Bureau will or will not take that step in a future rulemaking. Additionally, Regulation X permits servicers to provide disclosures in languages other than English.[93] The Bureau both permits and encourages servicers to ascertain the language preference of their borrowers, when done in a legal manner

[90] Comment 39(b)(1)–1 states, in part, that a servicer may provide additional information that the servicer determines would be helpful.

[91] For example, comment 39(a)–4.ii states, in part, that a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication promptly after the servicer establishes live contact.

[92] *See, e.g.,* 12 CFR 1026.41(d)(7)(v).

[93] *See* 12 CFR 1024.32(a)(2).

and without violating the Equal Credit Opportunity Act or Regulation B, to be responsive to borrower needs during this critical time for borrower communication.[94] The Bureau will be providing on its website a Spanish language translation of Appendix MS–4 of Regulation X that servicers may use, as permitted by applicable law.

Electronic media use for live contacts. A consumer advocate commenter and State Attorney General commenter requested the Bureau provide guidance about which electronic communication media satisfy the live contact requirements. The Bureau has previously declined to require or explicitly permit certain methods of electronic media for required communications under the mortgage servicing rules, stating it believes it would be most effective to address the use of such media after further study and outreach to enable the Bureau to develop principles or standards that would be appropriate on an industry-wide basis.[95] Similarly now, the Bureau is not finalizing language in the rule to discuss specific electronic media use for early intervention live contact requirements, but notes that certain electronic media, such as live chat functions, can, in certain circumstances, be compared to telephone or in-person conversations that are permitted as live contact under the rule.

Sunset date. A few commenters discussed the sunset date for proposed § 1024.39(e). These commenters generally supported having a sunset date. However, they differed about whether the proposed August 31, 2022 sunset date was the appropriate choice. A government commenter and an industry commenter supported the existing sunset date, suggesting it was long enough, with one indicating it should not be shortened. Conversely, another industry commenter asserted the proposed sunset date conflicted with certain existing GSE requirements and requested the sunset date correlate with the emergency declaration or COVID–19-related forbearance program end dates. The Bureau also received a suggestion during its interagency consultation process to revise the sunset date to June 30, 2022, the anticipated end date of certain Federal COVID–19-related forbearance programs.

The Bureau is persuaded a sunset date for § 1024.39(e) is appropriate and provides servicers with certainty as to how long they are required to provide the additional information during live contacts. However, the Bureau is revising the sunset date to better align with the pandemic, rather than the effective date of this final rule. The Bureau is persuaded that aligning the sunset of § 1024.39(e) more closely to the pandemic is necessary to prevent conflicts between § 1024.39(e) and pandemic-related investor or guarantor requirements, such as those related to additional communications and loss mitigation options.

As such, § 1024.39(e) will sunset on October 1, 2022. The Bureau anticipates that COVID–19-related forbearance programs will be offered through at least September 30, 2021, and anticipates that most borrowers utilizing the full 360 days offered under the CARES Act will exit forbearance by September 30, 2022. Once COVID–19-related forbearance programs expire and borrowers exit the applicable forbearance programs, the circumstances that warranted the additional information in § 1024.39(e) will no longer apply. The Bureau anticipates that will occur sometime after September 30, 2022, but there is significant uncertainty about exactly when such programs will expire. Taking that uncertainty into consideration, to best ensure a sufficient period of coverage, the Bureau concludes that it is appropriate to extend the proposed sunset date. The Bureau notes that the final sunset date will align with the mandatory compliance date for the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule). The Bureau recently extended, that mandatory compliance date, in part, to preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects. As similarly noted in that rule, the Bureau will continue to monitor for any unanticipated effects of the COVID–19 pandemic on market conditions to determine if future changes are warranted.

While commenters suggested the Bureau could tie the sunset date to the end of these loss mitigation programs, the Bureau believes that, because investors and guarantors may differ as to when their respective pandemic-related requirements will expire, it will simplify compliance for the requirements to sunset on a universal date. The Bureau believes this change to the sunset date will address comments indicating the proposed date conflicted with guidance from other agencies. Additionally, the Bureau believes this change will address commenter concerns that the provision should sunset with the circumstances of the pandemic. Further, the Bureau believes this time period is necessary to allow servicers to reach most borrowers. While, as discussed above in part II, the anticipated surge and largest amount of strain on servicer resources is expect to begin to decline after January 1, 2022, the volume of borrowers expected to exit forbearance each month will remain high beyond that date and the unique circumstances of the pandemic, including the unusually long delinquencies, will persist. The Bureau concludes the sunset date for § 1024.39(e) must cover both the expiration of COVID–19-related forbearance programs, which would be relevant for the requirements for § 1024.39(e)(1), and also borrowers exiting COVID–19-related forbearance programs who entered on the last possible day and utilized a full 12 months of forbearance, which would be relevant for the requirements in § 1024.39(e)(2). To cover both groups of borrowers, and particularly to reach all borrowers exiting the relevant forbearance programs discussed in § 1024.39(e), the Bureau believes it is necessary to extend this provision beyond the anticipated surge of borrowers existing forbearance, unlike other provisions in this rule.

Final Rule

As discussed in more detail in the section-by-section analyses of § 1024.39(e)(1) and (2) below, the Bureau is finalizing § 1024.39(e) generally as proposed, with some revisions to address certain comments received, including revisions to the sunset date of this provision, adding a requirement to provide certain homeownership counseling information, revising the requirement that the servicer ask the borrower to assert a COVID–19-related hardship, and revising the applicable time period when the servicer must provide the additional information to borrowers who are in a forbearance program. The Bureau believes the addition of § 1024.39(e) will help encourage and support borrowers in seeking available loss mitigation assistance during this unprecedented time. Section 1024.39(e) temporarily requires servicers to provide specific additional information to certain delinquent borrowers promptly after establishing live contact.

[94] *See* Bureau of Fin. Prot., *Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency* (Jan. 13, 2021), *https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/;* 86 FR 6306 (Jan. 13, 2021). *See also* 82 FR 55810 (Nov. 20, 2017).

[95] *See, e.g.,* 78 FR 10695, 10745 (Feb. 14, 2013) (discussing the suggestion to require establishing electronic portals for intake of notices of error under § 1024.35(c)).

As revised, the requirements apply until October 1, 2022.

The Bureau notes that this final rule does not change the scope of any current live contact requirements more generally under § 1024.39(a). Thus, the Bureau reiterates that § 1024.39(e) does not apply if the borrower is current. The Bureau also notes that nothing in the rule prevents a servicer from providing additional information than what is required under the rule to borrowers about forbearance programs or other loss mitigation programs. For example, if the forbearance program may end soon after the live contact is established, has certain eligibility criteria, or is subject to investor ''waterfall'' review procedures, a servicer may choose to discuss that information with the borrower to attempt to prevent confusion.

Additionally, both § 1024.39(e)(1) and (2) require servicers to provide a list of forbearance programs or loss mitigation programs made available by the owner or assignee of the borrower's mortgage loan to borrowers experiencing a COVID–19-related hardship. The list of forbearance programs is limited to only those that are available at the time the live contact is established. The Bureau has added language to both sections to clarify this timing limitation. If a forbearance program or loss mitigation program is no longer available at the time of the live contact, the servicer need not include that forbearance program or loss mitigation program in the list.

If a borrower's COVID–19-related hardship would not meet applicable eligibility criteria for a forbearance program or a loss mitigation program, the servicer also need not include that in the lists required by § 1024.39(e)(1) or (2). However, the Bureau reiterates that the required information under § 1024.39(e) is not limited to forbearance programs or loss mitigation programs specific to COVID–19 or only available during the COVID–19 emergency. The servicer must provide information about COVID–19-specific programs, as well as any generally available programs where COVID–19-related hardships are sufficient to meet the hardship-related requirements for the program. Further, the servicer must inform the borrower about program options made available by the owner or assignee of the borrower's mortgage loan regardless of whether the option is available based on a complete loss mitigation application, an incomplete application, or no application, to the extent permitted by this rule. Finally, the existing rule provides guidance as to what constitutes a brief description and the steps the borrower must take to be evaluated for loss mitigation options.[96]

39(e)(1)

The Bureau's Proposal

Proposed § 1024.39(e)(1) would have temporarily required servicers to take certain actions promptly after establishing live contact with borrowers who are not currently in a forbearance program where the owner or assignee of the borrower's mortgage loan makes a payment forbearance program available to borrowers experiencing a COVID–19-related hardship. In those circumstances, proposed § 1024.39(e)(1) would have required that the servicer ask if the borrower is experiencing a COVID–19-related hardship. If the borrower indicated they were experiencing a COVID–19-related hardship, proposed § 1024.39(e)(1) would have required the servicer to provide the borrower a list and description of forbearance programs available to borrowers experiencing COVID–19-related hardships and the actions the borrower would need to take to be evaluated for such forbearance programs. For the reasons discussed below, the Bureau is finalizing § 1024.39(e)(1) generally as proposed, with some revisions to address certain comments received, including removing the requirement that the servicer ask whether the borrower is experiencing a COVID–19-related hardship, and adding a requirement to provide certain housing counselor information.

Comments Received

Commenters generally supported proposed § 1024.39(e)(1). One industry commenter opposed this provision overall, asserting servicers were already performing the requirements proposed in § 1024.39(e)(1) and that adding new regulatory requirements at this time will further strain servicer capacity. Of those that supported the proposal, commenters generally suggested certain scope and content revisions, discussed below.

Scope. Several commenters discussed which borrowers would benefit from proposed § 1024.39(e)(1) requirements. A consumer advocate commenter and an individual supported the proposed requirement that the servicer ask the borrower to assert a COVID–19-related hardship. A consumer advocate commenter suggested that the requirements should instead apply to all delinquent borrowers not yet in forbearance, not just those that assert a COVID–19-related hardship. This comment asserted that requiring § 1024.39(e)(1) information for all such delinquent borrowers removes the onus from borrowers to identify whether their hardship qualifies as COVID–19-related. A few industry commenters asserted that servicers should have discretion to determine whether the borrower has a COVID–19-related hardship, rather than asking the borrower. Further, as discussed above in the section-by-section analysis for the definition of COVID–19-Related Hardship in § 1024.31, commenters expressed concern about servicer and borrower understanding of the term and ability to accurately implement its use.

The Bureau is persuaded it should remove the requirement that servicers ask borrowers whether they are experiencing a COVID–19-related hardship, and instead require servicers to provide certain information under § 1024.39(e)(1) to delinquent borrowers during the period the provision is effective unless the borrower asserts they are not interested. The Bureau indicated in the proposal that it was considering expanding this provision to all delinquent borrowers not in forbearance at the time live contact is established. As mentioned by commenters and in the proposal, borrowers may not know or may be more hesitant to assert that their hardship qualifies as a COVID–19-related hardship. This seems particularly applicable to the borrowers that have not yet obtained forbearance assistance. As discussed in the proposal, the Bureau believes these borrowers may not yet have taken advantage of the offered forbearance programs because they may be more hesitant to assert hardship, may not fully trust their ability to receive assistance, or may not understand whether their hardship is COVID–19-related. By removing the requirement that borrowers take action to receive the information, and instead requiring that borrowers take action to be excluded, the rule helps to ensure that borrowers are not missing beneficial information due to any misunderstanding or hesitancy, reducing the likelihood that target borrowers may miss this important information.

However, the Bureau is also persuaded by commenters that some delinquent borrowers may not benefit from receipt of this information. Thus, the final rule continues to provide a method for borrower-initiated exclusion. Unlike the proposal, the final rule will require borrowers to state that they are uninterested in receiving information about the available forbearance programs. In doing so, the

[96] 12 CFR 1024.38(b)(2); 12 CFR 1024.40(b)(1)(i) and (ii).

Bureau continues to narrow the applicability of the provision to those borrowers most likely to be experiencing a COVID–19-related hardship, without requiring borrowers who are uncertain or hesitant to opt-in to receiving this information. The Bureau believes borrowers who are certain they do not have a COVID–19-related hardship are likely to assert they do not need the additional information in § 1024.39(e)(1). Borrowers that are certain they have a COVID–19-related hardship or are unsure will likely not take such action, unless they are uninterested forbearance program assistance. For those borrowers that are unsure, the Bureau believes that receiving this information likely will clarify whether their hardship qualifies as COVID–19-related and will be beneficial even if ultimately the borrower does not meet the required hardship criteria. Further, the Bureau does not believe that requiring an assertion to be excluded, rather than an assertion to be included, is likely to increase the probability of borrower confusion. As with the proposal, the information seems equally likely to be received by only those borrowers that may have a COVID–19-related hardship.

Content. A few consumer advocate commenters indicated the Bureau should expand § 1024.39(e)(1) to require servicers to inform the borrower of all possible or available loss mitigation options, not just the available forbearance options. The commenters assert that while forbearance may be beneficial for some borrowers, some delinquent borrowers may have stabilized their income and may be ready for more permanent loss mitigation options. The commenters also assert, as discussed above in the section-by-section analysis for § 1024.39(e), that borrowers may benefit from the knowledge of all possible loss mitigation options, rather than those options only available to them.

The Bureau is not persuaded that the current unique circumstances presented by the COVID–19 emergency warrant requiring servicers to inform delinquent borrowers who are not yet in a forbearance program about all possible or available loss mitigation options. First, the Bureau is not persuaded that it would be beneficial to expand the content discussed to include options beyond forbearance programs. The Bureau believes that forbearance programs at this time are beneficial to delinquent borrowers, given they can provide borrowers with additional time to recover from their hardships, develop a financial plan, and apply for permanent loss mitigation. Additionally, limiting the required information to just forbearance options first can help prevent borrowers not yet in forbearance from becoming overwhelmed with information, a concern noted by commenters as discussed above. Further, the content required by § 1024.39(e)(1) does not replace the existing live contact requirements in § 1024.39(a), which require that, promptly after establishing live contact with a borrower, the servicer must inform the borrower about the availability of loss mitigation options, if appropriate. Thus, in some cases, it may be appropriate for servicers to inform certain borrowers, such as those who indicate that they have resolved their hardship, about the availability of additional loss mitigation options in addition to the information required in § 1024.39(e)(1). Second, the Bureau is not persuaded that the options discussed should be all possible options, whether or not available to the borrower through the owner or assignee of the mortgage. The potential for increased borrower confusion or frustration outweighs any potential benefit this knowledge may provide the borrower.

Final Rule

For the reasons discussed in this section and in more detail below, the Bureau is finalizing § 1024.39(e)(1) generally as proposed with some revisions to address certain comments received. The Bureau believes § 1024.39(e)(1), as revised, will help encourage borrowers not yet in forbearance to work with their servicer under these unique circumstances and avoid unnecessary foreclosures.

For the reasons discussed above, the Bureau is revising § 1024.39(e)(1) to remove the requirement that servicers ask borrowers whether they are experiencing a COVID–19-related hardship before being providing the additional forbearance program information. Instead, the Bureau is finalizing § 1024.39(e)(1) such that all delinquent borrowers not yet in forbearance at the time live contact is established will receive notification that forbearance programs are available by the owner or assignee of the borrowers' mortgage loan to borrowers experiencing COVID–19-related hardships. To provide this information, the servicer need not use the exact language in the regulation, and may find a more plain-language method, such as informing the borrower that there are forbearance programs available if they are having difficulty making their payments because of COVID–19. Unless the borrower states they are not interested, servicers are then required to provide a list and brief description of such forbearance programs, as well as the actions the borrower must take to be evaluated for such forbearance programs. In addition to the guidance discussed above in the section-by-section analysis for § 1024.39(e) more generally, the Bureau notes that particular to § 1024.39(e)(1), the forbearance programs that servicers must identify also include more than just short-term forbearance programs as defined in the mortgage servicing rules.[97] Additionally, as discussed above, the Bureau is also requiring servicers to identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

39(e)(2)

The Bureau's Proposal

Proposed § 1024.39(e)(2) would have temporarily required a servicer to provide certain information promptly after establishing live contact with borrowers currently in a forbearance program made available to those experiencing a COVID–19-related hardship. First, it would have required the servicer to provide the borrower with the date the borrower's current forbearance program ends. Second, it would have required the servicer to provide a list and brief description of each of the types of forbearance extensions, repayment options and other loss mitigation options made available by the owner or assignee of the borrower's mortgage loan to resolve the borrower's delinquency at the end of the forbearance program. It also would have required the servicer to inform the borrower of the actions the borrower must take to be evaluated for such loss mitigation options. Proposed § 1024.39(e)(2) would have required the servicer to provide the borrower with this additional information during the last live contact made pursuant to existing § 1024.39(a) that occurs before the end of the loan's forbearance period. For the reasons discussed below, the Bureau is finalizing § 1024.39(e)(2) generally as proposed, with some revisions to address certain comments received, including revising the timing for when this information is provided, and adding a requirement to provide certain housing counselor information.

[97] Existing § 1024.41(c)(2)(iii) and comment 41(c)(2)(iii)–1 define short-term payment forbearance program as a payment forbearance program that allows the forbearance of payments due over periods of no more than six months.

Comments Received

Commenters generally supported proposed § 1024.39(e)(2). One industry commenter opposed this provision overall, asserting servicers were already performing the requirements proposed in § 1024.39(e)(2), and that adding new regulatory requirements at this time will further strain servicer capacity. Of those that supported the proposal, commenters generally suggested certain scope, content, and timing revisions, discussed below.

Scope. A few commenters discussed the scope of § 1024.39(e)(2). One individual commenter suggested the requirements in § 1024.39(e)(2) should apply to all delinquent borrowers during the time period, rather than just those in forbearance programs made available to borrowers experiencing a COVID–19-related hardship at the time of the live contact. A couple of industry commenters suggested the Bureau should exempt borrowers that voluntarily exit the forbearance program early.

The Bureau is not persuaded that the current pandemic warrants expanding the scope of § 1024.39(e)(2) to all delinquent borrowers. Delinquent borrowers not yet in forbearance will receive additional information under this final rule, as provided in § 1024.39(e)(1). As discussed above, the Bureau is persuaded that providing such borrowers with forbearance information first provides additional time for borrowers to then seek loss mitigation assistance and develop a financial plan. Further, the Bureau notes that the requirements in § 1024.39(e) are in addition to the existing requirement in § 1024.39(a). Thus, even if a delinquent borrower is not in forbearance at the time live contact is established, if appropriate, a servicer is already required to inform the borrower about the availability of loss mitigation options.

The Bureau is also not persuaded that an exemption from § 1024.39(e)(2) is necessary for borrowers that exit forbearance programs early. First, § 1024.39(e)(2), and § 1024.39(a) more broadly, only apply to delinquent borrowers. It seems likely that if a borrower is voluntarily exiting forbearance early, it is because the borrower has the ability to bring the account current and the hardship has ended. If the borrower was current at the time the forbearance was scheduled to end, § 1024.39(e)(2), as revised, would not apply because § 1024.39(a) would not apply. If, however, a borrower exited forbearance early but remained delinquent, the Bureau believes that borrower would still benefit from the loss mitigation information required by § 1024.39(e)(2) and thus, it should still apply.

Content. Several consumer advocate commenters requested the Bureau require servicers to provide information to borrowers about all possible loss mitigation options, not just those that are available. These commenters supported the Bureau in limiting servicer discretion. Some indicated borrowers benefit from receiving information about all possible loss mitigation options, even if not applicable, because it allows borrowers to better identify mistakes in information they receive. The commenters also asserted that available loss mitigation options should include those that the borrower is eligible for even if the investor ''waterfall'' requirements may prevent the borrower from being offered a particular option. Conversely, feedback during an interagency consultation and a few industry commenters expressed concern about requiring servicers to provide all loss mitigation options available to the borrower. These commenters cited concerns about borrower confusion. They indicated that providing options that may not be available after review of the loss mitigation application due to investor ''waterfall'' requirements and changes in borrower eligibility after the live contact may confuse borrowers or make them believe they were provided with inaccurate information. Some of these commenters requested that the Bureau give servicers discretion to determine which loss mitigation options are appropriate for discussion, rather than listing all available loss mitigation options, or allow generalized statements that loss mitigation options are available.

As discussed in the proposed rule and above in the section-by-section analysis for § 1024.39(e), the Bureau believes that information about specific loss mitigation options is crucial for borrowers at this time. Additionally, the Bureau believes that providing all borrowers exiting forbearance with consistent information about loss mitigation options made available by the owner or assignee of their mortgage loan will address concerns about consistency and accuracy with respect to pandemic-related loss mitigation information.

As discussed above, the Bureau is not persuaded it should expand the information provided to include all possible loss mitigation options or that it should allow servicers to exercise discretion about what information to share. As stated above, the Bureau is persuaded by the comments that the proposed approach appropriately balances providing the borrower transparency as to which loss mitigation options the borrower may reasonably expect to potentially be reviewed for, with the need to prevent borrower confusion. Because the options provided are only those that might be available to the borrower, rather than all options that the owner or assignee makes available to any borrowers, the Bureau believes this will sufficiently tailor the information to the borrower's particular situation. Additionally, because the rule requires only a brief description, as discussed further below, rather than a full review of the loss mitigation program, there will not be an overwhelming amount of information provided.

With regard to concerns about investor waterfall requirements, the Bureau is not persuaded these concerns and the potential implications on borrower understanding justify eliminating the potential benefit of the provision of information about all of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower by the owner or assignee of the borrower's mortgage loan at the time of the live contact. However, as noted above, if a servicer believes that a borrower may be confused by the investor's waterfall requirements and the impact they may have on the loss mitigation options offered to the borrower, nothing in the rule would prevent a servicer from providing additional information to assist the borrower in understanding how an evaluation ''waterfall'' may affect the loss mitigation options for which a borrower is reviewed and ultimately offered. The Bureau encourages this type of transparency in communications.

''*Last live contact*'' *timing.* Several commenters discussed the proposed requirement that servicers convey the information required by § 1024.39(e)(2) during the last live contact made pursuant to existing § 1024.39(a) that occurs before the end of the loan's forbearance program. These commenters supported proposed § 1024.39(e)(2) overall but suggested different timing than the ''last live contact.'' Several industry commenters suggested the Bureau require servicers to provide the information during the last live contact that is no later than 30 days before the scheduled end of the forbearance program, ensuring the information is not provided on the last day of the forbearance program and noting that the scheduled end date provides more

certainty for servicers. One industry commenter indicated that the last live contact is too late, and that the information should be provided earlier in the forbearance program. A few consumer advocate commenters suggested the Bureau should require that the contact occur 45 days before the end of forbearance. Further, some commenters suggested the last live contact should be tied to the scheduled end of forbearance programs, not the actual end date, citing that consumers may voluntarily leave programs early or may extend their forbearance program, effectively changing the actual end date.

Additionally, a few commenters suggested that the information required under proposed § 1024.39(e)(2) should be provided in more than one live contact. A few consumer advocate commenters suggested the information be provided during all live contacts established during the forbearance program. One consumer advocate suggested the information be provided during the live contact established at the start of the forbearance program, in addition to the last live contact. One State Attorney General commenter suggested the information be provided during the live contact that is established immediately after final rule issuance, as well as the last live contact.

The Bureau is persuaded by the comments that it should revise § 1024.39(e)(2) to clarify when servicers must provide the information required by § 1024.39(e)(2). First, the Bureau agrees with commenters that the timing should be tied to the scheduled end of the forbearance program, rather than the actual end date. As discussed above, the Bureau recognizes that some borrowers may extend their forbearance programs and others may voluntarily exit before the scheduled end date. The Bureau concludes that providing this information based on the scheduled end date is beneficial for borrowers that extend their forbearance program, so that they will receive this information each time they extend their forbearance program.

Second, the Bureau declines to require servicers to provide the information required by § 1024.39(e)(2) to borrowers earlier in the forbearance program or more than one time. As discussed in the proposal, the Bureau believes providing this information towards the end of forbearance programs better aligns with current borrower behavior patterns, given economic uncertainty and the impact foreclosure moratoria may have their sense of urgency, potentially increasing the effectiveness of the messaging.[98] In addition, the Bureau is concerned that requiring this information too early before the scheduled end date of the forbearance program may not align with existing investor requirements, a timing misalignment which may require duplicated efforts by servicers to contact with borrowers, burdening servicers and potentially confusing borrowers. However, the Bureau agrees that the servicer should provide this information before the final day of the borrower's forbearance program. The Bureau does not believe it is necessary to require this information under § 1024.39(e)(2) in additional instances, such as at the beginning of forbearance programs or during the live contact established immediately after the effective date of this final rule. Most borrowers have already started the relevant forbearance programs, and for those yet to begin forbearance programs, servicers are already required under the servicing rules to provide a written notice to borrowers promptly after offering a borrower a short-term payment forbearance program based on the evaluation of an incomplete application.[99] Additionally, the Bureau is concerned that requiring servicers to provide the additional information at the effective date for all accounts would overwhelm servicer capacity at a critical moment.

Thus, to balance the timing considerations, the Bureau is revising § 1024.39(e)(2) to clarify that servicers must provide the additional information during the live contact that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program. The Bureau recognizes that this approach may mean that certain borrowers exiting forbearance near the effective date of this final rule could be missed. As a result, the Bureau is amending this provision to require servicers to provide the additional information during the first live contact made pursuant to § 1024.39(a) after August 31, 2021, if the scheduled end date of the forbearance program occurs between August 31, 2021 and September 10, 2021. Additionally, see part VI for discussion of voluntary early compliance.

Final Rule

For the reasons discussed in this section and in more detail below, the Bureau is finalizing § 1024.39(e)(2) generally as proposed, with some revisions to address certain comments received. As revised, the Bureau concludes that § 1024.39(e)(2) will help further the Bureau's goal to encourage borrowers to begin application for loss mitigation assistance before the end of the forbearance program.

As discussed above, the Bureau is revising § 1024.39(e)(2) to require that at least 10 and no more than 45 days before the scheduled end date of their current forbearance program, the servicer must provide the borrower a list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower at the time of the live contact, the actions the borrower must take to be evaluated for such loss mitigation options, and at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement. The loss mitigation options listed under § 1024.39(e)(2) are not limited to a specific type of loss mitigation, as servicers must provide borrowers with information about all available loss mitigation types, such as forbearance extensions, repayment plans, loan modifications, short-sales, and others.

As revised, § 1024.39(e)(2) requires this additional information be provided in the live contact established with the borrower at least 10 days and no more than 45 days before the scheduled end of the forbearance program. The Bureau is also revising § 1024.39(e)(2) to address a servicer's obligations with respect to forbearance programs scheduled to end within 10 days after the effective date of this final rule. If the scheduled end date of the forbearance program occurs between August 31, 2021 and September 10, 2021, final § 1024.39(e)(2) requires the servicer to provide the additional information during the first live contact made pursuant to § 1024.39(a) after August 31, 2021.

Finally, the Bureau notes that § 1024.39(e)(2), as revised, works with the new reasonable diligence obligations in comment 41(b)(1)–4.iv to ensure

[98] 86 FR 18840, 18849–18850 (Apr. 9, 2021).

[99] 12 CFR 1024.41(c)(2)(iii) requires servicers promptly after offering a short-term payment forbearance program to provide borrowers with a written notice stating the specific payment terms and duration of the program, that the servicer offered the program based on an evaluation of an incomplete application, that other loss mitigation options may be available, and the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan. This requirement applies with respect to every such short-term payment forbearance program offered, including each successive program renewal or extension. *See, e.g.,* 78 FR 60381, 60401 (Oct. 1, 2013) (noting that the rule does not preclude a servicer from offering multiple successive short-term payment forbearance programs).

borrowers that submit incomplete applications receive notification of loss mitigation options that would be available after their COVID–19-related forbearance program ends.

Section 1024.41 Loss Mitigation Procedures

41(b) Receipt of a Loss Mitigation Application

41(b)(1) Complete Loss Mitigation Application

Comment 41(b)(1)–4.iii discusses a servicer's reasonable diligence obligations when a servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii). It also provides that reasonable diligence means servicers must contact the borrower before the short-term payment forbearance program ends (''the forbearance reasonable diligence contact''), but it does not specify when servicers must make the contact. Consequently, the Bureau proposed adding a new comment, comment 41(b)(1)–4.iv, to specify that, if the borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID–19-related hardship, servicers must make the forbearance reasonable diligence contact at least 30-days prior to the end of the short-term forbearance program. Additionally, the proposal specified that, if the borrower requests further assistance, the servicer must also exercise reasonable diligence to complete the loss mitigation application prior to the end of forbearance period. The Bureau solicited comment on the proposed 30-day deadline for completing the forbearance reasonable diligence contact at the end of the forbearance and whether a different deadline was appropriate. The Bureau also solicited comment on whether to extend these requirements to all borrowers exiting short-term payment forbearance programs during a specified time period, instead of limiting it to borrowers in a short-term payment forbearance program made available to borrowers experiencing a COVID–19-related hardship.

Overall, commenters generally supported the proposal. A few commenters, including consumer advocate commenters and an industry commenter, suggested a different deadline from the proposed 30-day deadline would be appropriate. The commenters suggested an earlier or later deadline. Specifically, the consumer advocate commenter indicated they believe the appropriate timing might depend on whether and how the Bureau finalizes proposed § 1024.41(f). Under one scenario, they believed that 30 days was appropriate, but under another scenario they urged the Bureau to move the deadline to resume reasonable diligence to at least 60 days before the end of the forbearance program. The industry commenter encouraged the Bureau to adopt a later deadline, which would allow servicers to complete the forbearance reasonable diligence contact within 30 days before the end of the forbearance. This commenter expressed the belief that borrowers would be more responsive if servicers could complete the forbearance reasonable diligence contact right before the borrower's forbearance ends.

The Bureau declines to revise the proposed 30-day deadline. The 30-day deadline aligns with GSE Quality Right Party Contact (QRPC) guidelines. Servicers are required to establish QRPC at least 30 days before the end of the initial 12-month cumulative COVID–19 forbearance period, or at least 30 days prior to the end of any subsequent forbearance plan term extension.[100] The Bureau aimed to make this requirement complementary to existing GSE guidelines and to avoid exacerbating confusion among servicers attempting to comply with multiple compliance obligations.

The Bureau also received comments from industry commenters on whether the Bureau should extend the reasonable diligence protections of proposed comment 41(b)(1)–4.iv to all borrowers exiting short-term payment forbearance programs during a specified time period or retain the proposed limitation that the comment applies only to borrowers in short-term payment forbearance programs made available to borrowers experiencing a COVID–19-related hardship. These commenters encouraged the Bureau to retain the proposed limitation. Commenters noted that the proposed comment's requirements mirror current practices and would not create an extra burden for servicers to implement. The commenters cautioned against imposing any additional reasonable diligence requirements, citing that many servicers are fatigued from constant policy changes. The Bureau did not receive any comments suggesting that the proposed provision should apply to all borrowers exiting short-term payment forbearance programs. The Bureau is finalizing the applicability of comment 41(b)(1)–4.iv as proposed.

A few commenters, including industry commenters encouraged the Bureau to exclude servicers from the requirement to make the proposed forbearance reasonable diligence contact if the borrower voluntarily ends forbearance. To clarify that the reasonable diligence requirements included in new comment 41(b)(1)–4.iv mirror the scope of existing comment 41(b)(1)–4.iii and only apply if the borrower remains delinquent, the Bureau is adding the phrase ''if the borrower remains delinquent'' to proposed comment 41(b)(1)–4.iv. This language is in comment 41(b)(1)–4.iii but was inadvertently omitted from proposed comment 41(b)(1)–4.iv. The Bureau declines to exclude servicers from the forbearance reasonable diligence contact if the borrower voluntarily ends forbearance early. If a borrower voluntarily ends forbearance early and remains delinquent, the servicer must still make the forbearance reasonable diligence contact required by comment 41(b)(1)–4.iv. If a borrower voluntarily ends forbearance early and is no longer delinquent, servicers need not make the forbearance reasonable diligence contact.

Some industry commenters also urged the Bureau to eliminate the proposed requirement to exercise reasonable diligence to complete an application, stating that § 1024.41(c)(2)(v), adopted in the June 2020 IFR,[101] and proposed § 1024.41(c)(2)(vi) permit servicers to offer certain loss mitigation options based on the evaluation of an incomplete application. Commenters indicated that they believe borrowers will be confused if servicers contact borrowers to evaluate them for a payment deferral or loan modification based on an incomplete application, but then also contact them to inquire if they want to complete a loss mitigation application. The Bureau holds that while § 1024.41(c)(2)(v) and new § 1024.41(c)(2)(vi) empower servicers to offer deferral or loan modifications based on the evaluation of an incomplete application, a servicer is still required to exercise reasonable diligence to complete an application unless the borrower accepts the deferral or loan modification offer. There are benefits to borrowers of being fully evaluated for all available loss

[100] The Fed. Nat'l Mortg. Ass'n, *Lender Letter (LL–2021–02)*, at 6 (Feb. 25, 2021), *https://singlefamily.fanniemae.com/media/24891/display;* The Fed. Home Loan Mortg. Corp., *COVID–19 Servicing: Guidance for Helping Impacted Borrowers*, at 5 (May 1, 2021), *https://sf.freddiemac.com/content/_assets/resources/pdf/ebooks/helpstartshere-servicing-ebook.pdf.*

[101] 85 FR 39055 (June 30, 2020).

mitigation options based on complete application, and certain protections under the rules apply only once the borrower completes an application. In addition, if a servicer believes that a borrower may be confused by the reasonable diligence outreach, a servicer may provide additional information to the borrower to help explain the application process. The Bureau encourages this type of transparency in communications. However, once the borrower accepts a deferral offer or loan modification offer based on that evaluation of an incomplete application, the servicer is not required to continue to exercise reasonable diligence to complete any loss mitigation application that the borrower submitted before the servicer's offer of the accepted loss mitigation option.

A few commenters requested that the Bureau clarify the method of compliance for the outreach requirements in comment 41(b)(1)–4. Specifically, an industry commenter requested that the Bureau clarify whether the outreach requirements could be satisfied either orally or in writing. A consumer advocate commenter requested that the Bureau clarify that the outreach must be sent in writing. The Bureau clarifies that the forbearance reasonable diligence contact required by comment 41(b)(1)–4.iv, like the forbearance reasonable diligence contact required by comment 41(b)(1)–4.iii can be oral or in writing. Servicers will likely find it beneficial to communicate their decisions in writing in some cases to prevent ambiguity and memorialize decisions. However, there may be circumstances where oral notification is advantageous due to time constraints, and the Bureau has concluded that the best approach is to allow the servicer to choose the appropriate mode of communication based on the particular facts and circumstances of each case.

For the reasons discussed above, the Bureau is finalizing comment 41(b)(1)–4.iv as proposed with a minor edit to clarify the provision applies only to delinquent borrowers. As finalized, comment 41(b)(1)–4.iv explains that if the borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID–19-related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stability Act, section 4022 (15 U.S.C. 9056), that was offered to the borrower based on evaluation of an incomplete application, a servicer must contact the borrower no later than 30 days before the end of the forbearance period if the borrower remains delinquent and determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance period.

41(c) Evaluation of Loss Mitigation Applications

41(c)(2)(i) In General

Section 1024.41(c)(2)(i) states that, in general, servicers shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by making an offer based upon an incomplete application. For ease of reference, this section-by-section analysis generally refers to this provision as the ''anti-evasion requirement.'' Currently, the provision identifies three general exceptions to this anti-evasion requirement, § 1024.41(c)(2)(ii), (iii), and (v). As further described in the section-by-section analysis of § 1024.41(c)(2)(vi) below, the Bureau proposed to add a temporary exception to this anti-evasion requirement in new § 1024.41(c)(2)(vi) for certain loan modification options made available to borrowers experiencing COVID–19-related hardships. The Bureau also proposed to amend 1024.41(c)(2)(i) to reference the new proposed exception in § 1024.41(c)(2)(vi). The Bureau did not receive any comments on the addition of this reference and, because the Bureau is adopting § 1024.41(c)(2)(vi), the Bureau is finalizing the amendment to § 1024.41(c)(2)(i) as proposed.

41(c)(2)(v) Certain COVID–19-Related Loss Mitigation Options

Definition of a COVID–19-related hardship. Section 1024.41(c)(2)(v) currently allows servicers to offer a borrower certain loss mitigation options made available to borrowers experiencing a COVID–19-related hardship based upon the evaluation of an incomplete application, provided that certain criteria are met. The Bureau added this provision to the mortgage servicing rules in its June 2020 IFR. Section 1024.41(c)(2)(v)(A)(*1*) refers to a COVID–19-related hardship as a financial hardship due, directly or indirectly, to the COVID–19 emergency. Section 1024.41(c)(2)(v)(A)(*1*) further states that the term COVID–19 emergency has the same meaning as under the Coronavirus Economic Stabilization Act, section 4022(a)(1)(15 U.S.C. 9056(a)(1)).

As discussed in the section-by-section analysis of § 1024.31, the Bureau proposed to define the term ''COVID–19-related hardship'' for purposes of subpart C, including § 1024.41(c)(2)(v), as ''a financial hardship due, directly or indirectly, to the COVID–19 emergency as defined in the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)).'' Thus, the Bureau proposed a conforming amendment to § 1024.41(c)(2)(v) to utilize the proposed new term.

As further explained in the section-by-section analysis of § 1024.31, the Bureau is revising the proposed definition of the term ''COVID–19-related hardship'' for purposes of subpart C to refer in the final rule to the national emergency proclamation related to COVID–19, rather than to the COVID–19 emergency as defined in section 4022 of the CARES Act. The Bureau did not receive any comments on the conforming amendment in § 1024.41(c)(2)(v), and is finalizing it as proposed. The Bureau does not intend for this conforming amendment to substantively change § 1024.41(c)(2)(v).

Escrow Issues. As the Bureau stated in the June 2020 IFR, § 1024.41(c)(2)(v)(A)(1) allows for some flexibility among loss mitigation options that may qualify for the exception. For example, although the loss mitigation options must defer all forborne or delinquent principal and interest payments under § 1024.41(c)(2)(v)(A)(1), the rule does not specify how servicers must treat any forborne or delinquent escrow amounts. A loss mitigation option would qualify for the exception if it defers repayment of escrow amounts, in addition to principal and interest payments, as long as it otherwise satisfies § 1024.41(c)(2)(v)(A).

The Bureau has received questions about whether servicers should issue a short-year annual escrow account statement under § 1024.17(i)(4) prior to offering a loss mitigation option under § 1024.41(c)(2)(v)(A). Regulation X does not require a short year statement prior to offering any loss mitigation option, but the Bureau strongly encourages servicers to conduct an escrow analysis and issue a short-year statement or annual statement, depending on the applicable timing. Doing so may help avoid unexpected potential escrow-related payment increases after the borrower has already agreed to a loss mitigation option, and can inform servicers of the information needed to provide a history of the escrow account, pursuant to § 1024.17(i)(2), after the loan becomes current.

The Bureau has also received questions about how servicers may treat funds that they have advanced or plan to advance to cover escrow shortages in

this context. Assume a servicer performs an escrow analysis before offering a loss mitigation option to the borrower under § 1024.41(c)(2)(v)(A), and the analysis reveals a shortage. The Bureau has received questions about whether the servicer is permitted under Regulation X to advance funds to cover the shortage (for example, if a borrower is in a forbearance) and seek repayment of those advanced funds as part of the non-interest bearing deferred balance that is due when the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the FHA, the mortgage insurance terminates. Section 1024.17 has specific rules and procedures for the administration of escrow accounts associated with federally related mortgage loans, but it does not address the specific situation described in the question. Regulation X does not prohibit a servicer from seeking repayment of funds advanced to cover the shortage as described above. Section 1024.17 is intended to ensure that servicers do not require borrowers to deposit excessive amounts in an escrow account (generally limiting monthly payments to 1/12th of the amount of the total anticipated disbursements, plus a cushion not to exceed 1/6th of those total anticipated disbursements, during the upcoming year). Loss mitigation programs such as those permitted under § 1024.41(c)(2)(v)(A) give the borrower more time to repay forborne or delinquent amounts and does not specify how servicers must treat any forborne or delinquent escrow amounts. Regulation X does not prohibit the borrower and servicer from agreeing to a loss mitigation option that allows for the repayment of funds that a servicer has advanced or will advance to cover an escrow shortage.[102]

41(c)(2)(vi) Certain COVID–19-Related Loan Modification Options

The Bureau's Proposal

As discussed in more detail in the section-by-section analysis of § 1024.41(c)(2)(i), in general, servicers shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by making an offer based upon an incomplete application. The Bureau proposed to add a new temporary exception to this anti-evasion requirement to permit servicers to offer certain loan modification options made available to borrowers with COVID–19-related hardships based on the evaluation of an incomplete application. The exception is temporary because the Bureau in this final rule is defining the term ''COVID–19-related hardship'' for purposes of subpart C to refer to a financial hardship due, directly or indirectly, to the national emergency for the COVID–19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021. At some point after the national emergency ends, servicers will no longer make available loan modification options to borrowers with COVID–19-related hardships for purposes of subpart C.

The proposal would have established eligibility criteria for the new exception in proposed § 1024.41(c)(2)(vi)(A). Specifically, a loan modification eligible for the proposed new exception would have to limit a potential term extension to 480 months, not increase the required monthly principal and interest payment, not charge a fee associated with the option, and waive certain other fees and charges. For loan modifications to qualify under the proposed new exception, they would not be able to charge interest on amounts that the borrower may delay paying until the mortgage loan is refinanced, the mortgaged property is sold, or the loan modification matures. However, loan modifications that charge interest on amounts that are capitalized into a new modified term would qualify for the proposed new exception, as long as they otherwise satisfy all of the criteria in § 1024.41(c)(2)(vi)(A). To qualify for the proposed new exception, a loan modification also either (1) would have to cause any preexisting delinquency to end upon the borrower's acceptance of the offer or (2) be designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification.

Once the borrower accepts an offer made pursuant to proposed § 1024.41(c)(2)(vi)(A), the Bureau proposed to exclude servicers from the requirement to exercise reasonable diligence required by § 1024.41(b)(1) and to send the acknowledgement notice required by § 1024.41(b)(1). However, the proposal would have required the servicer to immediately resume reasonable diligence efforts required by § 1024.41(b)(1) if the borrower fails to perform under a trial loan modification plan offered pursuant to the proposed new exception or requests further assistance.

The Bureau solicited comment on the proposed new exception. For the reasons discussed below, the Bureau is finalizing proposed § 1024.41(c)(2)(vi) largely as proposed, with some revisions to address certain comments received, including limiting the requirement to waive certain fees, as discussed in more detail below.

Comments Received

General comments about the proposed exception. The vast majority of commenters, including industry, consumer advocate commenters, and individuals, expressed general support for proposed § 1024.41(c)(2)(vi). Most commenters who expressed support for proposed § 1024.41(c)(2)(vi) also urged the Bureau to make certain revisions to the provision. In general, industry commenters requested that the Bureau provide additional flexibility, clarification, or both surrounding what loan modification options can qualify for the new anti-evasion exception and the regulatory relief provided to servicers after they offer these loan modifications. Consumer advocate commenters generally requested that the final rule require that servicers provide various additional disclosures and protections to borrowers who are evaluated for a loan modification option based on the evaluation of an incomplete application. The Bureau's responses to these comments are discussed further in this section and the section-by-section analyses below.

A few individuals and a few industry commenters expressed opposition to the proposed new exception overall for a variety of reasons and suggested removing it entirely or replacing it with various alternatives. The Bureau concludes that it is appropriate to add a new exception to the servicing rule's anti-evasion requirement for certain loan modification options, like the GSEs' flex modification programs, FHA's COVID–19 owner-occupant loan modification, and other comparable programs (''streamlined loan modifications'').[103] These programs will

[102] Additionally, when a borrower is more than 30 days delinquent, a servicer may recover a deficiency in the borrower's escrow account pursuant to the terms of the mortgage loan documents. Deficiencies exist when there is a negative balance in the borrower's escrow account, which can occur, for example, when a servicer advances funds for expenses such as taxes and insurance. *See* § 1024.17(f)(4)(iii).

[103] A loan modification that a servicer offers based upon the evaluation of an incomplete loss mitigation application can qualify for the exception in § 1024.41(c)(2)(vi) even if the servicer collects information, such as information to verify income, from a borrower. Section 1024.41(b)(1) defines a complete loss mitigation application as an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications

Continued

help ensure that servicers have sufficient resources to efficiently and accurately respond to loss mitigation assistance requests from the unusually large number of borrowers who will be seeking assistance from them in the coming months as Federal foreclosure moratoria and many forbearance programs end. And borrowers dealing with the social and economic effects of the COVID–19 emergency may be less likely than they would be under normal circumstances to take the steps necessary to complete a loss mitigation application to receive a full evaluation. This could prolong their delinquencies and put them at risk for foreclosure referral. Moreover, by allowing servicers to assist borrowers eligible for streamlined loan modifications more efficiently, servicers will have more resources to provide other loss mitigation assistance to borrowers who are ineligible for or do not want streamlined loan modifications.

Additional disclosures and protections. Some consumer advocate commenters urged the Bureau to provide additional disclosures and protections in connection with the evaluation of a streamlined loan modification option under proposed § 1024.41(c)(2)(vi). A few of these commenters urged the Bureau to include additional requirements for eligible loan modifications, including, for example, requiring certain written notices, denial notices, the right to appeal a decision, dual tracking protections, and simultaneous evaluation for all available streamlined loan modification options. One of these commenters also urged the Bureau to prohibit a servicer from requiring a borrower to give up the option of obtaining a streamlined loan modification if the borrower completes a loss mitigation application. This commenter expressed concern that borrowers would be negatively affected by not knowing the options for which they had been reviewed if, for example, they had been denied for an option on the basis of inaccurate information. A group of State Attorneys General also commented generally that a borrower should be aware of all loss mitigation options available to them.

One of the consumer advocate commenters urged the Bureau to require that a servicer include streamlined options during a review of a complete loss mitigation option that may take place after a borrower is offered a loan modification under the exception, and expressed skepticism that servicers would complete another loan modification quickly after implementing a loan modification offered under the exception. The same commenter expressed concern that defaults or trial loan modification plan failures for loan modification options offered under the exception would render a borrower ineligible to receive another streamlined loan modification for a period of time.

The Bureau acknowledges that borrowers accepting a loan modification offer under the new exception will not receive protections under § 1024.41 that are critical in other circumstances. However, the Bureau concludes that the exception set forth in final § 1024.41(c)(2)(vi)(A) will be unlikely to affect this benefit in most cases, given the narrow scope and particular circumstances of the exception. If a borrower is interested in another form of loss mitigation after accepting an offer made pursuant to § 1024.41(c)(2)(vi)(A), they would still have the right under § 1024.41 to submit a complete loss mitigation application and receive an evaluation for all available options. This would be the case even if, for example, a borrower accepted a loan modification trial plan offered pursuant to § 1024.41(c)(2)(vi)(A) and then failed to perform on that plan.

Further, to be eligible for the exception under § 1024.41(c)(2)(vi)(A), a loan modification must bring the loan current or be designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification. In most cases, a borrower must be more than 120 days delinquent before a servicer may make the first notice or filing required under applicable law to initiate foreclosure proceedings. Thus, if a borrower wishes to pursue another loss mitigation option after accepting a permanent loan modification offer, the borrower will still have a considerable amount of time to complete a loss mitigation application before they would be at risk for foreclosure.

Additionally, if a borrower fails to perform under a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) or requests further assistance, under § 1024.41(c)(2)(vi)(B) the servicer must immediately resume reasonable diligence efforts to collect a complete loss mitigation application as required under § 1024.41(b)(1). Also, as further discussed below, in this final rule the Bureau is amending § 1024.41(c)(2)(vi)(B) to adopt as final a requirement that if a borrower fails to perform under a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) or requests further assistance, the servicer must send the borrower the notice required by § 1024.41(b)(2)(i)(B), with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification under the exception, unless the servicer has already sent that notice to the borrower.

Finally, as discussed in the section-by-section analysis of § 1024.41(f)(3), the Bureau is finalizing requirements for special COVID–19 loss mitigation procedural safeguards that will extend through December 31, 2021. These requirements provide generally that a servicer must ensure that certain procedural safeguards are met to give borrowers a meaningful opportunity to pursue loss mitigation options before a servicer initiates foreclosure. These special COVID–19 loss mitigation procedural safeguards will temporarily provide borrowers with more time to submit a complete loss mitigation application, should they choose to do so, before they would be at risk of referral to foreclosure.

With respect to some commenters' concerns that consumers should be made aware of the loss mitigation options available to them, many borrowers who would receive an offer pursuant to § 1024.41(c)(2)(vi)(A) are likely to have received early intervention efforts by their servicers, including the written notice required under Regulation X stating, among other things, a brief description of examples of loss mitigation options that may be available, as well as application instructions or a statement informing the borrower about how to obtain more information about loss mitigation options from the servicer. In general, borrowers who previously entered into a forbearance program will also have received the notice required under § 1024.41(b)(2) and written notification of the terms and conditions of the forbearance program stating, among other things, that other loss mitigation options may be available, and that the borrower still has the option to submit a complete application to receive an evaluation for all available options.

for the loss mitigation options available to the borrower. If a servicer collects a complete loss mitigation application, the servicer is required to comply with all of the provisions of § 1024.41 relating to the receipt of complete loss mitigation applications, such as a written notice of determination, the right to an appeal, and dual tracking protections. If a servicer collects information that does not constitute a complete loss mitigation application, the servicer is prohibited from making an offer for a loss mitigation option by § 1024.41(c)(2)(ii), unless one of the exceptions listed in § 1024.41(c)(2)(ii) through (vi) applies.

As noted above, a commenter expressed concern that a borrower default on a loan modification or failure to perform under a trial loan modification plan may render a borrower ineligible for certain additional loan modifications for a period of time. The Bureau notes that the flex modification guidelines cited by the commenter in discussing this concern are Fannie Mae's general flex modification guidelines. Fannie Mae's reduced eligibility guidelines apply to COVID–19-related hardships, and the reduced eligibility guidelines do not contain the limitation cited by the commenter related to previous failure to perform on a trial loan modification or previous default on a flex modification.[104] The Bureau therefore understands that a borrower experiencing a COVID–19-related hardship who previously failed to perform on a trial loan modification or defaulted on a permanent loan modification would not be precluded from obtaining another flex modification for those reasons.

For the reasons discussed above, the Bureau declines to generally extend the requirements in § 1024.41 relating to the receipt of complete loss mitigation applications, such as a written notice of determination, the right to an appeal, and dual tracking protections, to borrowers who are evaluated for or offered a streamlined loan modification on the basis of an incomplete application. The Bureau also declines to impose requirements on servicers regarding which and how many streamlined loan modifications it must evaluate a borrower for on the basis of an incomplete application or on the basis of a complete loss mitigation application that the borrower may elect to submit after the servicer has evaluated an incomplete loss mitigation application under § 1024.41(c)(2)(vi).

Expanded eligibility criteria. Some industry commenters asked that the Bureau expand the eligibility criteria in § 1024.41(c)(2)(vi)(A) to cover a much broader variety of loss mitigation options available to borrowers with COVID–19-related hardships, including, among other things, repayment plans and loan modifications that would increase the monthly required principal and interest payment. Another industry commenter urged the Bureau to apply the anti-evasion exception to bankruptcy plans that are amended to cure COVID–19 delinquencies.

The Bureau declines to generally broaden the exception's eligibility requirements to cover more loss mitigation solutions with criteria different from those outlined in § 1024.41(c)(2)(vi)(1)–(5), as requested by some commenters, for reasons discussed in the section-by-section analyses of those sections below.

Final Rule

For the reasons discussed herein, the Bureau is adopting § 1024.41(c)(2)(vi) largely as proposed, with a few changes described below.

41(c)(2)(vi)(A)

41(c)(2)(vi)(A)(1)

The Bureau's Proposal

Under proposed § 1024.41(c)(2)(vi)(A)(*1*), the first criteria would have been that the loan modification must extend the term of the loan by no more than 480 months from the date the loan modification is effective and not cause the borrower's monthly required principal and interest payment to increase. As discussed more fully below, the Bureau is adopting the criteria in § 1024.41(c)(2)(vi)(A)(1) as proposed, with minor clarifying changes as discussed below.

Comments Received

One consumer advocate commenter and one individual commenter expressed specific support for the 480-month term limitation criterion. Some individual commenters expressed opposition to the 480-month term limitation criterion, stating generally that a 480-month term was too long.

One consumer advocate commenter expressed support for the payment increase limitation. One consumer advocate commenter and a few industry commenters urged the Bureau to provide additional flexibility for a streamlined loan modification to qualify for the new exception even if it resulted in increases to the monthly required principal and interest payment amount. The consumer advocate commenter advocated for a percentage cap, such as 15 percent or 20 percent, on any potential increase, noting that capitalizing a large amount of forborne payments may make it hard to achieve payment reduction. The Bureau also received feedback during its interagency consultation process indicating that limiting the proposed new exception to loan modifications that do not increase a borrower's monthly required principal and interest payment would exclude from the exception some loan modifications offered under FHA's COVID–19 owner-occupant loan modification program, which permits payment increases in certain circumstances. The industry commenters noted that some investors do not offer loan modifications with long-term fixed rates, and urged the Bureau to clarify whether the criterion as proposed would allow adjustable rate loan modifications to qualify for the new anti-evasion exception.

A different industry commenter stated that certain State laws prohibit balloon payments, which could make it difficult for servicers to offer loan modifications that do not extend the term beyond 480 months or cause the monthly required principal and interest to increase, because the servicer could not defer remaining delinquent amounts to the end of the loan.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1024.41(c)(2)(vi)(A)(*1*) as proposed, with minor revisions to clarify the criterion that, for a loan modification to qualify for the exception, the monthly required principal and interest payment amount must not increase for the entire modified term.

The Bureau believes that it will be advantageous to borrowers and servicers alike to facilitate the timely transition of eligible borrowers into certain streamlined loan modifications that do not cause additional financial hardship, such as flex modifications offered by the GSEs and COVID–19 owner-occupant loan modifications offered by FHA that meet the eligibility criteria in § 1024.41(c)(2)(vi)(A)(1)–(5).[105] The Bureau has concluded that the criteria discussed in this section-by-section analysis relating to the term and payment features of loan modifications eligible for the exception are appropriate to achieve this goal.

The Bureau notes that § 1024.41(c)(2)(vi) itself will not prevent borrowers from qualifying for certain loss mitigation options. The criteria that the Bureau is adopting in final § 1024.41(c)(2)(vi)(A) do not constitute general requirements or prohibitions applying to all loss mitigation options. Rather, they are a narrowly tailored exception to the anti-evasion requirement to allow servicers to offer certain loan modifications to borrowers

[104] *See* Fed. Nat'l Mortg. Ass'n, *Servicing Guide: D2–3.2–07: Fannie Mae Flex Modification* (Sept. 9, 2020), *https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D2-Assisting-a-Borrower-Who-is-Facing-Default-or/Chapter-D2-3-Fannie-Mae-s-Home-Retention-and-Liquidation/Section-D2-3-2-Home-Retention-Workout-Options/D2-3-2-07-Fannie-Mae-Flex-Modification/1042575201/D2-3-2-07-Fannie-Mae-Flex-Modification-09-09-2020.htm.*

[105] U.S. Dep't of Hous. and Urban Dev., *Mortgagee Letter 2021–05* at 10 (Feb. 16, 2021), *https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-05hsgml.pdf* (HUD Mortgagee Letter).

on the basis of an incomplete application. Section 1024.41(c)(2)(vi) does not prevent a borrower from submitting a complete loss mitigation application, and it does not relieve servicers of their obligations under § 1024.41 to evaluate a borrower for all available loss mitigation options upon the receipt of a complete loss mitigation application. Borrowers can therefore still be evaluated for all loss mitigation options available to them, including options that increase the term of the loan beyond 480 months from the effective date of the loan modification and options that entail an increase to the required monthly principal and interest payment amount, by submitting a complete loss mitigation application.

In response to some commenters' requests for clarification regarding whether a loan modification with an adjustable rate can qualify for the exception, the Bureau is adopting revised language in final § 1024.41(c)(2)(vi)(A)(*1*) clarifying that, for the entire modified term, the monthly required principal and interest payment cannot increase beyond the monthly principal and interest payment required prior to the loan modification. Other than this clarifying language, the Bureau adopts § 1024.41(c)(2)(vi)(A)(*1*) as proposed.

41(c)(2)(vi)(A)(2)

The Bureau's Proposal

Under proposed § 1024.41(c)(2)(vi)(A)(*2*), to qualify for the anti-evasion requirement exception, any amounts that the borrower may delay paying until the mortgage loan is refinanced, the mortgaged property is sold, or the loan modification matures must not accrue interest. As proposed, § 1024.41(c)(2)(vi)(A)(*2*) also would have provided that, to qualify for the anti-evasion exception in § 1024.41(c)(2)(vi), a servicer must not charge any fee in connection with the loan modification option, and a servicer must waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the option. For ease of readability, the Bureau is moving the language regarding fees to new final § 1024.41(c)(2)(vi)(A)(*5*). These criteria, as well as a revision to them that the Bureau is adopting in this final rule, are therefore discussed in additional detail in the section-by-section analysis of § 1024.41(c)(2)(vi)(A)(*5*).

Comments Received

The Bureau received a few comments on this proposed provision. One consumer advocate commenter noted that the Bureau did not include FHA mortgage insurance termination as a point after which amounts that a borrower may delay paying must not accrue interest to meet the proposed criterion, even though this language is included in the exception for certain deferrals described in § 1024.41(c)(2)(v). An industry commenter and a consumer advocate commenter asked that the Bureau clarify whether a loan modification that capitalizes some arrearages, such as interest arrearages, escrow advances, and escrow shortages, into the principal balance of a loan modification would satisfy the criterion in proposed § 1024.41(c)(2)(vi)(A)(2). Because the GSEs also specify that, for flex modifications, amounts that the borrower may delay paying until the mortgage loan is transferred or the unpaid principal balance (UPB) is paid off must not accrue interest, the Bureau sought comment on whether to specify in a final rule that interest cannot be charged on amounts that a borrower may delay paying until UPB pay off, transfer, or both. The Bureau did not receive any comments regarding the potential addition of this language.

Final Rule

The Bureau is adopting the criterion in § 1024.41(c)(2)(vi)(A)(*2*) largely as proposed with a revision to add language addressing FHA mortgage insurance termination. This eligibility criterion ensures that borrowers receiving one of the covered loan modifications will have years to plan to address amounts that are not due until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by FHA, the mortgage insurance terminates, and that those amounts will not increase due to interest accrual. This may be particularly important during the COVID–19 emergency, as many borrowers may be facing extended periods of economic uncertainty.

With respect to the addition in this final rule of language addressing FHA mortgage insurance termination, the Bureau notes that FHA's COVID–19 owner-occupant loan modification does not involve allowing a borrower to delay paying certain amounts until FHA mortgage insurance terminates. However, the Bureau understands that FHA also offers a COVID–19 combination partial claim and loan modification, which includes the potential extension of the loan's term, as well as allowing a borrower to delay paying certain amounts until FHA mortgage insurance terminates.[106] If this type of loan modification option meets all of the criteria listed in § 1024.41(c)(2)(vi)(A), servicers can offer it under that anti-evasion exception on the basis of an incomplete application. The Bureau is therefore adopting § 1024.41(c)(2)(vi)(A)(*2*) with the addition of language concerning FHA mortgage insurance termination, to clarify that a loan modification option can qualify for § 1024.41(c)(2)(vi)'s exception if, in addition to meeting § 1024.41(c)(2)(vi)(A)'s other eligibility requirements, amounts the borrower may delay paying until FHA mortgage insurance terminates do not accrue interest.

In response to commenters' request for clarification regarding capitalization of amounts into a new modified loan term, the Bureau notes that loan modifications that charge interest on amounts that are capitalized into a new modified term would qualify for the proposed new exception, as long as they otherwise satisfy all of the criteria in § 1024.41(c)(2)(vi)(A). Capitalized amounts are amounts that the borrower pays over the course of the new modified term, and a loan modification can meet the criteria in § 1024.41(c)(2)(vi)(A) even if these amounts accrue interest. However, if the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by FHA, the mortgage insurance terminates, the criterion in final § 1024.41(c)(2)(vi)(A)(*2*) are met only if those amounts do not accrue interest. The Bureau is revising § 1024.41(c)(2)(vi)(A)(*2*) to make more clear that this criterion regarding interest accrual only applies to loan modifications that involve payments that are delayed until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by FHA, the mortgage insurance terminates.

With respect to concerns regarding the potential capitalization of amounts related to escrow, the Bureau has received questions about whether the servicer is permitted under Regulation X to advance funds to cover an escrow shortage (for example, if a borrower is in a forbearance) and seek repayment of those advanced funds by capitalizing them into a modified principal balance as part of a loan modification. Section 1024.17 has specific rules and procedures for the administration of escrow accounts associated with

[106] *Id.*

federally related mortgage loans, but it does not address the specific situation described in the question. Regulation X does not prohibit a servicer from seeking repayment of funds advanced to cover the shortage as described above. Section 1024.17 is intended to ensure that servicers do not require borrowers deposit excessive amounts in an escrow account (generally limiting monthly payments to 1/12th of the amount of the total anticipated disbursements, plus a cushion not to exceed 1/6th of those total anticipated disbursements, during the upcoming year). Loss mitigation programs such as those permitted under this final rule give the borrower more time to repay forborne or delinquent amounts and do not specify how servicers must treat any forborne or delinquent escrow amounts. Regulation X does not prohibit the borrower and servicer from agreeing to a loss mitigation option that allows for the repayment of funds that a servicer has advanced or will advance to cover an escrow shortage.[107]

As described above, the Bureau is adopting § 1024.41(c)(2)(vi)(A)(*2*) as proposed, with revisions to add language concerning FHA mortgage termination and to clarify that permitting a delay in the payment of amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by FHA, the mortgage insurance terminates is not required for a loan modification to qualify for the anti-evasion exception in § 1024.41(c)(2)(vi)(A).

41(c)(2)(vi)(A)(3)

The Bureau's Proposal

Proposed § 1024.41(c)(2)(vi)(A)(*3*) would have required that, to qualify for the anti-evasion requirement exception, the loan modification offered pursuant to the exception in § 1024.41(c)(2)(vi)(A) must have been made available to borrowers experiencing a COVID–19-related hardship. As discussed in the section-by-section analysis of § 1024.31, the Bureau proposed to define the term ''COVID–19-related hardship'' as ''a financial hardship due, directly or indirectly, to the COVID–19 emergency as defined in the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)).'' The Bureau solicited comment on whether to instead condition eligibility on loan modifications offered during a specified time period, regardless of whether the option was made available to borrowers with a COVID–19-related hardship. The Bureau sought comment on whether that alternative would be easier for servicers to implement.

Comments Received

The Bureau received a few comments on this aspect of the proposal. An individual commenter expressed concern that servicers may require evidence of the onset of the hardship. A consumer advocate commenter noted it would have no general objection to an approach limiting the exception to a time period, indicating that that approach might be easier for servicers to administer. For the reasons discussed below, the Bureau is adopting § 1024.41(c)(2)(vi)(A)(3) as proposed.

Final Rule

As noted in part II, the COVID–19 emergency presents a unique period of economic uncertainty, during which borrowers may be facing extended periods of financial hardship and servicers expect to face extraordinary operational challenges to assist large numbers of delinquent borrowers. The Bureau believes it would be difficult to establish with certainty a date beyond which borrowers would no longer be experiencing COVID–19-related hardships and servicers may stop making loan modification options available to borrowers experiencing such hardships. As further explained in the section-by-section analysis of § 1024.31, the Bureau is revising the proposed definition of the term ''COVID–19-related hardship'' for purposes of subpart C to refer in this final rule to the national emergency proclamation related to COVID–19. No end date for this national emergency has been announced. The Bureau therefore concludes that it is appropriate to limit eligibility for the exception in § 1024.41(c)(2)(vi) to loan modification options that are generally made available to borrowers experiencing a COVID–19-related hardship.

Regarding a commenter's concern that servicers would require evidence of a COVID–19-related hardship, the Bureau notes that the final rule does not require as a criterion for the anti-evasion exception that the individual borrower offered the loan modification has experienced a COVID–19-related hardship. Rather, the final rule limits this exception to loan modifications made available to borrowers experiencing a COVID–19-related hardship. The loan modification option offered need not be made available exclusively to borrowers experiencing a COVID–19-related hardship to qualify for the anti-evasion exception. A loan modification option can qualify for the anti-evasion exception if it is made available to borrowers experiencing a COVID–19-related hardship as well as other borrowers. For example, the Bureau understands that the GSEs' flex modifications are offered to a broader population of borrowers than those experiencing COVID–19-related hardships.[108] Because these loan modifications are currently also available to borrowers experiencing COVID–19-related hardships, they meet the criterion that the Bureau is adopting as final in § 1024.41(c)(2)(vi)(A)(*3*).

41(c)(2)(vi)(A)(4)

The Bureau's Proposal

Proposed § 1024.41(c)(2)(vi)(A)(*4*) would have required that either the borrower's acceptance of a loan modification offer end any preexisting delinquency on the mortgage loan, or that a loan modification offered be designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification, for a loan modification to qualify for the proposed anti-evasion requirement exception in § 1024.41(c)(2)(vi).

Comments Received

The Bureau did not receive any comments specifically addressing proposed § 1024.41(c)(2)(vi)(A)(*4*). For the reasons discussed below, the Bureau is adopting this requirement as proposed.

Final Rule

The Bureau believes that this provision will help ensure that borrowers who accept a loan modification offered under § 1024.41(c)(2)(vi) have ample time to complete an application and be reviewed for all loss mitigation options before foreclosure can be initiated. Servicers are generally prohibited from making the first notice or filing until a mortgage loan obligation is more than 120 days delinquent.[109] If the borrower's acceptance of a loan

[107] *Supra* note 102.

[108] *See* Fed. Home Loan Mortg. Corp., *Freddie Mac Flex Modification Reference Guide* (Mar. 2021), *https://sf.freddiemac.com/content/_assets/resources/pdf/other/flex_mod_ref_guide.pdf;* Fed. Nat'l Mortg. Ass'n, *Servicing Guide: D2–3.2–07: Fannie Mae Flex Modification* (Sept. 9, 2020), *https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D2-Assisting-a-Borrower-Who-is-Facing-Default-or/Chapter-D2-3-Fannie-Mae-s-Home-Retention-and-Liquidation/Section-D2-3-2-Home-Retention-Workout-Options/D2-3-2-07-Fannie-Mae-Flex-Modification/1042575201/D2-3-2-07-Fannie-Mae-Flex-Modification-09-09-2020.htm.*

[109] 12 CFR 1024.41(f)(1).

modification offer ends any preexisting delinquency on the mortgage loan, § 1024.41(f)(1)(i) would prohibit a servicer from making a foreclosure referral until the loan becomes delinquent again, and until that delinquency exceeds 120 days. Similarly, if the loan modification offered is designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification and the loan modification is finalized, § 1024.41(f)(1)(i) would prohibit a servicer from making a foreclosure referral until the loan becomes delinquent again after the trial ends, and until that delinquency exceeds 120 days. This would provide borrowers who become delinquent again time to complete an application and be reviewed for all loss mitigation options before foreclosure can be initiated.

Additionally, the Bureau notes that servicers must still comply with the requirements of § 1024.41 for the first loss mitigation application submitted after acceptance of a loan modification offered pursuant to § 1024.41(c)(2)(vi)(A), due to § 1024.41(i)'s requirement that a servicer comply with § 1024.41 if a borrower submits a loss mitigation application, unless the servicer has previously complied with the requirements of § 1024.41 for a complete application submitted by the borrower and the borrower has been delinquent at all times since submitting that complete application. The anti-evasion exception described under new § 1024.41(c)(2)(vi) would only apply to offers based on the evaluation of an incomplete loss mitigation application. Regardless of whether the loan modification is finalized and therefore resolves any preexisting delinquency, a servicer would be required to comply with all of the provisions of § 1024.41 with respect to the first subsequent application submitted by the borrower after the borrower accepts an offer pursuant to § 1024.41(c)(2)(vi)(A). This requirement would apply, for example, for a borrower who accepted a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) and subsequently fails to perform under that plan.

Additionally, servicers may be required to comply with early intervention obligations if a borrower's mortgage loan account remains delinquent after a loan modification is offered and accepted under § 1024.41(c)(2)(vi)(A) (such as when a borrower is in a trial loan modification plan) or becomes delinquent after a loan modification under § 1024.41(c)(2)(vi)(A) is finalized.[110] These include live contact and written notification obligations that, in part, require servicers to inform borrowers of the availability of additional loss mitigation options and how the borrowers can apply. For these reasons, the Bureau is adopting § 1024.41(c)(2)(vi)(A)(*4*) as proposed.

41(c)(2)(vi)(A)(5)

The Bureau's Proposal

As noted above, proposed § 1024.41(c)(2)(vi)(A)(2) would have provided that, to qualify for the anti-evasion requirement exception in § 1024.41(c)(2)(vi)(A), a servicer must not charge any fee in connection with the loan modification option, and a servicer must waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the option. For ease of readability, the Bureau is moving this provision to new final § 1024.41(c)(2)(vi)(A)(*5*). The Bureau invited comment on whether the proposed fee waiver criterion was appropriate and on whether it should be further limited by, for example, requiring that only fees incurred after a certain date be waived for a loan modification option to qualify for the anti-evasion requirement exception. The Bureau is revising this provision to add a date limitation of March 1, 2020, on the fee waiver criterion, as described below.

Comments Received

The Bureau received several comments on this aspect of the proposal. Some industry commenters urged the Bureau to narrow the fee waiver criterion to fees incurred during a COVID–19-related forbearance or on or after March 1, 2020. One consumer advocate commenter also asked the Bureau to limit the fee waiver criterion to only fees incurred after March 1, 2020, noting that this criterion would align with FHA rules regarding COVID–19 loan modification fee waivers. The Bureau also received feedback regarding FHA fee waivers during its interagency consultation process encouraging the Bureau to narrow the fee waiver criterion to fees incurred on or after March 1, 2020. Some industry commenters asked that the Bureau confirm whether pass-through costs, such as inspection fees, are subject to the waiver requirement. The Bureau did not receive any comments addressing the aspect of the criterion excluding a loan modification option from eligibility for the exception if a fee is charged in connection with the loan modification option.

Final Rule

The Bureau is adopting § 1024.41(c)(2)(vi)(A)(*2*) largely as proposed, but re-numbered as § 1024.41(c)(2)(vi)(A)(*5*) and with a revision limiting the requirement to waive certain fees as discussed below. The final rule provides that, to qualify for the anti-evasion exception, a servicer must waive all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification. This revision responds to commenters' concerns that the proposed fee waiver criterion would inappropriately limit the availability of the exception. The Bureau, in adopting the new anti-evasion exception, seeks to allow servicers to offer loan modifications to borrowers on the basis of an incomplete application if such a loan modification would avoid imposing additional economic hardship on borrowers who likely have already experienced prolonged economic hardship due to the COVID–19 pandemic.

The Bureau believes that servicers may be more likely to expeditiously offer the types of loan modifications that may qualify for the exception in § 1024.41(c)(2)(vi) if they are not required to waive fees and charges incurred before March 1, 2020. This approach also aligns with FHA servicer guidelines, which only require servicers to waive fees incurred on or after March 1, 2020, for its COVID–19 owner-occupant loan modification and its combination partial claim and loan modification.[111] The Bureau declines to tie the fee waiver criterion to fees incurred during forbearance, because some borrowers seeking a streamlined loan modification may not have been in forbearance for some or all of the period between March 1, 2020 and the point at which the servicer offers an eligible loan modification to the borrower.

The Bureau does not believe that it is necessary to revise the proposed regulatory language to address commenters' requests to clarify what is meant by similar charges for purposes of this criterion. As finalized, § 1024.41(c)(2)(vi)(A)(*5*) states that the servicer must waive all existing late charges, penalties, stop payment fees, or

[110] Small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), are not subject to these requirements. 12 CFR 1024.30(b)(1).

[111] HUD Mortgagee Letter, *supra* note 105, at 9 and 11.

similar charges. Similar charges for purposes of § 1024.41(c)(2)(vi)(A)(*5*) refers to charges that are similar to late charges, penalties, and stop payment fees. The Bureau understands that late charges, penalties, and stop payment fees are typically amounts imposed on a borrower's mortgage loan account directly by the servicer. By contrast, costs such as inspection fees are typically paid by the servicer to a third party, and are therefore not similar to late charges, penalties and stop payment fees. These charges do not need to be waived for a loan modification to qualify under § 1024.41(c)(2)(vi)(A)'s anti-evasion exception.

For the reasons described above, the Bureau is adopting § 1024.41(c)(2)(vi)(A)(*5*), renumbered from the proposal and with the revisions discussed above.

41(c)(2)(vi)(B)

The Bureau's Proposal

Section 1024.41(b)(1) requires that a servicer exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, and § 1024.41(b)(2) requires that promptly upon receipt of a loss mitigation application, a servicer must review the application to determine if it is complete, and send the written notice described in § 1024.41(b)(2)(i)(B) in connection with such an application within five days after receiving the application, acknowledging receipt of the application (''acknowledgement notice''). As proposed, § 1024.41(c)(2)(vi)(B) would have offered servicers relief from these regulatory requirements when a borrower accepts a loan modification meeting the criteria that the Bureau proposed in § 1024.41(c)(2)(vi)(A), but it would have required a servicer to immediately resume reasonable diligence efforts as required under § 1024.41(b)(1) with regard to any loss mitigation application the borrower submitted before the servicer's offer of the trial loan modification plan if the borrower failed to perform under a trial loan modification plan offered pursuant to proposed § 1024.41(c)(2)(vi)(A) or if the borrower requested further assistance.

The Bureau solicited comment on whether the Bureau should adopt additional foreclosure referral protections for borrowers enrolled in a trial loan modification program that does not end any prior delinquency upon the borrower's acceptance of the offer, on the most effective ways to achieve this additional protection, and to what extent this additional protection may be necessary if the Bureau were to finalize the proposed § 1024.41(f)(3). For the reasons discussed below, the Bureau is adopting § 1024.41(c)(2)(vi)(B) as proposed, with the revisions discussed below.

Comments Received

Timing of regulatory relief and resumption of reasonable diligence. The Bureau received several comments addressing proposed § 1024.41(c)(2)(vi)(B). As discussed above, proposed § 1024.41(c)(2)(vi)(B) would have provided servicers with relief from the regulatory requirements to perform reasonable diligence to complete a loss mitigation application and to send an acknowledgement notice when a borrower accepts a loan modification meeting the criteria that the Bureau proposed in § 1024.41(c)(2)(vi)(A). Some industry commenters urged the Bureau to provide relief from these regulatory requirements starting from the point that the servicer offers the loss mitigation option until the borrower rejects the offer, rather than providing such relief only if and when the borrower accepts the offer. The industry commenters noted that, as proposed, the rule would in some circumstances still require the servicer to send the notice required by § 1024.41(b)(2)(i)(B), which the commenters implied could confuse borrowers who were still considering an outstanding offer of a streamlined loan modification. Additionally, an industry commenter stated that the provision as proposed may create confusion about how a servicer must confirm the borrower's acceptance of the offer.

An industry commenter urged the Bureau not to require the resumption of reasonable diligence efforts under § 1024.41(b)(1) when a borrower fails to perform under a trial loan modification plan offered pursuant to proposed § 1024.41(c)(2)(vi)(A). This commenter expressed concern that borrowers who fail to perform under a trial loan modification plan are unlikely to be able to afford a home retention option and stated that the requirement that servicers resume reasonable diligence to complete a loss mitigation application for those borrowers would thus impose undue burden on servicers. The same commenter urged the Bureau to clarify that servicers are permitted to continue to collect a complete loss mitigation application while a borrower is in a trial loan modification plan that was offered pursuant to § 1024.41(c)(2)(vi)(A).

The Bureau is finalizing § 1024.41(b)(2)(i)(B) to provide servicers with relief from the requirements of § 1024.41(b)(1) and (b)(2) upon the borrower's acceptance of an offer made pursuant to § 1024.41(c)(2)(vi)(A). In response to a commenter's concern about the method of a borrower's acceptance of an offer, the Bureau stresses that § 1024.41(c)(2)(vi) does not impose any specific requirements on servicers concerning what constitutes a borrower's acceptance of loan modification offer. For example, the Bureau acknowledges that acceptance can take place verbally, and does not necessarily need to occur in writing. As to the concern about notices sent pursuant to § 1024.41(b)(2)(i)(B), the Bureau notes that § 1024.41(b)(2)(i)(B) does not prohibit a servicer from adding explanatory language to such a notice to allay potential confusion if a loan modification offer is outstanding when the notice is sent. The Bureau encourages this type of transparency in communications.

The Bureau also believes that it is important to provide the regulatory relief contemplated by § 1024.41(b)(2)(i)(B) only if the borrower has become current or accepts an offer for a loan modification designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification. If the Bureau were to provide relief from the requirements of § 1024.41(b)(1) and (b)(2) upon an offer of a loan modification option but prior to a borrower's acceptance of that option, a servicer would have no obligation to exercise reasonable diligence to complete a loss mitigation application or to notify a borrower of the completion status of such an application during a period of time when the borrower was still delinquent and not in a loan modification trial plan or a permanent loan modification. The Bureau does not believe it is appropriate to offer this regulatory relief when a borrower is delinquent and not in a loan modification trial plan or a permanent loan modification, as such a borrower may be vulnerable to foreclosure activity, the assessment of default related costs, or both during that time. Similarly, the Bureau concludes that it is necessary to require a servicer to resume the exercise of reasonable diligence when a borrower fails to perform under a trial loan modification plan offered pursuant to the exception or requests further assistance.

In relieving servicers who evaluate a borrower for a streamlined loan modification on the basis of an incomplete application from the requirements of § 1024.41(b)(1) and (b)(2), the Bureau again emphasizes, as

it did in the proposed rule, that if a borrower does wish to pursue a complete application and receive the full protections of § 1024.41, § 1024.41(c)(2)(vi) would not prohibit them from doing so. In addition, as discussed in the section-by-section analysis of § 1024.41(c)(2)(vi)(A)(*4*), the Bureau stresses that servicers are required to comply with § 1024.41, including § 1024.41(b)(1) and (2), if the borrower submits a new loss mitigation application after accepting a loan modification pursuant to § 1024.41(c)(2)(vi)(A).

Trial loan modification plans—additional protections. The Bureau received one comment from a consumer advocate commenter specifically urging the Bureau to prohibit foreclosure referral for a borrower who enters a trial loan modification plan that was offered on the basis of an incomplete application pursuant to proposed § 1024.41(c)(2)(vi)(A).

The Bureau is not including a specific provision in § 1024.41(c)(2)(vi) prohibiting foreclosure referral for a borrower who enters a trial loan modification plan that was offered on the basis of an incomplete application pursuant to proposed § 1024.41(c)(2)(vi)(A). The Bureau notes that the special COVID–19 loss mitigation procedural safeguards that the Bureau is adopting in this final rule as § 1024.41(f)(3) will provide additional protection from foreclosure until January 1, 2022, for certain borrowers who enter into a trial loan modification trial plan offered on the basis of an incomplete application pursuant to the exception in § 1024.41(c)(2)(vi)(A).

Though the Bureau is not revising § 1024.41(c)(2)(vi) to provide foreclosure referral protection for a borrower who enters a trial loan modification plan that was offered under the new anti-evasion exception, the Bureau recognizes the importance of ensuring that borrowers who fail to perform under a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) or who request further assistance are provided with the information necessary to complete a loss mitigation application. The Bureau also notes that some borrowers who enter into a trial loan modification plan that was offered on the basis of an incomplete application pursuant to § 1024.41(c)(2)(vi)(A) and then fail to perform on that plan may not have received an acknowledgement notice with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification under the exception. This could be the case, for example, when a borrower who was not previously in forbearance contacts their servicer to inquire about loss mitigation options and is offered a streamlined loan modification. The Bureau is therefore revising § 1024.41(c)(2)(vi)(B) to adopt a requirement that, if a borrower fails to perform under a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) or requests further assistance, the servicer must send the borrower the notice required by § 1024.41(b)(2)(i)(B), with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification under the exception, unless the servicer has already sent that notice to the borrower.

Final Rule

For the reasons discussed above, the Bureau is adopting § 1024.41(b)(2)(i)(B) as proposed, with a revision to require an acknowledgement notice under certain circumstances.

41(f) Prohibition on Foreclosure Referral

41(f)(1) Pre-Foreclosure Review Period

41(f)(1)(i)

As noted below, the Bureau proposed conforming amendments to § 1024.41(f)(1)(i) to help implement the proposed special pre-foreclosure review period in proposed § 1024.41(f)(3). The Bureau did not receive any comments on this aspect of the proposal. As discussed below in the section-by-section analysis of § 1024.41(f)(3), the Bureau is not finalizing the special pre-foreclosure review period as proposed and, thus, is not finalizing any corresponding amendments in § 1024.41(f)(1)(i).

41(f)(3) Temporary Special COVID–19 Loss Mitigation Procedural Safeguards

Section 1024.41(f) prohibits a servicer from referring a borrower to foreclosure in several circumstances. Specifically, § 1024.41(f)(1) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process (''first notice or filing'' or ''foreclosure referral''), unless the borrower's mortgage loan obligation is more than 120 days delinquent, the foreclosure is based on a borrower's violation of a due-on-sale clause, or the servicer is joining the foreclosure action of a superior or subordinate lienholder. Regulation X generally refers to this prohibition as a pre-foreclosure review period. Section 41(f)(2) establishes an additional prohibition on making the first notice or filing if the borrower submits a complete loss mitigation application within a certain timeframe, unless other specified conditions are met. Section 1024.41 generally does not apply to small servicers.[112] However, the pre-foreclosure review period in § 1024.41(f)(1) does apply to small servicers.[113]

The Bureau's Proposal

The Bureau proposed to revise § 1024.41(f) to provide a special COVID–19 Emergency pre-foreclosure review period (the ''special pre-foreclosure review period'') that generally would have prohibited servicers from making a first notice or filing because of a delinquency from the effective date of the rule until after December 31, 2021. Specifically, the Bureau proposed to amend § 1024.41(f)(1)(i) to state that a servicer shall not make the first notice or filing unless a borrower's mortgage loan obligation is more than 120 days delinquent and paragraph (f)(3) does not apply. The Bureau proposed to add new § 1024.41(f)(3), which would have provided that a servicer shall not rely on paragraph (f)(1)(i) to make the first notice or filing until after December 31, 2021.

The proposed special pre-foreclosure review period was intended to help ensure that every borrower who is experiencing a delinquency between the time the rule becomes final until the end of 2021, regardless of when the delinquency first occurred, will have sufficient time in advance of foreclosure referral to pursue foreclosure avoidance options with their servicer. The Bureau proposed the intervention to address concerns that borrowers and servicers will likely both need additional time before foreclosure referral in the months ahead to help ensure borrowers have a meaningful opportunity to pursue foreclosure avoidance options consistent with the purposes of RESPA. As explained in more detail in the proposal, the Bureau is concerned that servicers will face capacity constraints that will slow down their operations and increase error rates associated with the servicing of delinquent borrowers. With respect to borrowers, the Bureau is concerned that borrowers have encountered, or will encounter, obstacles to pursuing foreclosure avoidance options, such as physical barriers that may undermine their ability to pursue foreclosure avoidance options sooner or confusion caused by the present circumstances that may have interfered with their ability to obtain and understand important information

[112] 12 CFR 1024.30(b)(1).

[113] 12 CFR 1024.41(j).

about the status of their loan and their foreclosure avoidance options. A servicer facing capacity constraints will be less able to dedicate the resources necessary to borrowers who are facing these obstacles.

Ensuring borrowers have sufficient time before foreclosure referral should, in turn, help to avoid the harms of dual tracking, including unwarranted or unnecessary costs and fees, and other harm when a potentially unprecedented number of borrowers may be in need of loss mitigation assistance at around the same time later this year after the end of forbearance periods and foreclosure moratoria. The Bureau requested comment on alternatives that could narrow the scope of the special pre-foreclosure review period while mitigating harm that could arise from a surge in loss mitigation-related default servicing activity during a period when borrowers might need a lot of assistance. The Bureau recognized that, if adopted as proposed, the special pre-foreclosure review period could have prevented a servicer from making the first notice or filing even in circumstances where additional time would merely delay rather than prevent avoidable foreclosure. However, the Bureau was concerned that alternatives would be difficult to craft and implement, particularly under very tight time frames. The Bureau believed that the straightforward and simple ''date certain'' approach in the proposal would be easy to implement, and its brevity would partially mitigate concerns. The alternatives discussed in the Proposal included options to (1) use a date certain other than December 31, 2021; (2) provide exemptions from the December 31, 2021 date certain; or (3) adopt a different approach such as requiring a grace period after exiting forbearance, keying the special pre-foreclosure review period to the length of the delinquency, or ending the special pre-foreclosure review period on a date that is based on when a borrower's delinquency begins or forbearance period ends, whichever occurs last. The Bureau explained that it believed each option carried its own set of advantages and disadvantages.

For the reasons discussed below, the Bureau is not finalizing the special pre-foreclosure review period as proposed. Instead, as finalized, § 1024.41(f)(3) will temporarily provide a more tailored procedural protection to minimize avoidable foreclosures in light of a potential wave of loss mitigation-related default servicing activity during a period when borrowers are also likely to need extra assistance. Final § 1024.41(f)(3) generally requires a servicer to ensure that one of three temporary procedural safeguards has been met before making the first notice or filing because of a delinquency: (1) The borrower submitted a completed loss mitigation application and § 1024.41(f)(2) permits the servicer to make the first notice or filing; (2) the property securing the mortgage loan is abandoned under state law; or (3) the servicer has conducted specified outreach and the borrower is unresponsive. The temporary procedural safeguards are applicable only if (1) the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and (2) the statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022. This temporary provision will expire on January 1, 2022, meaning that the procedural safeguards in § 1024.41(f)(3) would not be applicable if a servicers makes the of the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022.

Comments Received

Most commenters addressed the proposed special pre-foreclosure review period. The comments covered issues ranging from general support and opposition to specific aspects of the proposal, including specific suggestions on overall scope.

General Support and Opposition. A number of commenters expressed general support for the Bureau's stated goals underlying the proposal. While most commenters suggested changes to the proposal, several, including at least one industry commenter, an individual, and a consumer advocate commenter, urged the Bureau to finalize as proposed. Those who wanted to finalize the special pre-foreclosure review period as proposed (the ''proposed approach'') argued, for example, that the proposed approach struck the right balance between minimizing costs to servicers and allowing sufficient time for loss mitigation review, and that the proposed approach would create clarity and certainty to customers who may have become disengaged because of confusion created by evolving requirements.

A group of State Attorneys General expressed general support for the proposed special pre-foreclosure review period because they believed it would provide a modest expansion of current requirements that would bring fairness to borrowers who have no control over who owns their loans. Other commenters who generally supported the proposed special pre-foreclosure review period stated that they believed the proposed approach would give time for borrowers to recover economically and explore loss mitigation options to avoid foreclosure. Some commenters also cited racial equity concerns, explaining that unnecessary foreclosures would have serious negative consequences on communities of color, and that the proposal could help address those concerns. A consumer advocate commenter echoed and amplified the Bureau's concerns described in the proposal. That commenter provided additional support and asserted that there will be a spike of hundreds of thousands of seriously delinquent mortgage borrowers this fall, that there is a serious concern that servicers will be unprepared because of problems some servicers exhibited over the last year, and that unnecessary foreclosures that could occur as a result would cause serious harm.

Commenters who expressed general opposition to the proposed special pre-foreclosure review period cited a range of concerns related to, among other things, the Bureau's assumptions, the effect the intervention would have on the housing markets, mortgage markets, and servicer liquidity, and the Bureau's authority, each discussed more fully below.

After considering the comments, the Bureau is persuaded that it should not finalize the proposed special pre-foreclosure review period as proposed. Instead, the Bureau is adopting a more narrowly tailed approach that balances the goals of foreclosure avoidance in light of servicer capacity and borrower confusion concerns while also allowing servicers to proceed with foreclosure referral where additional procedural safeguards and time are unlikely to help, or are unnecessary to give, a borrower pursue foreclosure avoidance options. This more narrowly tailored approach adopts aspects of the original proposal, but also incorporates exceptions on which the Bureau sought and received comment that address circumstances where additional procedural safeguards and time are least likely to be beneficial. Because the Bureau is adopting this more narrowly tailored approach, the Bureau also believes it is appropriate to now refer to this intervention as Temporary Special COVID–19 Loss Mitigation Procedural Safeguards, or procedural safeguards, to better reflect the temporary and targeted nature of the requirement.

The Bureau continues to believe the proposed approach would be simple to

implement and would give time and flexibilities to servicers and borrowers to identify foreclosure alternatives in light of the anticipated wave of loss mitigation-related default servicing activity. However, the Bureau is also concerned that the proposed approach would temporarily prevent servicers from making the first notice or filing where doing so is the best remaining option (because, for example, the borrower does not qualify for a foreclosure alternative and delaying the first notice or filing would do nothing more than increase the borrower's delinquency). Further, the Bureau is persuaded that the proposed approach would not have sufficiently encouraged borrowers and servicers to work together towards a foreclosure alternative because it did not include incentives for borrowers or servicers to act promptly. Instead, it may have incentivized borrowers and servicers to delay any communications because it would have imposed a foreclosure restriction that applied regardless of the specific circumstances.

Inaccurate Assumptions. A number of commenters challenged the Bureau's stated assumptions underlying the proposed special pre-foreclosure review period and argued that the proposed special pre-foreclosure review period is unnecessary. For example, a number of industry and individual commenters argued that the Bureau was wrong to assume that there will be a wave of consumers seeking loss mitigation later this year. They argued that the number of borrowers who need loss mitigation assistance later this year will be much smaller than the Bureau predicted because the economy is improving, borrowers have already begun exiting forbearance,[114] and borrowers who can no longer afford their homes can avoid foreclosure by selling their homes because most borrowers have equity in their homes.[115] One industry commenter cited a recent report indicating that the rate of foreclosures over the next two years is expected to be consistent with the historical average.

Some commenters also argued that it was wrong to assume that servicers will experience capacity issues. For example, an industry commenter argued that most borrowers who may exit forbearance this fall will not require significant servicer resources because they will qualify for a loss mitigation option that requires few servicer resources, such as a payment deferral or streamlined loan modification. That commenter also argued that, to the extent any capacity concerns exist, they relate to servicers' ability to implement and communicate changing regulatory and investor requirements, and not to volume. The commenter stated that the proposal would heighten that concern.

A number of commenters, including consumer advocate commenters, industry commenters, and individuals, argued that it was wrong to assume that the special pre-foreclosure review period would encourage or facilitate loss mitigation review. They generally argued that the proposal was nothing more than an extended foreclosure moratorium because it would prevent servicers from making the first notice or filing without imposing any affirmative loss mitigation review requirements, and that such an intervention would do nothing more than delay, rather than prevent, any increased foreclosure activity. One of these industry commenters also argued that the proposal would do nothing to resolve borrower confusion concerns or to prompt communications and would instead cause borrowers to further delay contacting their servicers.

Because they believe the Bureau's assumptions are wrong, several commenters argued that the proposed intervention would not help borrowers and could harm them. Some commenters argued that the proposal would be unhelpful because servicers must already comply with current investor, Federal law, and State law requirements that would render any potential protections created by the rule irrelevant. Some commenters argued that the proposal would harm borrowers by, for example, allowing the borrower's past due debt to accumulate and artificially delay opportunities to exit while home prices are elevated. Other commenters, who argued that the proposal essentially extends the moratorium for all borrowers to a date certain, expressed concern that this approach could harm borrowers, especially borrowers with pre-pandemic delinquencies, by leaving them with no exit strategy. For example, an industry commenter argued that 18 months is the practical limit of the beneficial effect of forbearance and stated that payment deferrals and streamlined loan modifications may not be available to borrowers who have longer delinquencies. Others expressed concern that the proposal could make bankruptcy and loan modification less likely if the size of the borrower's default becomes unmanageable.

An industry commenter argued that the Bureau was wrong to assume that borrowers will incur unnecessary fees, stating that fees associated with an erroneous foreclosure referral are not recoverable from the borrower.

The Bureau acknowledges that it is impossible to predict what will occur later this year, and thus, it is possible that some of the Bureau's assumptions will prove to be inaccurate. However, available data show that servicers could be faced with potentially unprecedented volumes of loss mitigation activity later this fall when approximately 900,000 borrowers could become eligible for foreclosure referral at around the same time. Some of these borrowers will likely exit forbearance before September 1, and many may opt into payment deferrals or streamlined loan modifications that are less resource intensive than full loss mitigation evaluations. However, servicers will likely still need to process a high volume of borrowers in the fall to determine eligibility for these streamlined options and to otherwise assist with related issues, potentially straining servicer resources. Further, even if most borrowers take advantage of streamlined options, borrowers needing additional assistance, including through a full evaluation based on a complete loss mitigation application, could still be significant. And, while many affected borrowers are likely to have equity in their homes, considerable servicer resources may be necessary in the fall to assist borrowers in assessing whether selling their home is their best available, or preferred, option. Foreclosure referral could limit those borrowers' options and frustrate those borrowers' ability to pursue foreclosure alternatives. As a result, and as discussed in more detail in the proposal, servicers are likely to nevertheless face capacity constraints that could increase error rates.

Further, because of unique circumstances created by the pandemic, borrowers may be delayed in seeking loss mitigation assistance and may face obstacles that delay their efforts, which will increase the likelihood that a surge of borrowers will need assistance during this critical period. For example, as discussed in more detail in the proposal, borrowers may have received outdated or incorrect information that delays their requests for loss mitigation options, or they may have deferred

[114] An industry commenter argued that 25 percent of the loans included in the Bureau's assumptions will not qualify for the six-month extension of forbearance (for a maximum of 18 months) because they are not government agency or GSE loans, and that servicers have already begun reaching out to those borrowers.

[115] Commenters generally made broad statements that the housing prices have been increasing, although some pointed to specific statistics. For example, an industry commenter cited a report indicating that 80 percent of homes have at least 20 percent equity.

consideration of their long-term ability to meet their monthly mortgage payment obligations in favor of short-term needs concerning health, childcare, and lost wages. Many borrowers also may not have taken steps to address their delinquency because they expected that the foreclosure moratoria would be extended again or that they would have another the opportunity to extend their forbearance. The Bureau believes that such expectations are understandable given repeated extensions of the same throughout the current economic and health crisis.

As some commenters emphasized, if these obstacles prevent borrowers from having a meaningful opportunity to pursue foreclosure alternatives before foreclosure referral, the harm could be severe.

The Bureau acknowledges that the proposed special pre-foreclosure review period was not sufficiently targeted to address the need for procedural safeguards in light of the scope of the anticipated wave of loss mitigation applications, and could harm borrowers if, for example, the review period were to cause borrowers to delay communicating with their servicers about foreclosure avoidance options, and the borrowers' delay in seeking foreclosure avoidance options causes borrowers to lose eligibility for a foreclosure alternative or to incur additional costs. Further, the Bureau is persuaded by comments that, if a broad swath of borrowers all simply delay seeking foreclosure avoidance options, an even larger number of borrowers may become eligible for foreclosure referral at around the same time. To address these concerns, the Bureau is finalizing narrower temporary loss mitigation procedural safeguards that the Bureau believes will facilitate and encourage loss mitigation reviews while reducing the risk of servicer errors that cause borrower harm in light of the anticipated wave of loss imitation-related default servicing activity and obstacles facing consumers discussed above. See the section-by-section analysis of § 1024.41(f)(3)(i) through (iii) for additional discussion.

Moral Hazards and Market Effects. Many commenters, including individuals and industry commenters, expressed concern that the proposed special pre-foreclosure review period would harm the housing or mortgage markets by driving up housing prices and reducing the availability of credit, which could harm first time homebuyers and renters who may be priced out of the market. At least one commenter expressed concern that these issues could widen the racial wealth gap. Others argued that, because most borrowers have equity, the proposal and the effects it would cause on the housing market are unjustified. Relatedly, a number of individual commenters expressed concern that the proposal would create moral hazards and would be inequitable. For example, some commenters expressed concern that the proposal would incentivize borrowers who were not suffering a financial hardship to skip payments or not bring their mortgage loan obligations current while servicers were prohibited from making the first notice or filing, while at the same time first time home buyers could be prevented from purchasing a home because of rising prices. They also expressed concern that borrowers would be allowed to live in their homes for free for many years because the court system could be backed up when foreclosures are eventually allowed to proceed.

An industry commenter expressed concern that the proposal would further reduce credit availability, particularly for borrowers with less-than-perfect credit. The commenter argued that the private label securities market is capable of providing safe and responsible access to credit to those borrowers, but may be more hesitant to do so if they are subject to strict restrictions and are left without support relative to the support that other markets receive.

While the Bureau appreciates markets and moral hazard concerns, the Bureau believes that the final rule, as revised from the proposal, will mitigate these concerns. Although it is possible that the final rule could affect housing markets, housing markets could also be affected if the Bureau does not finalize consumer protections because the circumstances could lead to an upsurge of foreclosures that could have otherwise been avoided, which would in turn affect housing prices. It is also true that a small number of borrowers may take advantage of the procedural safeguards under the final rule even if they could resume payments without assistance, but the Bureau is not aware of any evidence indicating that a significant number of borrowers would do so. Using data from 2012 to 2015, which may not be directly comparable to the current economic crisis, recent economic research finds that adverse events were a necessary condition for 97 percent of mortgage defaults, and not solely because borrowers were underwater. This research suggests that moral hazard concerns have generally been overstated in the past.[116] Further, the final rule should reduce this risk because the final rule will only limit a servicer's ability to proceed with the first notice or filing in limited circumstances. Finally, while the final rule will impose costs on servicers, the protections are narrowly tailored and apply for a limited period of time. Thus, costs should be minimized compared to the proposal and they are unlikely to majorly contribute to credit access concerns. For these reasons, the Bureau does not believe that these issues present a significant concern that would justify curtailing consumer protections.

Servicer liquidity concerns. Several industry commenters expressed concern that the proposed special pre-foreclosure review period could cause a strain on servicer liquidity. For example, an industry commenter noted that some servicers have already experienced strain in connection with the lengthy forbearances and stated that the proposal could deepen that strain. The commenter explained that, while updates to GSE policies mitigated some liquidity concerns, servicers would be required to continue advancing payment for escrow items and other costs, which could cause additional strains. The Bureau appreciates these concerns. However, as discussed herein, the Bureau is finalizing a more targeted, narrower intervention that should mitigate these concerns because it is limited in duration and scope, such that it will not delay a servicer from making the first notice or filing except in certain circumstances for a brief period of time.

Legal authority. Several industry commenters questioned the Bureau's legal authority for the proposed special pre-foreclosure review period, arguing, among other things, that the Bureau lacks legal authority under RESPA for the broad intervention proposed.[117] A few of these industry commenters further stated that, if the Bureau moved forward with the intervention, it would be appropriate to narrow it to include several exceptions, including for nonresponsive borrowers or borrowers

[116] *See* Peter Ganong & Pascal Noel, *Why Do Borrowers Default on Mortgages? A New Method for Causal Distribution,* (Becker Friedman Inst., Working Paper No. 2020–100, 2020), *https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_2020100.pdf.*

[117] Several commenters also stated that the proposed pre-foreclosure review period raised constitutional concerns, including under the First Amendment and Article I, Section 10, Clause 1 (the Contract Clause). The Bureau has considered these arguments and concludes that the proposed pre-foreclosure review intervention and the final rule's procedural safeguards are fully consistent with constitutional requirements. The Bureau further believes that the final rule adequately addresses commenters' underlying equitable concerns.

that would not qualify for loss mitigation options.

As described in Part IV (Legal Authority), Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. The consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers prevent avoidable costs and fees, and facilitating review for foreclosure avoidance options. Section 6(k)(1) of RESPA specifically prohibits servicers from, among other items, failing to take timely action to respond to borrower requests to correct errors.[118]

The Bureau's temporary special COVID–19 loss mitigation procedural safeguards are intended to achieve these RESPA consumer protection purposes, including providing procedural protections to help ensure that consumers (1) are appropriately evaluated for foreclosure avoidance options in light of an anticipated wave of loss mitigation applications causing servicer capacity constraints and (2) do not incur the potential unnecessary costs and fees associated with foreclosures that can be avoided. The temporary special COVID–19 loss mitigation procedural safeguards are also intended to minimize the potential wave of borrowers who may seek loss mitigation at the same time, which could result in increased servicer errors or an inability by servicers to take timely action to respond to borrowers requests to correct errors.

Further, as described below, under the section-by-section analyses of § 1024.41(f)(3)(ii)(A) through (C), the Bureau's targeted loss mitigation procedural safeguards will enable servicers to move forward with foreclosure if the property securing the mortgage loan is abandoned under State or municipal law, and in circumstances where a borrower is unresponsive or does not qualify for loss mitigation options. The Bureau believes these new procedural safeguards respond to comments that the original proposal may have been overly broad and better ensure that the rule is tailored to preventing avoidable foreclosures.

Time Period Covered. The proposed special pre-foreclosure review period would have ended on a date certain, meaning that it would have applied from the effective date of the rule through December 31, 2021. Some commenters expressing concern about the proposed special pre-foreclosure review period argued, for example, that it would provide limited protection to a small subset of borrowers who become eligible for foreclosure referral between the effective date of the rule and December 31, 2021. These commenters expressed concern that that this could incentivize foreclosure referral before the rule becomes effective, and that it would not provide protections for borrowers exiting forbearance just before, or after, December 31, 2021.

The Bureau believes the approach under final § 1024.41(f)(3) is better tailored than the proposed approach to facilitate loss mitigation review. However, the Bureau concludes that final § 1024.41(f)(3), like the proposed special pre-foreclosure review period, should apply only for a limited period of time. As described more in the section-by-section analysis of § 1024.41(f)(3)(iii), final § 1024.41(f)(3) will apply during the same period of time that would have been covered by the proposed special pre-foreclosure review period, *i.e.,* from the effective date of the rule through December 31, 2021. While this is a very short period of time, and some borrowers experiencing COVID–19-related hardships will likely be exiting forbearance or remain delinquent long after December 31, 2021, the Bureau believes that this is the critical period of time when current rules may be insufficient because servicers are most likely to suffer capacity issues, which could also exacerbate concerns that borrowers could face obstacles to pursuing loss mitigation options during that period. The Bureau expects that servicers will have fewer capacity concerns before August 31, 2021, and after December 31, 2021, because the volume of borrowers seeking loss mitigation assistance during those timeframes should be more staggered and much lower. While there may be some risk of servicers rushing to foreclose on those loans subject to the Bureau's final temporary procedural safeguards, based on its expertise and experience in the mortgage servicing markets, the Bureau believes that servicers are more likely to prioritize soliciting borrowers for loss mitigation during the few week gap between the anticipated end of nationwide foreclosure moratoria and the effective date of the Bureau's rule. Commenters offered no evidence to suggest otherwise, much less that any such foreclosure filings will be prompted by the Bureau's own rule. The Bureau also notes that existing regulatory requirements, including Regulation X, prohibitions against unfair, deceptive, or abusive practices, and State law, apply to borrowers who become eligible for foreclosure referral before August 31, 2021, or after December 31, 2021. The Bureau intends to use the full scope of its supervision and enforcement authority to ensure that servicers comply with those existing requirements.

Potential Exceptions. As noted above, the Bureau sought comment on whether, if it adopted a date certain approach, it should add exceptions that would allow a servicer to make the first notice or filing before December 31 (the ''date certain approach with exceptions'' approach). The Bureau solicited comment on possible exceptions where the servicer (1) completed a loss mitigation review of the borrower and the borrower was not eligible for any non-foreclosure option or (2) made certain efforts to contact the borrower and the borrower did not respond to the servicer's outreach. Many industry commenters supported finalizing a date certain approach with exceptions (or preferred it over the proposed approach or other alternatives). These commenters argued, for example, that adding exceptions would ensure that the final rule protects borrowers who need it while allowing foreclosure to proceed where additional time is unlikely to help the borrower or the servicer.

A number of consumer advocates and some industry commenters opposed adding exceptions to the date certain approach. These commenters expressed concern that, for example, the exceptions would swallow the rule, would fail to provide appropriate protections to communities of color, or would increase the likelihood of servicer error and create unnecessary confusion without adding any benefits.

After considering these comments and the general comments summarized above, the Bureau believes that allowing servicers to make the first notice or filing in certain circumstances is important both for purposes of consumer protection and for the proper functioning of the market. As discussed in detail below and in the section-by-section analysis of § 1024.41(f)(3)(ii) through (iii), to address these concerns, the Bureau is not finalizing the special pre-foreclosure review period as proposed and is instead finalizing a more tailored procedural safeguards approach to minimize avoidable foreclosures in light of a potential wave

[118] 12 U.S.C. 2605(k)(1).

of loss mitigation applications. The Bureau believes that the approach taken in final § 1024.41(f)(3) should help encourage borrowers and servicers to work together to pursue foreclosure alternatives while allowing servicers to make the first notice or filing if the servicer has given the borrower a meaningful opportunity to pursue loss mitigation options or additional time is unlikely to result in foreclosure avoidance.

Unresponsive Borrower. The Bureau specifically sought comment on whether to include a potential exception if the servicer has exercised reasonable diligence to contact the borrower and has been unable to reach the borrower (''unresponsive borrower exception''). A number of industry commenters supported an unresponsive borrower exception. These commenters explained that there is always a population of borrowers who will not respond to servicer outreach until after foreclosure referral occurs, at which point the referral will prompt the borrower to reach out to their servicer and explore foreclosure alternatives. Some commenters also expressed concern that prohibiting foreclosure referral in these circumstances could unintentionally create a larger wave of foreclosures later because the delinquent amounts will continue to accrue, and borrowers may lose their ability to obtain a foreclosure alternative.

A group of consumer advocate commenters expressed concern that an exception for unresponsive borrowers would encourage less rigorous and less effective servicer outreach. A State elected official expressed opposition to the exception and noted that the pandemic has created unique burdens that could increase the likelihood that a borrower is unresponsive over a short period of time, such as hospitalization of the borrower or a family member or additional caregiving responsibilities.

Commenters offered various ideas related to the scope and framing of an unresponsive borrower exception, including suggestions on what types of outreach should qualify, the timeframe for such outreach, and when a borrower should be considered unresponsive.

After considering these comments, the Bureau concludes that further delaying servicers from making the first notice or filing for delinquent borrowers who are unresponsive could harm both the delinquent borrower and the broader housing market. As explained in the section-by-section analysis of § 1024.41(f)(3)(ii)(C) below, the Bureau is finalizing temporary special COVID–19 loss mitigation procedural safeguards that should help ensure servicers will not be prohibited from making the first notice or filing in these situations.

Completed Loss Mitigation Application Exception. The Bureau also specifically sought comment on whether to include an exception if the servicer has completed a loss mitigation review of the borrower and the borrower is not eligible for any non-foreclosure option or the borrower has declined all available options (the ''completed loss mitigation application exception''). A number of industry commenters supported this type of exception. These commenters explained that a completed loss mitigation application exception would ensure that servicers focus their limited resources on borrowers who are eligible for loss mitigation options and who express an interest in home retention, while allowing borrowers for whom foreclosure is the best option to proceed without unnecessarily stripping their equity. An industry commenter expressed its belief that such an exception would allow foreclosure referral to occur for a small subset of borrowers without increasing borrower harm to the extent that it would outweigh other concerns, such as the proper functioning of the housing market. This commenter also noted that borrowers may become eligible for State assistance after foreclosure referral, including certain mediation and loss mitigation programs, which the commenter stated are highly successful and may lead to better results for the borrower. Another industry commenter expressed support for this type of exception, noting that it has seen dramatic declines in bankruptcy filings and that it is concerned that continuing to delay foreclosure for borrowers that have already been evaluated for non-bankruptcy alternative will lessen the likelihood of successful bankruptcy reorganization. This commenter explained that a successful bankruptcy reorganization is much more likely if it occurs before large arrearages have accumulated.

Commenters who opposed a completed loss mitigation application exception argued, for example, that a borrower's financial situation may rapidly change, and that the borrower should not be denied a second chance at loss mitigation. A group of consumer advocate commenters expressed concern that the exception would allow servicers to proceed with foreclosure referral before the borrower has a full opportunity to be considered for loss mitigation options.

Commenters also offered various ideas relating to the scope of any complete loss mitigation application exception that largely revolved around limiting the exception based on the date the review occurred.

After considering these comments, the Bureau concludes that further delaying servicers from making the first notice or filing if the servicer has already determined that the borrower does not qualify for a non-foreclosure alternative is unlikely to help borrowers or servicers. As explained in the section-by-section analysis of § 1024.41(f)(3)(ii)(A) below, the Bureau is finalizing temporary special COVID–19 loss mitigation procedural safeguards that should help ensure servicers that servicers are permitted to make the first notice or filing in these situations.

Additional Exceptions. Commenters proposed a number of additional exceptions that they believed would allow servicers to proceed with foreclosure referral without significantly harming borrowers. For example, some commenters, including consumer advocate commenters, urged the Bureau to require servicers to offer specific loss mitigation options before referral. An industry commenter suggested allowing foreclosure to proceed if the borrower has not entered into a forbearance plan or loss mitigation process. Another industry commenter suggested adding an exception for servicers who have followed program loss mitigation requirements for agency or GSE loans. The Bureau declines to adopt the additional exceptions suggested by commenters and is instead finalizing temporary special COVID–19 loss mitigation procedural safeguards, as discussed below. Among other reasons, the Bureau believes that incorporating additional ideas offered by commenters would add complexity and costs. The Bureau believes its revised approach strikes the right balance of ensuring borrowers have a meaningful opportunity to pursue foreclosure alternatives while allowing servicers to proceed with foreclosure referral when additional time is unlikely to aid in that goal.

Potential Alternative Approaches. The Bureau solicited comment on several alternatives to the proposed special pre-foreclosure review period, including imposing a ''grace period'' within which servicers could not make the first notice or filing for a certain number of days after the borrower exited forbearance, keying the special pre-foreclosure review period to the length of the borrower's delinquency, or ending the special pre-foreclosure review period on a date that is based on when a borrower's delinquency begins or forbearance period ends, whichever occurs last.

Most consumer advocates preferred a grace period approach to the proposed date certain approach, and at least one industry commenter supported it. Commenters who preferred the grace period approach generally believed that it would give most COVID–19-affected borrowers time to find an affordable solution without swamping servicers with a single date on which foreclosure referrals may begin because it would continue to apply after December 31, 2021. These commenters argued that it takes significant time and effort to move borrowers from a forbearance plan to a sustainable permanent solution.

Few commenters addressed other alternatives, although at least one consumer advocate commenter expressed support for an alternative approach that would apply a pre-foreclosure review period based on the later of the date the borrower's delinquency begins or forbearance period ends. However, another consumer advocate commenter opposed that approach because they were concerned that it provided the weakest protections to borrowers who need it most. Another commenter urged the Bureau to develop a solution that would focus on making contact with the borrower and determining which foreclosures can be avoided, and that the Bureau should provide a soft landing for borrowers who cannot avoid foreclosure.

A few commenters suggested applying a different date certain for various reasons. At least one commenter suggested applying a more flexible date certain that is tied to the last-announced forbearance extensions.

A number of commenters, including individual, consumer advocate, and industry commenters, suggested the Bureau consider different alternatives that were not specifically discussed in the proposed rule, such as implementing the California Homeowner's Bill of Rights, prohibiting foreclosure referral until the later of a date certain or 120 days after forbearance, funding additional outreach to borrowers, or requiring servicers to offer specific loss mitigation options.

The Bureau declines to adopt one of the alternatives suggested by commenters and is instead finalizing temporary special COVID–19 loss mitigation procedural safeguards, as discussed below. Although the Bureau agrees that a grace period approach would offer some advantages, it also has several disadvantages. For example, it would impose restrictions for a longer period of time, well beyond the critical period this fall identified by the Bureau, and would leave some borrowers unprotected during the period of time when the Bureau finds intervention is most needed to help ensure borrowers have a meaningful opportunity to pursue foreclosure avoidance options consistent with the purposes of RESPA. The Bureau believes that final § 1024.41(f)(3), which imposes procedural safeguards for the narrow period of time through the end of 2021 when a borrower's ability to pursue foreclosure avoidance options is most likely to be frustrated, is more appropriately tailored to facilitate loss mitigation review during the period of time when existing requirements may be insufficient. As noted herein, the Bureau intends to use the full scope of its supervision and enforcement authority to ensure that servicers comply with existing requirements.

Scope. Under the proposed rule, the special pre-foreclosure review period would have applied to all delinquent loans that are secured by the borrower's principal residence, regardless of when the first delinquency occurred. The Bureau sought comment on whether this category of loans was the appropriate scope of coverage for the proposed special pre-foreclosure review period. Many commenters addressed this question. Some commenters urged the Bureau to adopt a broader scope, while others asked that the scope be narrowed.

For example, some commenters, including consumer advocate commenters, argued that any final rule should apply to borrowers with pre-pandemic delinquencies. These commenters generally argued that borrowers whose delinquencies began before the pandemic are among the most vulnerable because borrowers with longer delinquencies are more likely to need additional assistance from their servicers. In contrast, others, including individuals, industry commenters, and other consumer advocate commenters, argued that the scope should be limited based on the timing of delinquency. These commenters argued, for example, that loans that first became delinquent before the pandemic are unlikely to benefit from an additional delay in foreclosure referral. Some commenters also argued that limiting any foreclosure restriction based on when the mortgage loan became delinquent would ensure the rule is tailored to COVID–19-related delinquencies. These commenters suggested various cutoffs, such as excluding loans that became delinquent before March 1, 2020, that became 120 days delinquent before March 1, 2020, or that had already been referred to foreclosure before March 1, 2020.

Some commenters suggested limiting the scope based on the cause of delinquency so that the provision only applies to borrowers who can demonstrate a financial hardship, with some suggesting an even narrower scope so that it only applies if the financial hardship is COVID–19-related. An individual commenter who indicated they were denied forbearance because they had already used forbearance in connection with a previous financial hardship asked the Bureau to ensure the final rule applies even if the borrower experienced a financial hardship in the past.

Some commenters asked the Bureau to exclude particular loans, such as loans that are not government backed, those that are government backed, loans located in States that already have special COVID–19-related rules, open-end loans, or business-purpose loans. Some commenters also discussed which entities they believe should be subject to any new foreclosure restriction adopted by the final rule. A group of consumer advocate commenters argued that the final rule should apply to small servicers, while an industry commenter and an individual argued that the final rule should exempt small lenders and servicers.

After considering all of the comments addressing the scope of the proposed special pre-foreclosure review period, the Bureau is limiting the scope of the new temporary special COVID–19 loss mitigation procedural safeguards to apply only to mortgages that became more than 120 days delinquent on or after March 1, 2020. Thus, the procedural safeguards are not applicable for a mortgage that became more than 120 days delinquent prior to March 1, 2020, and a servicer may make the first notice or filing before January 1, 2022, without ensuring a procedural safeguard has been met in those circumstances. The Bureau believes this narrowly tailored approach will address a number of concerns raised by commenters without imposing overly burdensome requirements on servicers that could prove impossible to implement by the effective date of the final rule. For example, the Bureau concludes that the final rule should focus on providing relief to borrowers who became severely delinquent near the beginning of the COVID–19 pandemic or after it began. These borrowers are the least likely to have already meaningfully pursued foreclosure alternatives and are the most likely to have suffered a sudden but temporary financial strain and they may have obtained temporary relief, such as forbearance, without understanding the effects of the relief. Final § 1024.41(f)(3)

targets these borrowers because it only applies to mortgage loans that became more than 120 days delinquent after March 1, 2020. Borrowers who became more than 120 days delinquent before that date almost certainly became delinquent for reasons unrelated to the pandemic, and they should have been given a meaningful opportunity under then existing requirements to pursue foreclosure avoidance options before the pandemic began. These borrowers are more likely to have already discussed foreclosure avoidance options with their servicers. This approach is consistent with existing § 1024.41(f)(1)(i), which provides a 120-day period to ensure a borrower has a meaningful opportunity to pursue foreclosure avoidance options. The Bureau chose March 1, 2020, to help ensure that borrowers who became eligible for foreclosure referral just prior to the date on which the COVID–19 national emergency was declared, who are less likely to have been given a meaningful opportunity to pursue foreclosure avoidance options during the first 120 days of their delinquency, are also given procedural safeguards provided by the final rule.

The Bureau believes that requiring servicers to determine the cause of the delinquency would add complexity during a period when servicer capacity may already be strained. Limiting the rule to permit servicers to proceed with foreclosure referral for borrowers with serious delinquencies before the pandemic without applying the temporary special COVID–19 loss mitigation procedural safeguards for those borrowers should generally achieve the same goal while placing less strain on servicers because they already track the delinquency date for every loan.

Foreclosure Restarts. Several commenters, including law firms, trade associations, and a government commenter, asked the Bureau to clarify that the special pre-foreclosure review period does not apply to loans that have already been referred to foreclosure, regardless of whether the foreclosure must be ''restarted.'' ''Restarts'' should not be an issue under the final rule because the scope of the new temporary special COVID–19 loss mitigation procedural safeguards is limited to mortgage loan obligations that became more than 120 days delinquent after March 1, 2020. Shortly thereafter, beginning on March 18, 2020, a foreclosure moratorium was imposed on most mortgages that prohibited certain foreclosure activities, including making the first notice or filing. Thus, the servicer is unlikely to have made the first notice or filing in connection with these mortgage loans.

Statute of Limitations. At least two commenters urged the Bureau to adopt an additional exception that would permit a servicer to make the first notice or filing if the foreclosure statute of limitations will expire during the period covered by the rule. One industry commenter, for example, expressed concern that any Federal prohibition on making the first notice or filing would not toll the statute of limitations and would permanently prevent the servicer from foreclosing on the property. The Bureau is persuaded that the final rule should not prohibit a servicer from making the first notice or filing if the applicable foreclosure statute of limitations will expire during the period of time covered by the rule.

Vacant and Abandoned Properties. A number of commenters, including industry and consumer advocates, urged the Bureau to clarify the extent to which any foreclosure restriction adopted in the final rule applies to abandoned properties, vacant properties, unoccupied properties, and properties with trespassers or squatters. Several urged the Bureau to specifically exempt these properties from any foreclosure restriction that the Bureau adopts and asked the Bureau to define these terms or otherwise provide guidance on how to determine that a property is the borrower's principal residence. Commenters explained that the lack of clarity around this issue could prevent servicers from making the first notice or filing even though the borrowers likely no longer have any interest in retaining the property and the condition of the property could negatively affect surrounding properties and communities. However, at least one commenter urged caution, expressing concern that servicers may incorrectly conclude that a property is vacant or abandoned, which is a particular concern during the pandemic because borrowers or their family members may have spent significant time away from their properties. Commenters offered several specific solutions, including proposed definitions of abandoned property.

The Bureau appreciates these concerns and has considered similar issues in prior rulemakings.[119] The Bureau declines to establish general definitions that would apply broadly to Regulation X in this rulemaking. However, the Bureau concludes that additional clarity for purposes of this rulemaking is important to address heightened concerns that numerous properties may have been abandoned during the extended foreclosure moratorium [120] and to ensure that servicers may make the first notice or filing without further delay when a property has been abandoned. Thus, the Bureau's final temporary special COVID–19 loss mitigation procedural safeguards will expressly permit a servicer to make the first notice or filing before January 1, 2022, if the property is abandoned under the laws of the State or municipality where the property is located. This is not intended to more broadly define abandoned property or principal residence for purposes of Regulation X. Further, a servicer continues to have flexibility to determine that a property is not the borrower's principal residence for different reasons, including because it used a different method to determine that the property is abandoned or because the State or municipality in which the property is located does not define abandoned property. However, if a servicer incorrectly applies State or municipal law and makes the first notice or filing on a property that is not abandoned under the laws of the State or municipality in which the property is located, the servicer will have failed to satisfy the procedural safeguard in § 1024.41(f)(3)(ii)(B) and may have violated Regulation X, as well as other applicable law.

This final rule does not address other issues raised in the comments, such as what actions the servicer may take when a property is vacant or occupied by squatters or trespassers. The Bureau considers these issues beyond the scope of this rulemaking, which was not undertaken to clarify the scope of actions servicers may take to address such a vacant or occupied property under the Regulation X servicing provisions. Servicers should determine whether the property is the borrower's principal residence in those circumstances consistent with existing requirements.

Definition of First Notice or Filing. A few commenters, including industry, trade associations and consumer advocates, asked the Bureau to clarify whether sending certain State-mandated disclosures to borrowers, such as notices that are commonly called

[119] 78 FR 60381, 60406–07 (Oct. 1, 2013); 81 FR 72160, 72913, 72915 (Oct. 19, 2016).

[120] Commenters did not provide data on this issue. The proposed rule noted that, of the homes in the foreclosure process, only approximately 3.8 percent are currently abandoned. Even if the number of abandoned properties in the foreclosure process is small compared to the total volume of properties in foreclosure, the Bureau appreciates that the number of abandoned properties may have grown, and that clarity is needed for purposes of this rulemaking.

''breach notices,'' would be considered making the first notice or filing and thus prohibited during the proposed special pre-foreclosure review period. These commenters asserted that these State-mandated disclosures have proven to be an effective tool to encourage borrowers to seek foreclosure alternatives. The Bureau does not believe additional clarity is needed to address this issue because current comment 41(f)–1 provides guidance on what documents are considered the first notice or filing for purposes of § 1024.41(f). As noted in that comment, whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law. Thus, certain State-mandated documents might be considered the first notice or filing and some might not. To the extent State-mandated documents, such as breach notices or acceleration notices are not the first notice or filing, nothing in this rule prevents servicers from sending them.

Final Rule

For the reasons stated herein, and after considering all of the comments, the Bureau is not finalizing the proposed special pre-foreclosure review period as proposed and is instead finalizing temporary special COVID–19 loss mitigation procedural safeguards at § 1024.41(f)(3). Final § 1024.41(f)(3) requires a servicer to give a borrower a meaningful opportunity to pursue loss mitigation options by ensuring that one of three procedural safeguards has been met before making the first notice or filing because of a delinquency: (1) The borrower submitted a completed loss mitigation application and § 1024.41(f)(2) permits the servicer to make the first notice or filing; (2) the property securing the mortgage loan is abandoned under State or municipal law; or (3) the servicer has conducted specified outreach and the borrower is unresponsive. The temporary procedural safeguards are applicable only if (1) the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020 and (2) the statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022. In addition, the temporary procedural safeguards will expire on January 1, 2022, meaning that the procedural safeguards are not applicable if a servicer makes the of the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process before the effective date of the rule or on or after January 1, 2022.

Small servicers. Like the proposal, final § 1024.41(f)(3) does not apply to small servicers. This is because small servicers are exempt from the requirements in § 1024.41, except with respect to § 1024.41(f)(1).[121] The final rule's temporary procedural safeguards are in § 1024.41(f)(3) and not § 1024.41(f)(1).

Record retention. The Bureau is also adding new comment 41(f)(3)–1 to clarify record retention requirements for § 1024.41(f)(3). It provides that, as required by § 1024.38(c)(1), a servicer shall maintain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer. It clarifies that, if the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process before January 1, 2022, these records must include evidence demonstrating compliance with § 1024.41(f)(3), including, if applicable, evidence that the servicer satisfied one of the procedural safeguard requirements described in § 1024.41(3)(ii). It also provides examples of information and documents required to be retained, depending on the procedural safeguard on which the servicer relies to make the first notice or filing while § 1024.41(f)(3) is in effect.

The temporary procedural safeguards provisions consist of three parts in § 1024.41(f)(3)(i) through (iii) described more fully below. Section 1024.41(f)(3)(i) describes the general rule requiring a servicer to ensure that one of the procedural safeguards is met for certain loans before making a foreclosure referral and the scope of its coverage. Section 1024.41(f)(3)(ii) describes when a procedural safeguard is met for purposes of § 1024.41(f)(3)(i). Section 1024.41(f)(3)(iii) provides a sunset date after which the temporary special COVID–19 loss mitigation procedural safeguards no longer apply.

41(f)(3)(i) In General

As noted above, the Bureau proposed to add new § 1024.41(f)(3) that would have imposed a special pre-foreclosure review period on certain mortgage loans and would have provided that a servicer shall not rely on paragraph (f)(1)(i) to make the first notice or filing until after December 31, 2021.

The Bureau received numerous comments on proposed § 1024.41(f)(3), discussed above in the section-by-section analysis of § 1024.41(f)(3). For the reasons discussed in the section-by-section analysis of § 1024.41(f)(3), the Bureau is not finalizing proposed § 1024.41(f)(3), and is, instead, adopting new § 1024.41(f)(3) to establish new temporary special COVID–19 loss mitigation procedural safeguards.

Final § 1024.41(f)(3)(i) provides that, to give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one of the procedural safeguards described in § 1024.41(f)(3)(ii) has been met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency under paragraph (f)(1)(i) if: (A) The borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and (B) the applicable statute of limitations will expire on or after January 1, 2022. Both of these elements must be met, and § 1024.41(f)(3) must be in effect prior to the sunset date, for the procedural safeguards to be applicable. See the section-by-section analysis of § 1024.41(f)(3)(iii) for discussion of when § 1024.41(f)(3) will be in effect.

As discussed more fully in part II, most borrowers with loans in forbearance programs as of the publication of this final rule are expected to reach the maximum term of 18 months in forbearance available for federally backed mortgage loans between September and November of this year and will likely be required to exit their forbearance program at that time. These expirations could trigger a sudden and sharp increase in loss mitigation-related default servicing activity at around the same time. Many of these borrowers may become immediately eligible for foreclosure referral even though, in light of unique circumstances created by the pandemic, they have not yet pursued or been reviewed for available loss mitigation options. Thus, without regulatory intervention, servicers may make the first notice or filing before those borrowers have had a meaningful opportunity to pursue foreclosure avoidance options. As explained in more detail in the proposed rule and in part II above, this could occur because the expected surge in borrowers seeking loss mitigation assistance later this year could trigger servicer errors that lead to improper foreclosure referrals. This also could occur because borrowers who may have been confused about protections available, or who may have been unable to seek loss mitigation

[121] 2013 RESPA Servicing Final Rule, *supra* note 11, at 10843.

options because of issues related to the COVID–19 pandemic, may not have adequate time before foreclosure referral to understand their options and pursue them. If borrowers do not have sufficient time before foreclosure referral to pursue foreclosure avoidance options, borrowers could suffer harms similar to the harms that the 2013 RESPA Servicing Final Rule originally sought to address in § 1024.41(f) and that cannot be adequately remediated after the fact including, among other things, harms from dual tracking, such as unwarranted or unnecessary costs and fees.

Although current Regulation X, State laws, and investor requirements already impose obligations on servicers that help to ensure borrowers have a meaningful opportunity to pursue foreclosure avoidance options, the Bureau believes that these existing requirements are likely to be insufficient as a result of this unprecedented COVID–19 emergency when a surge of borrowers who were in extended forbearance programs and may have been experiencing unprecedented hardship due to the COVID–19 emergency, are likely to be seeking loss mitigation assistance between September 1 and December 31, 2021. For the reasons discussed herein, including in the section-by-section analysis of § 1024.41(f)(3), the Bureau concludes that the proposed special pre-foreclosure review period would not have sufficiently addressed these concerns. The proposed special pre-foreclosure review period would have imposed a restriction on making the first notice or filing, regardless of the borrower's specific situation, and it would not have provided any incentives for borrowers and servicers to work together to determine if a foreclosure alternative is available before its restrictions ended. As a result, the proposed special pre-foreclosure review period could have prevented servicers from making the first notice or filing in circumstances where doing so could have helped the borrower and where further delays could have potentially caused harm. Without exceptions to the proposed delay in when the first notice or filing could be made, the proposed approach could have caused borrowers and servicers to delay communications, potentially undermining the Bureau's objective to ensure borrowers receive a meaningful opportunity to pursue foreclosure avoidance options.

To address these concerns, the Bureau is now finalizing temporary special COVID–19 loss mitigation procedural safeguards, as described in more detail below and in the section-by-section analysis of § 1024.41(f)(3)(ii) through 1024.41(f)(3)(ii)(C), that balance the goal of ensuring that borrowers have a meaningful opportunity to pursue foreclosure avoidance options during the expected surge of borrowers seeking loss mitigation assistance later this year, while also recognizing that there may be circumstances where enhanced procedural safeguards are not appropriate and unlikely to accomplish RESPA's purpose of facilitating review for foreclosure avoidance options. These procedural safeguards are modeled on the stated goals of the proposed special pre-foreclosure review period and the various alternatives to that proposal on which the Bureau sought comment. However, instead of prohibiting any foreclosure referrals until a date certain without exceptions, the final rule imposes new temporary special COVID–19 loss mitigation procedural safeguards that apply only to certain mortgage loans and that generally must be satisfied before the servicer makes the first notice or filing until the sunset date of the provision. The Bureau believes these temporary procedural safeguards will provide sufficient incentives to encourage both: (1) Servicers to diligently communicate with borrowers about loss mitigation and promptly evaluate any complete loss mitigation applications; and (2) borrowers to communicate with their servicers.

The Bureau is adopting the temporary special COVID–19 loss mitigation procedural safeguards because the Bureau believes that many borrowers who may become eligible for foreclosure referral this fall may be able to avoid foreclosure if they are given a meaningful opportunity to pursue foreclosure alternatives, but they may not be given that opportunity without regulatory intervention that encourages, and allows time for, servicer outreach and borrower response. The Bureau is concerned, for example, that a surge in loss mitigation applications could make it more difficult for servicers to engage in outreach or for borrowers to contact or work with their servicers, and in some instances, that the wave could result in servicer errors. As described in more detail below, the final rule is intended to balance the goals of encouraging communication between the servicer and borrower to help ensure the borrower has a meaningful opportunity to pursue foreclosure avoidance options, while also allowing the servicer to make the first notice or filing where additional time before foreclosure referral is unlikely to achieve that goal. For example, specifying that servicers can make the first notice or filing when borrowers are unresponsive is intended to incentivize servicers to engage in outreach, which should also increase the likelihood that borrowers will to respond to servicer outreach, and work towards a foreclosure alternative, while allowing the servicer to proceed with foreclosure referral if the borrower does not respond. As another example, specifying that servicers can proceed with foreclosure when a servicer has already considered a borrower for loss mitigation and determined that the borrower does not qualify for a foreclosure alternative should encourage the servicer to promptly seek loss mitigation applications and evaluate them. Servicers could have been discouraged from engaging in outreach and borrowers may have been disincentivized from responding until foreclosure referral was imminent if the Bureau had instead finalized an intervention that delayed foreclosure referrals without any exceptions because they may have viewed earlier efforts as less likely to be productive.

Further, the Bureau believes that final § 1024.41(f)(3) will protect a borrower from servicer errors and delays that may occur during the surge this fall by ensuring that the servicer cannot make the first notice or filing while this provision is in effect if a temporary special COVID–19 loss mitigation procedural safeguard is not met. For example, if the borrower engages with the servicer but is unable to submit a complete loss mitigation application because of a servicer error or delay, the procedural safeguards would provide the borrower with additional time to submit a complete loss mitigation application because it would temporarily prevent the servicer from making the first notice or filing while this provision is in effect.

The temporary special COVID–19 loss mitigation procedural safeguards will generally prevent servicers from making the first notice or filing while this provision is in effect if the borrower and servicer are in communication, but the borrower has not exhausted their loss mitigation options. The Bureau believes that providing this additional time in cases where the servicer is evaluating the borrower for loss mitigation or is in communication with the borrower is important to protect borrowers from errors that may occur due to capacity issues.

41(f)(3)(i)(A)

Final § 1024.41(f)(3)(i) provides that, to give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one

of the procedural safeguards described in § 1024.41(f)(3)(ii) has been met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency under paragraph (f)(1)(i) if two elements are met. Final § 1024.41(f)(3)(i)(A) sets forth the first of the two elements: That the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020. This means that the temporary special COVID–19 loss mitigation procedural safeguards do not apply to mortgage loans that became more than 120 days delinquent before March 1, 2020, and a servicer may make the first notice or filing in connection with those mortgage loans without ensuring a procedural safeguard has been met, as long as all other applicable requirements are met.

As discussed in the section-by-section analysis of § 1024.41(f)(3) above, the Bureau believes that it is appropriate to apply the temporary procedural safeguards to borrowers who became severely delinquent near the beginning of the COVID–19 pandemic or after it because those borrowers are most likely to need additional time before foreclosure referral to have a meaningful opportunity to pursue foreclosure avoidance options. Although borrowers who became more than 120 days delinquent before that date may need significant help to avoid foreclosure, they are less likely to benefit from procedural safeguards for the reasons discussed above.

41(f)(3)(i)(B)

The other element under final § 1024.41(f)(3)(i) provides that the procedural safeguards are only applicable if the statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022. In other words, final § 1024.41(f)(3) does not prohibit a servicer from making the first notice or filing if the applicable statute of limitations will expire before the temporary special COVID–19 loss mitigation procedural safeguards expire. As discussed in the section-by-section analysis of § 1024.41(f)(3) above, the Bureau is adopting this element to ensure that the procedural safeguards do not permanently prevent a servicer from enforcing their rights under the security instrument and note.

41(f)(3)(ii) Procedural Safeguards

Final § 1024.41(f)(3)(ii) provides that a procedural safeguard is met if one of three specified conditions is met. As noted above, the Bureau believes these procedural safeguards will allow a servicer to make the first notice or filing where the borrower is likely to have already had a meaningful opportunity to pursue foreclosure avoidance options or would otherwise not benefit from additional time before foreclosure referral, which should also encourage borrowers and servicers to work together to pursue foreclosure avoidance options before the servicer makes the first notice or filing.

41(f)(3)(ii)(A) Completed Loss Mitigation Application Evaluated

Final § 1024.41(f)(3)(ii)(A) describes the first of the specified procedural safeguards that would allow the servicer to make the first notice or filing while the procedural safeguards are in effect. Specifically, § 1024.41(f)(3)(ii)(A) provides that the servicer has met a procedural safeguard if the borrower submitted a complete loss mitigation application, has remained delinquent at all times since submitting the application, and § 1024.41(f)(2) permits the servicer to make the first notice or filing required for foreclosure. Section 1024.41(f)(2) prohibits a servicer from making the first notice or filing if a borrower submits a complete loss mitigation application during the pre-foreclosure review period in § 1024.41(f)(1) or before the servicer has made the first notice or filing unless (1) the servicer has sent the borrower a notice required by § 1024.41(c)(1)(ii) stating that the borrower is not eligible for any loss mitigation option and the appeal process in § 1024.41(h) is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied; (2) the borrower rejects all loss mitigation options offered by the servicer; or (3) the borrower fails to perform under an agreement on a loss mitigation option.

As explained above, the Bureau believes that this provision will provide appropriate incentives for servicers to engage in meaningful outreach to solicit a completed loss mitigation application from the borrower and to promptly evaluate the application, which should in turn increase the likelihood that the borrower actively engages their servicer to discuss foreclosure alternatives. Unlike the proposed approach, final § 1024.41(f)(3) allows servicers to make the first notice or filing without delay in these circumstances, but otherwise generally prohibits the servicer from doing so unless another procedural safeguard is met or until the temporary special COVID–19 loss mitigation procedural safeguards expire.

The Bureau also believes that neither the borrower nor the servicer would benefit if the servicer were prohibited from making the first notice or filing in connection with these loans. The servicer will have determined that the borrower does not qualify for a foreclosure avoidance option, and the borrower will have submitted all required documentation to be considered for foreclosure avoidance options and exhausted all appeals to overturn the servicer's decision. Additional protections are not needed because these borrowers will have already been considered for foreclosure avoidance options. While it is possible that the borrower's financial condition could later improve, the Bureau concludes that prohibiting a servicer from making the first notice or filing in these circumstances would at best help a very small number of borrowers while adding substantial costs to servicers and potentially harming the vast majority of affected borrowers by allowing their delinquencies to continue to grow. As noted in the proposed rule, the Bureau understands that many owners or assignees of mortgage loans require servicers to consider material changes in financial circumstances in connection with evaluations of borrowers for loss mitigation options. Servicer policies and procedures must be designed to implement those requirements.[122] Thus, the servicer would be required to re-evaluate the borrower's eligibility for loss mitigation under those requirements if the borrower's financial situation later changes.

41(f)(3)(ii)(B) Abandoned Property

Final § 1024.41(f)(3)(ii)(B) describes the second specified condition that would allow the servicer to make the first notice or filing while procedural safeguards are in effect. Specifically, § 1024.41(f)(3)(ii)(B) provides that the servicer may make the first notice or filing if the property is abandoned according to the laws of the State or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process. As discussed in response to comments received in the section-by-section discussion of § 1024.41(f)(3) above, the Bureau believes that borrowers and servicers are unlikely to benefit, and could be harmed, if servicers are prohibited from making the first notice

[122] 2013 RESPA Servicing Final Rule, *supra* note 11, at 10836.

or filing in connection with abandoned properties.

Final § 1024.41(f)(3), like the rest of this final rule, only applies to mortgage loans that are secured by the borrower's principal residence. While the Bureau has previously stated that an abandoned property may no longer be a borrower's principal residence, and thus § 1024.41 generally would not apply,[123] the Bureau appreciates that servicers have difficulty in making that determination, which could pose special challenges because of the circumstances presented by the COVID–19 pandemic emergency. Thus, the Bureau is finalizing § 1024.41(f)(3)(ii)(B) to facilitate servicer's processes of determining whether a property is abandoned during the surge by expressly permitting a servicer to make the first notice or filing before January 1, 2022, if the property is abandoned under the laws of the State or municipality where the property is located.

The Bureau notes that this provision is specific to the temporary special COVID–19 loss mitigation procedural safeguards provision and is not intended to more broadly define what is considered an abandoned property or principal residence for purposes of the rest of Regulation X. Further, a servicer continues to have flexibility under Regulation X to determine that a property is not the borrower's principal residence for different reasons, including because it used a different method to determine that the property is abandoned because the State and municipality in which the property is located does not define abandoned property. However, if a servicer incorrectly applies State or municipal law and makes the first notice or filing on a property that is not abandoned under the laws of the State or municipality in which the property is located, the servicer will have failed to satisfy the procedural safeguard in § 1024.41(f)(3)(ii)(B) and may have violated Regulation X, as well as other applicable law.

41(f)(3)(ii)(C) Unresponsive Borrower

Final § 1024.41(f)(3)(ii)(C) describes the third specified procedural safeguard that would allow the servicer to make the first notice or filing while § 1024.41(f)(3) is in effect. Specifically, § 1024.41(f)(3)(ii)(C) provides that the servicer may make the first notice or filing if the servicer did not receive any communications from the borrower for at least 90 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and all of the following conditions are met: (1) The servicer made good faith efforts to establish live contact with the borrower after each payment due date, as required by § 1024.39(a), during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; (2) the servicer sent the written notice required by section 1024.39(b) at least 10 days and no more than 45 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; (3) the servicer sent all notices required by this section, as applicable, during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; and (4) the borrower's forbearance program, if applicable, ended at least 30 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

This provision is intended to allow a servicer to make the first notice or filing if the servicer has reasonably attempted to contact the borrower and the borrower has been unresponsive. This provision is modeled after the loss mitigation requirements in Regulation X to ease compliance burdens. The Bureau solicited comment on defining an unresponsive borrower based on Home Affordable Modification Program requirements, and commenters suggested several alternative approaches to defining unresponsive borrower. However, the Bureau is not finalizing any of those options due to concerns that servicers would not have sufficient time to adopt new procedures that would satisfy those alternatives or be able to track compliance with these requirements. The Bureau is concerned that servicers would be required to make significant changes to their systems and procedures to meet the standard, which could reduce the likelihood that a servicer would take advantage of it and may further overwhelm servicer capacity during this critical time. The Bureau believes it is important to design this procedure so that servicers can apply it broadly because, as commenters highlighted, the first notice or filing may serve to prompt borrowers who have been unresponsive to contact their servicers, and State programs can help to do the same.

This final rule builds on current Regulation X requirements and adds additional guardrails that are intended to ensure that the servicer has engaged in sufficient outreach when the borrower is most likely to understand and respond. In particular, this provision requires that four elements be met before a servicer can make the first notice or filing under this provision.

First, new § 1024.41(f)(3)(ii)(C)(*1*) clarifies that the servicer must make good faith efforts to establish live contact with the borrower after each payment due date, as required by § 1024.39(a), during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process. This requirement is intended to ensure that the servicer has engaged in sufficient outreach before determining that the borrower is unresponsive. A servicer can satisfy this provision based on activities that occurred before the effective date of this final rule.

Second, new § 1024.41(f)(3)(ii)(C)(*2*) requires the servicer to send the written notice required by § 1024.39(b) at least 10 days and no more than 45 days before the servicer makes the first notice or filing. Servicers are already required to provide the notice required by § 1024.39(b). This provision adds new timing requirements that are intended to ensure that the servicer has engaged in sufficient outreach during the most critical period before making the first notice or filing on the basis that the borrower is unresponsive. The Bureau believes that receipt of this notice during this period will decrease the likelihood that the borrower has not responded to servicer outreach because they do not understand the importance of communicating with their servicer.

Third, new § 1024.41(f)(3)(ii)(C)(*3*) requires the servicer to send all notices required by § 1024.41, as applicable, during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process. Applicable notices may include, for example, the notice required by § 1024.41(c)(2)(iii). The Bureau notes that this provision, as well as § 1024.41(f)(3)(ii)(C)(1) and (2), require strict compliance with all applicable provisions of § 1024.41. This includes all relevant aspects of those provisions, including the timing requirements. Thus, a servicer that has not met existing timing requirements under Regulation X during the relevant period cannot rely on § 1024.41(f)(3)(ii)(C) to make the first notice or filing while the procedural safeguards are in effect, notwithstanding the existing Joint Statement.

[123] 86 FR 18840, 18867 (Apr. 9, 2021). *See also* 78 FR 60381, 60406–07 (Oct. 1, 2013); 81 FR 72160, 72913, 72915 (Oct. 19, 2016).

Fourth, a servicer is only permitted to make the first notice or filing under new § 1024.41(f)(3)(ii)(C)(*4*) if the borrower's forbearance program, if applicable, ended at least 30 days before the servicer makes the first notice or filing. Similar to § 1024.41(f)(3)(ii)(C)(*1*), this requirement is intended to address concerns that a borrower would ignore a servicer's outreach efforts while the borrower is in a forbearance program because the servicer and borrower have already agreed that the borrower will not make payments until a later date. The Bureau is concerned that a borrower may not have a meaningful opportunity to pursue foreclosure avoidance options if a servicer were allowed to deem a borrower unresponsive because the borrower did not communicate with the servicer several months before the borrower's forbearance program was scheduled to end.

The Bureau believes that all of these provisions under § 1024.41(f)(3)(ii)(C) will ensure that the servicer's outreach and the borrower's failure to respond occurs during a period of time when the borrower should expect to be in contact with the servicer.

As noted above, § 1024.41(f)(3)(ii)(C) provides that the servicer may make the first notice or filing if the servicer did not receive any communications from the borrower within a specified period of time. The Bureau is adopting new comment 41(f)(3)(ii)(C)–1 to help clarify what is considered a communication from the borrower. Specifically, comment 41(f)(3)(ii)(C)–1 provides that, for purposes of § 1024.41(f)(3)(ii)(C), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, has not successfully established live contact with the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation. A servicer has received a communication from the borrower if, for example, the borrower discusses loss mitigation options with the servicer, even if the borrower does not submit a loss mitigation application or agree to a loss mitigation option offered by the servicer.

The Bureau is also adopting new comment 41(f)(3)(ii)(C)–2 to clarify that a servicer has received a communication from the borrower if the communication is from an agent of the borrower. The comment explains that a servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the comment explains that the servicer shall treat the communication as having been submitted by the borrower.

This comment clarifies that a borrower who is attempting to communicate with their servicer is afforded the protections of the procedural safeguards, regardless of the substance of the communication from the borrower. The Bureau will closely monitor consumer complaints and examine servicers to ensure that a servicer's procedures have not created obstacles that frustrate a borrower's ability to engage with the servicer or that make borrowers appear unresponsive even though they were attempting to contact the servicer (for example, if servicer phone lines have unreasonably long hold times).

41(f)(3)(iii) Sunset Date

Final § 1024.41(f)(3)(iii) provides that paragraph (f)(3) does not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022. Because the procedural safeguards provisions become effective on August 31, 2021, the provisions also would not be applicable if the servicer makes the first notice or filing before August 31, 2021. As discussed above, the Bureau believes that a significant number of borrowers are likely to be seeking loss mitigation assistance during this period from August 31, 2021 through December 31, 2022. This is the period of time when, in light of the anticipated surge, there is a heightened risk of servicer error, and borrowers may face more difficulty in contacting and communicating with their servicers to meaningfully pursue foreclosure alternatives. This is also the period when existing requirements may be insufficient to ensure borrowers have a meaningful opportunity to pursue foreclosure alternatives and additional requirements could help ensure that the potentially unprecedented circumstances do not result in borrower harm. The Bureau believes that the sunset date will ensure that certain procedural safeguards are in place during the temporary period when borrowers may face the greatest potential harm because of the increase in borrowers exiting forbearance and the related risks of servicer error and borrower delay or confusion.

VI. Effective Date

The Bureau proposed that any final rule relating to the proposed rule take effect on or before August 31, 2021, and at least 30 days, or if it is a major rule, at least 60 days, after publication of a final rule in the **Federal Register**. The Bureau sought comment on whether there was a day of the week or time of the month that would best facilitate the implementation of the proposed changes.

The Bureau did not receive comments about a specific day of the week or time of the month may best facilitate implementation of the proposed changes. The Bureau did receive a few general comments on the effective date. These comments generally urged the Bureau to make the final rule effective sooner than August 31, 2021, so that as many borrowers as possible could be benefit from the final rule.

As discussed more fully in part II, above, many of the protections available to homeowners as a result of measures to protect them from foreclosure during the COVID–19 emergency are ending in the coming weeks and months. The Bureau is keenly aware of the need for quick action to protect vulnerable borrowers during the unique circumstances presented by the COVID–19 emergency. However, the Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' for purposes of the Congressional Review Act (CRA).[124] The CRA requires that the effective date of a major rule must be at least 60 days after publication in the **Federal Register**.[125] The Bureau anticipates that August 31, 2021 will be at least 60 days from **Federal Register** publication of this rule. The effective date of this final rule will therefore be August 31, 2021.

While servicers will not have to comply with this rule until the effective date, servicers may voluntarily begin engaging in activity required by this final rule before the final rule's effective date. In certain circumstances, such voluntary activity can establish compliance with the rule after its effective date. For example, if the borrower's forbearance is scheduled to end on September 15th, and a servicer provides the additional information required by § 1024.39(e)(2) during a live contact that occurs before the effective date, but fewer than 45 days before the forbearance program is scheduled to

[124] 5 U.S.C. 801 *et seq.*

[125] 5 U.S.C. 801(a)(3).

expire, the servicer need not provide the information required by § 1024.39(e)(2) again after the effective date. Similarly, certain conduct taking place before the effective date of this rule can satisfy the procedural safeguards described in § 1024.41(f)(3). For a more detailed discussion of the required conduct that can establish compliance, whether completed before or after the effective date of the final rule, please refer to the section-by-section analyses of §§ 1024.39 and 1024.41(f)(3).

While the Bureau declines to adopt an earlier effective date, for the reasons discussed above, the Bureau does not intend to use its limited resources to pursue supervisory or enforcement action against any mortgage servicer for offering a borrower a streamlined loan modification that satisfies the criteria in § 1024.41(c)(2)(vi)(A) based on the evaluation of an incomplete loss mitigation application before the effective date of this final rule.[126]

In addition, some commenters expressed concern that servicers may initiate the foreclosure process between when foreclosure moratoria are set to expire and the August 31, 2021 effective date of this final rule. The Bureau is aware of the concern, but is not adopting an earlier effective date for the reasons discussed above. In addition, as most borrowers in forbearance programs receive protection from foreclosure during the forbearance program,[127] an August 31, 2021 effective date of this final rule ensures that most borrowers exiting forbearance in September, when the Bureau expects a very high volume of forbearance exits, are not at risk of foreclosure immediately when their forbearance program ends. The Bureau recently released a Compliance Bulletin and Policy Guidance (Bulletin) announcing the Bureau's supervision and enforcement priorities regarding housing insecurity in light of heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID–19 foreclosure moratoriums and forbearances end.[128] The Bulletin articulates the Bureau intends to consider a servicer's overall effectiveness in communicating clearly with consumers, effectively managing borrower requests for assistance, promoting loss mitigation, and ultimately reducing avoidable foreclosures and foreclosure-related costs. It reiterates that the Bureau intends to hold mortgage servicers accountable for complying with Regulation X.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[129] In developing this final rule, the Bureau has consulted or offered to consult with the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies, as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the Bureau. These sources form the basis for the Bureau's consideration of the likely impacts of the final rule. The Bureau provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of the final rule given available data. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the final rule are generally limited.

In light of these data limitations, the analysis below generally includes a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

C. Baseline for Analysis

In evaluating the benefits, costs, and impacts of this final rule, the Bureau considers the impacts of the final rule against a baseline in which the Bureau takes no action. This baseline includes existing regulations and the current state of the market. Further, the baseline includes, but is not limited to, the CARES Act and any new or existing forbearances granted under the CARES Act and substantially similar programs.[130]

The baseline reflects the response and actions taken by the Bureau and other government agencies and industry in response to the COVID–19 pandemic and related economic crisis, which may change. Protections for mortgage borrowers, such as forbearance programs, foreclosure moratoria, and other consumer protections and general guidance, have evolved since the CARES Act was signed into law on March 27, 2020. It is reasonable to believe that the state of protections for mortgage borrowers will continue to evolve. For purposes of evaluating the potential benefits, costs, and impacts of this final rule, the focus is on a baseline that reflects the current and existing state of protections for mortgage borrowers. Where possible, the analysis includes a discussion of how estimates might change in light of changes in the state of protections for mortgage borrowers.

As further discussed below, under the baseline, many mortgage borrowers who are currently protected by foreclosure moratoria and forbearance programs will be vulnerable to foreclosure when those programs begin to expire later this year. Bureau analysis using data from the National Mortgage Database showed that Black and Hispanic borrowers made up a significantly larger share of borrowers that were in forbearance (33 percent) or delinquent (27 percent) as reported through March 2021.[131] Whereas, Black and Hispanic borrowers made up 18 percent of all mortgage borrowers and 16 percent of borrowers that were current. Forbearance and delinquency were also significantly more likely in majority-minority census tracts and in tracts with lower relative income.

[126] This statement is intended to provide information regarding the Bureau's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. In addition, this statement is not intended to be rule, regulation, or interpretation for purposes of RESPA section 18(b) (12 U.S.C. 2617(b)).

[127] *See, e.g.,* 12 CFR 1024.41(c)(2)(iii) (prohibiting a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and certain other foreclosure activity if the borrower is performing pursuant to the terms of a short-term payment forbearance program offered based on the evaluation of an incomplete application).

[128] 86 FR 17897 (Apr. 7, 2021).

[129] Specifically, sec. 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in sec. 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[130] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts, and an appropriate baseline.

[131] *See* CFPB Mortgage Borrower Pandemic Report, *supra* note 5.

D. Potential Benefits and Costs to Consumers and Covered Persons

This section discusses the benefits and costs to consumers and covered persons of (1) the temporary special COVID–19 loss mitigation procedural safeguards (§ 1024.41(f)(3)); (2) the new exception to the complete application requirement (§ 1024.41(c)(2)(vi)); and (3) the clarifications of the early intervention live contact and reasonable diligence requirements (§§ 1024.39(a) and (e); 1024.41(b)(1)).

1. Temporary Special COVID–19 Loss Mitigation Procedural Safeguards

The amendments to Regulation X establish temporary special COVID–19 loss mitigation procedural safeguards that apply from the effective date of the rule until on or after January 1, 2022. The final rule provides that, to give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one of three procedural safeguards has been met before making the first notice or filing because of a delinquency: (1) The borrower submitted a completed loss mitigation application and § 1024.41(f)(2) permits the servicer to make the first notice or filing; (2) the property securing the mortgage loan is abandoned under State or municipal law; or (3) the servicer has conducted specified outreach and the borrower is unresponsive. A mortgage loan is subject to the temporary procedural safeguards if (1) the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020 and (2) the statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022. This restriction is in addition to existing § 1024.41(f)(1)(i), which prohibits a servicer from making the first notice or filing required by applicable law until a borrower's mortgage loan obligation is more than 120 days delinquent. The amendment does not apply to small servicers.

Benefits and costs to consumers. The provision would provide benefits and costs to consumers by providing certain borrowers additional time to allow for meaningful review of loan modification and other loss mitigation options to help ensure that those borrowers who can avoid foreclosure through loss mitigation will have the opportunity to do so. The primary benefits and costs to consumers of this additional time for review can be measured by actual avoidance of foreclosure among the set of borrowers for whom the special procedural safeguards would likely apply.[132]

In the context of the COVID–19 pandemic and related economic crisis, a very large number of mortgage loans may be at risk of foreclosure. Generally, a servicer can initiate the foreclosure process once a borrower is more than 120 days delinquent, as long as no other limitations apply. In response to the current economic crisis, there are existing forbearance programs and foreclosure moratoria in place that prevent servicers from initiating the foreclosure process even if the borrower is more than 120 days delinquent. As of late-June, Federal foreclosure moratoria are set to expire on July 31, 2021. This means that some borrowers not in a forbearance plan may be at heightened risk of referral to foreclosure soon after the foreclosure moratoria end if they do not resolve their delinquency or reach a loss mitigation agreement with their servicer. Among borrowers in a forbearance plan, a significant number of borrowers reached 12 months in a forbearance program in February (160,000) and March (600,000) of 2021.[133] If these borrowers remain in a forbearance program for the maximum amount of time (currently 18 months), then the forbearance program will end in September 2021. Other borrowers who were part of the initial, large wave of forbearances that began in April through June of 2020 will see their 18-month forbearance period terminate in October or November of 2021. These loans may be considered more than 120 days delinquent for purposes of Regulation X even if the borrower entered into a forbearance program, allowing the servicer to initiate foreclosure proceedings for these borrowers as soon as the forbearance program ends in accordance with existing regulations.[134] The final rule will be effective on August 31, 2021. Thus, the final rule should reduce foreclosure risk for the large number of borrowers who are expected to exit forbearance between September and December of 2021 and for whom the special procedural safeguards would apply.

The primary benefit to consumers from this provision arises from a reduction in foreclosure and its associated costs. There are a number of ways a borrower who is delinquent on their mortgage may resolve the delinquency without foreclosure. The borrower may be able to prepay by either refinancing the loan or selling the property. The borrower may be able to become current without assistance from the servicer (''self-cure''). Or, the borrower may be able to work with the servicer to resolve the delinquency through a loan modification or other loss mitigation option. Resolving the delinquency in one of these ways, if possible, will generally be less costly to the borrower than foreclosure. Even after foreclosure is initiated, a borrower may be able to avoid a foreclosure sale by resolving their delinquency in one of these ways, although a foreclosure action is likely to impose additional costs and may make some of these resolutions harder to achieve. For example, a borrower may be less likely to obtain an affordable loan modification if the administrative costs of foreclosure are added to the existing unpaid balance of the loan all else equal.[135] By providing borrowers with additional time before foreclosure can be initiated, the proposed provision would give borrowers a better opportunity to avoid foreclosure altogether.

To quantify the benefit of the provision from a reduction in foreclosure sales, the Bureau would need to estimate (1) the average benefit to consumers, in dollar terms, of preventing a single foreclosure and (2) the number of foreclosures that would be prevented by the provision. Given data currently available to the Bureau and information publicly accessible, a reliable estimate of these figures is difficult due to the significant uncertainty in economic conditions, evolving state of government policies, and elevated levels of forbearance and delinquency. Below, the Bureau outlines available evidence on the

[132] The benefits and costs to consumers will decrease to the extent that additional protections for delinquent borrowers are extended by the Federal government or investors. For instance, if new protections were introduced that prevent foreclosure from being initiated for federally backed mortgages until after January 1, 2022, then the benefits of the provision for borrowers with federally backed mortgages would be reduced or eliminated. Similarly, the costs of the provision to servicers of these loans, as discussed in the ''Benefits and costs to covered persons'' for this provision, below, would be reduced. The most recent available data from Black Knight indicate that about 1.6 million of the 2.2 million loans in forbearance as of April 2021 are federally backed mortgage loans. The benefits and costs of the provision for remaining loans would likely be largely unaffected. Black Apr. 2021 Report, *supra* note 7.

[133] *See* Black Jan. 2021 Report, *supra* note 44.

[134] *Supra* note 62 and accompanying text.

[135] In addition, the Bureau has noted in the past that consumers may be confused if they receive foreclosure communications while loss mitigation reviews are ongoing, and that such confusion potentially may lead to failures by borrowers to complete loss mitigation processes, or impede borrowers' ability to identify errors committed by servicers reviewing applications for loss mitigation options. 2013 RESPA Servicing Final Rule, *supra* note 11, at 10832.

average benefit to preventing foreclosure and the number of foreclosures that could be potentially prevented as a result of the special procedural safeguards.

Importantly, the Bureau notes that any evidence used in the estimation of the benefits to borrowers of avoiding foreclosure, generally, comes from earlier time periods that differ in many and significant ways from the current economic crisis. In the decade preceding the current crisis, the economy was not in distress. There was significant economic growth that included rising house prices, low rates of mortgage delinquency and forbearance, and falling interest rates. The current economic crisis also differs in substantive ways compared to the last recession from 2008 to 2009. In particular, housing markets have remained strong throughout the crisis. House prices have increased almost 7 percent year-over-year as of January 2021, whereas house prices plummeted between 2008 and 2009.[136] Delinquent borrowers in the last recession had significantly less equity in their homes compared to borrowers in the current crisis.[137] All else equal, this means that fewer borrowers in the current crises are expected to enter into foreclosure as a result of their equity position compared to the last crisis, making it difficult to generalize foreclosure outcomes from the last recession to the current period. Overall, these differences make the available data a less reliable guide to likely near-term trends and generate substantial uncertainty in the quantification of the benefits of avoiding foreclosure for borrowers. The Bureau must make a number of assumptions to provide reasonable estimates of the benefit to consumers of the provision, any of which can lead to significant under or overestimation of the benefits.

Estimates of the cost of foreclosure to consumers are large and include both significant monetary and non-monetary costs, as well as costs to both the borrower and non-borrowers. The Office of Housing and Urban Development (HUD) estimated in 2010 that a borrower's average out-of-pocket cost from a completed foreclosure was $10,300, or $12,500 in 2021 dollars.[138] This figure is likely an underestimate of the average borrower benefit of avoiding foreclosure. First, this estimate relies on data from before the 2000s, which may be difficult to generalize to the current period. Second, there are non-monetary costs to the borrower of foreclosure that are not included in the estimate. These may include but are not limited to, increased housing instability, reduced homeownership, financial distress (including increased delinquency on other debts),[139] and adverse medical conditions.[140] Although the Bureau is not aware of evidence that would permit quantification of such borrower costs, they may be larger on average than the out-of-pocket costs. Third, there may be non-borrower costs that are unaccounted for, which can affect both individual consumers or families and the greater community. For example, research using data from earlier periods has found that foreclosure sales reduce the sale price of neighboring homes by 1 to 1.6 percent.[141] The HUD study referenced above estimates the average effect of foreclosure on neighboring house values at $14,531, or $17,600 in 2021 dollars, based on research from 2008 or earlier. Combined, the HUD figures suggest a benefit of at least $30,100, which the Bureau believes is likely an underestimate of the average benefit to preventing foreclosure.[142]

Furthermore, during the COVID–19 pandemic and associated economic crisis, the cost of foreclosure for some borrowers may be even larger than the expected average cost of foreclosure more generally. Housing insecurity presents health risks during the pandemic that would otherwise be absent and that could continue to be present even if foreclosure is not completed for months or years.[143] In addition, searching for new housing may be unusually difficult as a result of the pandemic and associated restrictions. Recent analysis has shown that the pandemic has had disproportionate economic impacts on certain communities. For example, Black and Hispanic homeowners were more than two times as likely to be behind on housing payments as of December 2020.[144] Black and Hispanic borrowers were also two times as likely to be in forbearance compared to White borrowers as of March 2021.[145] The benefit to avoiding foreclosure for these arguably ''marginal'' borrowers may be significantly larger compared to the average borrower.

The total benefit to borrowers of delaying foreclosure also depends on the number of foreclosures that would be prevented by the provision; in other words, the difference in the total foreclosures between what would occur under the baseline and what would occur under the special procedural

[136] *See* Am. Enterprise Inst., *National Home Price Appreciation Index* (Jan. 2021), *https://www.aei.org/wp-content/uploads/2021/03/HPA-infographic-Jan.-2021-FINAL.pdf?x91208.*

[137] A recent Bureau report using data from the National Mortgage Database (NMDB) showed that borrowers with an LTV ratio above 95 percent, a common measure of whether a borrower may be underwater on their mortgage and potentially more vulnerable to foreclosure, made up 5 percent of borrowers that were delinquent, 1 percent of borrowers that were in forbearance, and less than 1 percent of borrowers that were current as reported through March 2021, *https://files.consumerfinance.gov/f/documents/cfpb_characteristics-mortgage-borrowers-during-covid-19-pandemic_report_2021-05.pdf.* Similar evidence from the Urban Institute showed that during the five years preceding Q4 2009, the rate of serious delinquency and home price appreciation had a strong negative relationship. By contrast, this relationship was weak in Q4 2020, *https://www.urban.org/urban-wire/understanding-differences-between-covid-19-recession-and-great-recession-can-help-policymakers-implement-successful-loss-mitigation.*

[138] This estimate from HUD is based on a number of assumptions and circumstances that may not apply to all borrowers who experience a foreclosure sale or those that remediate through non-foreclosures options. U.S. Dep't of Hous. and Urban Dev., *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010), *https://www.hud.gov/sites/documents/IA-REFINANCENEGATIVEEQUITY.PDF.* Adjustment for inflation uses the change in the Consumer Price Index for All Urban Consumers (CPI–U) U.S. city average series for all items, not seasonally adjusted, from January 2010 to February 2021. U.S. Bureau of Labor Statistics, *Consumer Price Index, https://www.bls.gov/cpi/.*

[139] Rebecca Diamond *et al., The Effect of Foreclosures on Homeowners, Tenants, and Landlords,* (Nat'l Bureau of Econ. Res., Working Paper No. 27358, 2020), *https://www.nber.org/papers/w27358.*

[140] One study estimated that, on average, a single foreclosure is associated with an increase in urgent medical care costs of $1,974. The authors indicate that a significant portion of this cost may be attributed to distressed homeowners although some may be due to externalities imposed on the general public. *See* Janet Currie *et al., Is there a link between foreclosure and health?,* 7 a.m. Econ. Rev. 63 (2015), *https://www.aeaweb.org/articles?id=10.1257/pol.20120325.*

[141] *See, e.g.,* Elliott Anenberg *et al., Estimates of the Size and Source of Price Declines Due to Nearby Foreclosures,* 104 a.m. Econ. Rev. 2527 (2014), *https://www.aeaweb.org/articles?id=10.1257/aer.104.8.2527;* Kristopher Gerardi *et al., Foreclosure Externalities: New Evidence,* 87. J. of Urban Econ. 42 (2015), *https://www.sciencedirect.com/science/article/pii/S0094119015000170.*

[142] Based on comments received by the Bureau on the May 2021 Notice of Proposed Rulemaking, commenters suggested that the significant costs of foreclosure for borrowers include the non-monetary cost to borrowers and the cost to communities. As such, the Bureau will focus on the combined value of $30,100 rather than only the direct costs of avoiding foreclosure as was used in the April 2021 Notice of Proposed Rulemaking.

[143] *See, e.g.,* Nrupen Bhavsar *et al., Housing Precarity and the COVID–19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties,* (Nat'l Bureau of Econ. Res., Working Paper No. 28394, 2021), *https://www.nber.org/papers/w28394.*

[144] Bureau of Consumer Fin. Prot., *Housing insecurity and the COVID–19 pandemic* at 8 (Mar. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf* (Housing Insecurity Report).

[145] *See* CFPB Mortgage Borrower Pandemic Report, *supra* note 5.

safeguards provision. To estimate this, the first step is estimating the number of loans that will be more than 120 days delinquent as of the effective date of the final rule, which is August 31, 2021, or that will become 120 days delinquent between the effective date and the end of the period during which the special procedural safeguards will apply, on or after January 1, 2022. The second step is to estimate what share of these loans would end in a foreclosure sale, and the third step is to estimate how that share would be affected by the provision.

As of April 2021, there were an estimated 2.1 million loans that were at least 90 days delinquent, the large majority of which were in forbearance programs.[146] An unknown number of borrowers whose loans are now delinquent may be able to resume payments at the end of a forbearance period or otherwise bring their loans current before the final rule's effective date. One publicly available estimate based on current trends is that 900,000 loans will reach terminal expirations starting in the fall of 2021.[147] Many of the loans currently delinquent are delinquent because borrowers have been taking advantage of forbearance programs, and some borrowers in that situation may be able to resume payments under their existing mortgage contract at the end of the forbearance. Given the uncertainty about the rate at which loans will exit forbearance or delinquency from now until the effective date, a reasonable approach is to consider a range with respect to the share of loans that will reach terminal expirations starting in September of 2021 and through the remainder of the year. For purposes of quantifying a potential range of benefits to consumers, the discussion below assumes that as of August 31, 2021, all of loans reaching terminal expiration in the fall will be considered 120 days delinquent under Regulation X and not in a forbearance plan.

Furthermore, the Bureau assumes that the distribution of performance outcomes as of August 31, 2021, is the same for borrowers who would exit a forbearance program and for borrowers with delinquent loans and never in a forbearance program. The true distribution of outcomes for these two groups may depend, for example, on the borrower's loan type and the level of equity the borrower has. If the rate of growth in recovery over time is lower for borrowers with delinquent loans and not in a forbearance program, these borrowers will have a higher incidence of foreclosure on average. Estimates from April 2021 show that the number of loans in forbearance programs (2.2 million) is significantly larger than the number of borrowers who are seriously delinquent and with loans that are not in a forbearance program (191,000).[148] Given the difference in the size of the two groups, changes in the incidence of foreclosure among borrowers who are delinquent and not in a forbearance program will have a relatively smaller effect on any estimate of the total benefit to borrowers from avoiding foreclosure.

Most loans that become delinquent do not end with a foreclosure sale. The Bureau's 2013 RESPA Servicing Rule Assessment Report (Servicing Assessment Report)[149] found that, for a range of loans that became 90 days delinquent from 2005 to 2014, approximately 18 to 35 percent ended in a foreclosure sale within three years of the initial delinquency.[150] Focusing on loans that become 60 days delinquent, the same report found that, 18 months after the initial 60-day delinquency, between 8 and 18 percent of loans had ended in foreclosure sale over the period 2001 to 2016, with an additional 24 to 48 percent remaining at some level of delinquency.[151] An estimate of the rate at which delinquent loans end in foreclosure can be taken from this range albeit with uncertainty as to the extent to which these data can be generalized to the current period. For example, using values from 2009 might overestimate the number of foreclosures due to differences in house price growth and the resulting amount of equity borrowers have in their homes. All else equal, this difference might lead to a higher share of delinquent borrowers who prepay.

The Bureau outlines one approach to estimating the baseline number of foreclosures, albeit with significant uncertainty. First, the Bureau considers a range of between one-third and two-thirds of the number of loans that are in forbearance as of April 2021 will be more than 120 days delinquent as of August 31, 2021, and unable to resolve their delinquency at that time. This range allows for a lower and upper bound estimate that reflects the substantial uncertainty that exists in forecasting the state of the market and the state of financial circumstances of borrowers as of the effective date of the rule.[152] Next, the Bureau excludes 14 percent of these loans, reflecting an estimate of the share of loans serviced by small servicers to which the rule would not apply.[153] This leaves between roughly 620,000 and 1.2 million loans at risk of an initial filing of foreclosure to which the final rule would apply.

The baseline number of such loans that will end with a foreclosure sale can be estimated using data from the Servicing Rule Assessment Report. Using data from 2016 (the latest year reported), 18 months after the initial 60-day delinquency, 8 percent of delinquent loans ended with a foreclosure sale and an additional 24 percent remained delinquent and had not been modified.[154] Of the loans that remain delinquent without a loan modification, the Bureau expects a significant number of these loans will end with a foreclosure sale although the Bureau does not have data to identify the exact share. The Bureau assumes one-half of this group will end with a foreclosure sale, which is a significant share although not a majority of loans.[155] Overall, this gives a baseline estimate of loans that will experience

[146] *See* Black Apr. 2021 Report, *supra* note 7.

[147] *Id.* Black Knight's estimates require significant assumptions due to the uncertainty in how forbearance will evolve in future periods. In particular, Black Knight assumes that borrowers exit forbearance at a rate of 3 percent per month until the end of 2021. The Bureau believes there is significant uncertainty in the rate at which borrowers will exit forbearance during the remainder of the year and, therefore, the extent to which this assumption will hold. Black Knight does not provide alternative estimates under different assumptions or a range of plausible outcomes.

[148] *See* Black Apr. 2021 Report, *supra* note 7. It is possible for a borrower to be delinquent for purposes of Regulation X during a forbearance program. *See supra* note 62 and accompanying text.

[149] *See* 2013 RESPA Servicing Rule Assessment Report, *supra* note 11.

[150] *Id.* at 69–70.

[151] *Id.* at 48.

[152] An alternative to providing a range of estimates is to forecast an expected number of loans that will exit forbearance after the effective date of the rule and be more than 120 days delinquent and unable to resolve the delinquency. Forecasting a specific value for a future period requires making significant assumptions due to the uncertainty associated with predicting future outcomes. In order to account for this uncertainty, standard econometric and statistical forecasting models also report standard errors or confidence bands around the estimates, effectively providing a range of plausible estimates given the uncertainty in future outcomes. Absent formal forecasting models, the Bureau believes it is reasonable to rely on a range of plausible estimates rather than making significant assumptions to pinpoint a single estimate, which may be less reliable.

[153] *See* Bureau of Consumer Fin. Prot., *Data Point: Servicer Size in the Mortgage Market* (Nov. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_2019-servicer-size-mortgage-market_report.pdf* (estimating that, as of 2018, approximately 14 percent of mortgage loans were serviced by small servicers).

[154] 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 48.

[155] A large share of foreclosures is not completed within the first 18 months of delinquency, so it is reasonable to assume that many loans that are still delinquent 18 months after an initial 60-day delinquency will eventually end in foreclosure. *See* 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 52–53.

foreclosure sale of between roughly 125,000 and 250,000.

The next step is to estimate how the number of foreclosures would change under the final rule. The final rule is effective on August 31, 2021 and requires servicers to comply with special procedural safeguards until January 1, 2022, delaying any foreclosure proceedings for certain loans until after that date. The Bureau assumes each loan will experience a four-month delay in the point at which servicers can initiate foreclosure for borrowers with loans that exit forbearance and are more than 120 days delinquent and cannot resolve the delinquency upon exiting forbearance between the effective date of the final rule and the end of the period during which special procedural safeguards will apply.[156] This approach also assumes that existing borrower protections do not change. If, for example, forbearance programs and foreclosure moratoria are extended, then the maximum delay period would be shorter and the number of foreclosures prevented would be smaller under the final rule.[157] Similarly, if servicers would not immediately initiate foreclosure proceedings with the borrowers absent the rule as some commenters indicated, then the delay period as a result of the rule would be shorter and the number of foreclosures prevented would be reduced.[158]

Estimating how many foreclosures might be prevented by a four-month delay requires making strong assumptions about the additional growth in the share of recovered loans over the additional four-month period, where recovered is defined as a self-cure, pre-payment, or permanent loan modification. The data available to the Bureau do not provide direct evidence of how protecting this group of borrowers from initiation of foreclosure will affect the likelihood that their loans will ultimately end with a foreclosure sale. In particular, some factors from the current environment that are difficult to generalize using data from earlier periods are: First, borrowers with loans in a forbearance plan may be very different from borrowers with loans that are delinquent but not in a forbearance plan; second, among borrowers with loans in a forbearance plan, some borrowers have made no payments for 18 months while others have made partial or infrequent payments; and, third, borrowers who have missed payments because of a forbearance plan may not be required to repay those missed payments immediately. Any of these differences across borrowers can significantly affect the growth in the share of recovered loans over time.

The Bureau provides some evidence on the rate at which delinquent loans may recover to estimate the total benefit to borrowers of the provision using information reported in the Servicing Assessment Report. Among borrowers who become 30 days delinquent in 2014: 60 percent recover before their second month of delinquency, 80 percent recover by the 12th month of delinquency, and 85 percent recover by the 24th month of delinquency.[159] These patterns, first, show that most borrowers who become delinquent recover early in their delinquency. Second, the data show that the rate of change in recovery falls as the length of the delinquency increases. For example, after the initial month of delinquency, an additional 20 percent of borrowers recover by the 12th month of delinquency, and then an additional 5 percent of borrowers by the 24th month. On a monthly basis, the number of borrowers who recover increases by less than one percent per month during the second year.[160] The Bureau notes that the above discussion is based on the recovery experience of loans that became 30 days delinquent. A smaller number of loans became more seriously delinquent. Relative to that smaller base, the share of loans recovering during later periods would be greater.

The special procedural safeguard requirements would provide certain borrowers additional time during which servicers cannot initiate foreclosure, unless the special procedural safeguards have been met. For these borrowers, the special procedural safeguards may increase the number of borrowers who are able to recover, in particular, by ensuring more borrowers have the opportunity to pursue foreclosure avoidance options before a servicer makes the first notice or filing required for foreclosure. The size of this increase depends on how much of a difference this additional time makes in a borrower's ability to recover. This, in turn, depends on factors such as the financial circumstances of borrowers as of the effective date, the number of foreclosures that servicers would in fact initiate, absent the rule, during the months after the effective date, and the effect of delaying foreclosure on borrowers' ability to obtain loss mitigation options or otherwise recover.

The special procedural safeguards provision will not change the course of recovery for all borrowers who exit forbearance and are at least 120 days delinquent as of the effective date of the rule. In particular, it will not affect the likelihood of foreclosure for loans to which the special procedural safeguards do not apply or for loans for which the special procedural safeguards have been met. The Bureau believes the special procedural safeguards will directly affect the course of recovery for the remaining group of borrowers who are more likely to be in contact with their servicer and are experiencing financial difficulty as a direct result of the current economic crisis. This group of borrowers is expected to have a higher likelihood of recovery as a result of the additional time for meaningful review generated by the special procedural safeguards provision.

The Bureau does not know exactly how many borrowers exist for whom the special procedural safeguard requirements will not apply or for

[156] The Bureau believes there is significant uncertainty in the average length of delay for affected loans. The average delay could be shorter if a significant share of loans exit forbearance between October and December 2021 and servicers are generally able to initiate foreclosure upon termination of the period during which special procedural safeguards will apply on January 1, 2022. On the other hand, if the rule indirectly causes a delay in servicers' ability to initiate foreclosure after January 1, 2022, then loans that exit forbearance between October and December 2021 may experience delays that extend beyond the termination of the period during which special procedural safeguards will apply. The average benefits to consumers will be overestimated if the average delay is shorter and will be underestimated if the average delay is longer.

[157] An extension of forbearance programs or foreclosure moratoria would reduce the total number of months delay under the rule. This would reduce the number of foreclosures prevented under the rule by the number of loans that self-cure, prepay, or enter into a loan modification during the time between the end of forbearance programs or foreclosure moratoria and January 1, 2022. The number of loans that will self-cure, prepay, or enter into a loan modification during that period is uncertain given limited information on what the economic circumstances and financial status of borrowers will be at that time.

[158] If servicers delay initiating foreclosure, then the total number of foreclosures prevented under the rule would fall by the number of loans that self-cure, prepay, or enter into a loan modification during that period of time. The number of loans that will self-cure, prepay, or enter into a loan modification during that period is uncertain given limited information on what the economic circumstances and financial status of borrowers will be at that time.

[159] *See* 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 85. The data used in this figure are publicly available loan performance data from Fannie Mae. *See* Fed. Nat'l Mortg. Ass'n, *Fannie Mae Single-Family Loan Performance Data* (Feb. 8, 2021), *https://capitalmarkets.fanniemae.com/credit-risk-transfer/single-family-credit-risk-transfer/fannie-mae-single-family-loan-performance-data.*

[160] The rate of change in borrowers who have recovered is calculated as: [(85 percent − 80 percent) ÷ 80 percent] × 100 ≈ 6 percent. This gives a monthly average increase in the share of loans that have recovered between the 12th and 24th month of delinquency of approximately 0.5 percent (6 percent ÷ 12 months).

whom the procedural safeguards may be met, and therefore would have similar outcomes both under the baseline and under the final rule. Publicly available estimates report that roughly 19 percent of borrowers in forbearance as of March 2021 were 30+ days delinquent in February of 2020. Given the special procedural safeguard requirements, the share of borrowers that were 120+ days delinquent in March 2020 is likely a smaller share of borrowers in forbearance. There are no publicly available numbers on the share of loans in forbearance that correspond to abandoned properties [161] or the share of unresponsive borrowers. Assuming some overlap between these three groups, the Bureau believes that 25 percent is a reasonable estimate of the share of borrowers for whom the special procedural safeguard requirements will not apply or for whom the servicer may exercise the special procedural safeguards, and who therefore will not experience a change in their course of recovery resulting from the special procedural safeguards provision. This implies that 75 percent of borrowers with terminal expirations between September 2021 and the end of the year will be directly affected as a result of the special procedural safeguard requirements and may experience a course of recovery different than they otherwise would have absent the special procedural safeguard provision.

For purposes of estimating a plausible range of potential benefits of the final rule, suppose that, for borrowers who are afforded additional time before foreclosure can be initiated as a result of the rule, the increase in the number of borrowers who are ultimately able to recover as a result of the delay is 0.55 percent per month of delay, which is similar to the monthly rate at which the number of borrowers who have recovered grows during the second year after a 30-day delinquency, as discussed above.[162] Assuming an average four-month delay, the additional share of loans that recover could then be estimated at about 2.2 percent of the initial group of delinquent loans.[163] The remaining distribution of outcomes (foreclosure, prepay, and delinquent without loan modification) are estimated based on a constant relative share across groups.[164] This means that 7.8 percent of delinquent loans will end with a foreclosure sale within 18 months. Similar to under the baseline, the Bureau assumes that one-half of loans that are delinquent and not in a loan modification will end with a foreclosure sale after more than 18 months (meaning an additional 11.7 percent of delinquent loans would end with a foreclosure sale). Applying this to the assumed 75 percent of loans that would be directly affected by the special procedural safeguard requirements generates an estimate of foreclosure sales under the rule for this set of loans of between roughly 91,000 and 182,000. Comparing this to baseline foreclosures for this group of loans, the special procedural safeguards would lead to approximately 2,500 and 5,000 fewer foreclosures compared to the baseline.

The Bureau believes that an assumed increase in the likelihood of recovery of 2.2 percent may significantly overestimate or underestimate the actual effect of the rule on whether loans recover or end with a foreclosure sale. The discussion above relies on data from between 2014 and 2016, which was not a period of economic distress as described earlier. In the current period compared to 2014 and 2016, the level of delinquency is higher and changes in the incidence of recovery over time may be slower. On the other hand, significant house price growth and higher levels of home equity may make it more likely the borrowers can avoid foreclosure if borrowers have better options for selling or refinancing their homes than in 2014 and 2017.

Finally, an estimate of a plausible range of the potential total benefit to borrowers of avoiding foreclosure sales as a result of the provision can be calculated by taking the difference in the number of foreclosure sales under the baseline compared to under the final rule and multiplying that difference by the per-borrower cost of foreclosure. Based on a per foreclosure cost to the borrower of $30,100, the benefit to borrowers of avoiding foreclosure under the rule is estimated at between $75 million and $151 million. The estimate is based on a number of assumptions and represents one approach to quantifying the total benefits to borrowers.

The above estimate of the per-borrower benefit of avoiding foreclosure likely underestimates the true value of the benefit. As discussed above, there is evidence that borrowers incur significant non-monetary costs that are not accounted for in the above estimates. Furthermore, there may be non-borrower benefits, such as benefits to neighbors and communities from reduced foreclosures, that are unaccounted for. Therefore, estimates of the total benefit to consumers, which includes the benefit to borrowers and non-borrowers are expected to be larger than the reported estimates.

Some borrowers will benefit from the provision even if they would not have experienced a foreclosure sale under the baseline. Many borrowers are able to cure their delinquency or otherwise avoid a foreclosure sale after the servicer has initiated the foreclosure process. Even though these borrowers do not lose their homes to foreclosure, they may incur foreclosure-related costs, such as legal or administrative costs, from the early stages of the foreclosure process. The special procedural safeguards provision could mean that some borrowers who would have cured their delinquency after foreclosure is initiated are instead able to cure their

[161] Publicly available information from ATTOM Data Solutions' reports that, of the roughly 216,000 homes currently in the foreclosure process, roughly 7,960 or 3.7 percent are abandoned as of the third quarter of 2021. It is unclear how to generalize this information to the group of borrowers that remain in forbearance. ATTOM Data Solutions, *Q3 2020 U.S. Foreclosure Activity Reaches Historical Lows as the Foreclosure Moratorium Stalls Filings* (Oct. 15, 2020), *https://www.attomdata.com/news/market-trends/foreclosures/attom-data-solutions-september-and-q3-2020-u-s-foreclosure-market-report/.*

[162] The average monthly rate of recovery is 10 percent higher than the rate of recovery used in the Bureau's Notice of Proposed Rulemaking, which used an average monthly recovery rate of 0.5 percent. As described, the Bureau believes the group of borrowers for whom the special procedural safeguards would delay foreclosure are relatively more likely to recover from delinquency. This means the rate of recovery should be higher for this group compared to the average borrower. If the additional rate of recovery compared to the average borrower was smaller (*e.g.,* 0.525 percent or a 5 percent increase compared to the average) then the number of prevented foreclosures would decrease. If the additional rate of recovery was larger (*e.g.,* 0.6 percent or a 20 percent increase compared to the average), then the number of prevented foreclosures would increase.

[163] The extent of the delay depends on when a loan exits forbearance and the specifics of how the special procedural safeguards delay initiation of foreclosure. If the exact number of loans experiencing a delay of a certain number of months was known, then one could multiply the number of loans exiting forbearance each month by the month-adjusted expected recovery rate. Then, the number of recovered loans can be calculated by summing across months.

[164] More specifically, the Bureau assumes that the number of loans that either self-cure or are modified increases by 2 percent, and that other outcomes decrease proportionately. For loans that became 60 days delinquent in 2016, the Bureau estimated that about 46 percent either cured or were modified within 18 months, about 8 percent had ended in foreclosure, about 24 percent remained delinquent, and about 22 percent had prepaid. *See* 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 48. A 2 percent increase in recovery would mean that the share of loans that recover increases to 47 percent (46 percent × 1.02) given the additional four-month delay. The assumption of a constant relative share across groups means that an additional recovery reduces the number of foreclosures by 0.15, the number of prepaid by 0.41, and the number of delinquent loans without loan modification by 0.44. An increase in the share of loans that cure or are modified from 46 to 47 percent implies a reduction in the share that end in foreclosure by 18 months to about 7.9 percent, and the share that remain delinquent at 18 months to about 23.6 percent.

delinquency before foreclosure is initiated, meaning that they are able to avoid such foreclosure-related costs. Preventing the initiation of foreclosure also may have longer-term benefits. For example, foreclosure initiation may make future access to both mortgage and nonmortgage credit more difficult if the foreclosure initiation is reported on the consumer's credit report. The Bureau does not have data that would permit it to estimate the extent of this benefit of the final rule, which would likely vary according to State foreclosure laws and the borrower's specific situation.

In addition, there may be significant indirect effects of additional time to enter into loss mitigation given recent policy changes affecting distressed borrowers.[165] For example, the U.S. Treasury Department (Treasury) is administering the Homeowner Assistance Fund (HAF), which was established under section 3206 of the American Rescue Plan Act of 2021 (the ARP).[166] The purpose of HAF is to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing financial hardship after January 21, 2020.[167] Funds from the HAF may be used for assistance with mortgage payments, homeowner's insurance, utility payments, and other specified purposes. Treasury is expected to distribute the majority of HAF funds to the States after June 30, 2021, with most funds available by the end of the year. Any delays in foreclosure initiation resulting from the special loss mitigation procedural safeguards provision may enable borrowers to take advantage of HAF funds when they begin to be distributed. In particular, the additional time available to certain borrowers may enable them to avoid foreclosure by offering additional time to gain access to HAF assistance. The Bureau does not have data that would permit it to estimate the extent of this benefit of the final rule.

The provision may create costs for some borrowers if it delays their engagement in the loan modification and loss mitigation process. For some borrowers, notification of foreclosure process initiation may provide the impetus to engage with the servicer to discuss options for avoiding foreclosure. For these borrowers, delaying the initiation of foreclosure may delay their engagement in determining a next step for resolving the delinquency on the loan, whether it be through repayment, loan modification, foreclosure, or other alternatives. This delay may put the borrower in a worse position because the additional delay can increase unpaid amounts and thereby reduce options to avoid foreclosure. In order to quantify this effect, the Bureau would need data on how often borrowers who are delinquent and have not yet taken steps to engage with their servicer about resolving their delinquency decide to initiate such steps *because* they receive a foreclosure notice. The Bureau does not have such data that would permit it to estimate the extent of this cost of the rule. However, the Bureau anticipates that the provision of the rule permitting foreclosures to proceed when borrowers are unresponsive will mitigate any such costs, by permitting some foreclosures to be initiated when borrowers choose not to engage with their servicers.

Benefits and costs to covered persons. The provision will impose new costs on servicers and investors by delaying the date at which foreclosure can be initiated for loans subject to the special procedural safeguard requirements but where the special procedural safeguards are not met, which will prolong the ongoing costs of servicing these non-performing loans and delay the point at which servicers are able to complete the foreclosure and sell the property. These costs apply to foreclosures that the rule does not prevent. As further discussed below, the costs could be mitigated somewhat by a reduction in foreclosure-related costs in cases where the delay in initiating foreclosure permits borrowers to avoid entering into foreclosure altogether.

As discussed above, the Bureau does not have data to quantify the number of loans that will ultimately enter foreclosure or the number that will end with a foreclosure sale. However, as also discussed above, past experience and the large number of loans currently in a nonpayment status suggest that as many as 91,000 and 182,000 loans of the loans that could be subject to delay as a result of the special procedural safeguard requirements could ultimately end in foreclosure. An additional number of these loans are likely to enter the foreclosure process but not end in foreclosure because the borrower is able to recover or prepay the loan either through refinancing or selling the home.

By preventing servicers from initiating foreclosure for loans that would be subject to the special procedural safeguard requirements and where the special procedural safeguards are not met before January 1, 2022, the rule could delay many foreclosures from being initiated by up to four months for this group of borrowers. The delay could be shorter for loans subject to a forbearance that extends past August 31, 2021, including some loans subject to the CARES Act that entered into forbearance later than March 2020 and are extended to a total of up to 18 months. The delay could also be reduced to the extent that servicers would not actually initiate foreclosure for all borrowers who are more than 120 days delinquent and whose loans are not in forbearance in the period between September and December 2021.[168] For borrowers in this group where foreclosures are eventually completed, a delay in the initiation of foreclosure would be expected, all else equal, to lead to an equivalent delay in the foreclosure's completion.

Any delay in completing foreclosure will mean additional costs to service the loan before completing foreclosure. This includes, for example, the costs of mailing statements, providing required disclosures, and responding to borrower requests. For loans that are seriously delinquent, servicers may be required by investors to conduct frequent property inspections to determine if properties are occupied and may incur costs to provide upkeep for vacant properties. MBA data report that the annual cost of servicing performing loans in 2017 was $156 (or $13 per month) and the annual cost of servicing nonperforming loans was $2,135 (or approximately $178 per month).[169] Some costs of servicing delinquent loans would be ongoing each month, including costs of complying with certain of the Bureau's servicing rules. However, many of the average costs of servicing a delinquent loan likely reflect one-time costs, such as the costs of paying counsel to complete particular steps in the foreclosure process, which likely would not increase as a result of a delay. In light of this, the additional servicing costs associated with a delay

[165] While the Bureau considers this potential benefit for purposes of sec. 1022(b)(2)(A), it does not rely on these potential benefits to finalize the rule's regulatory interventions under RESPA or the Dodd-Frank Act.

[166] American Rescue Plan Act of 2021, Public Law 117–2, 135 Stat. 4 (2021).

[167] U.S. Dep't of the Treasury, *Homeowner Assistance Fund Guidance* at 1 (Apr. 14, 2021), *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund.*

[168] Even absent the special procedural safeguards, servicers may be delayed in initiating foreclosure because the attorneys and other service providers that support foreclosure actions may not have capacity to handle the anticipated number of delinquent loans, particularly given that the long foreclosure moratoria have eroded capacity.

[169] Mortg. Bankers Ass'n, *Servicing Operations Study and Forum for Prime and Specialty Servicers* (Dec. 2018), *https://www.mba.org/news-research-and-resources/research-and-economics/single-family-research/servicing-operations-study-and-forum-for-prime-and-specialty-servicers.*

are likely to be well below $178 per month for each loan.

In addition, some mortgage servicers are obligated to make some principal and interest payments to investors, even if borrowers are not making payments. Servicers may also be obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. For loans subject to the special procedural safeguards but where the special procedural safeguards are not met, the provision will extend the period of time that servicers must continue making such advances for loans on which they are not receiving payment. Servicers may incur additional costs to maintain the liquid reserves necessary to advance these funds.

When the servicer does not advance principal and interest payments to investors, including cases in which a loan's owner is servicing loans on its own behalf, a delay will also impose costs on investors by delaying their receipt of proceeds from foreclosure sales and preventing them from investing those funds and earning an investment return during the time by which a foreclosure sale is delayed. These costs depend on the length of any delay, the amount of funds that the investor stands to recover through a foreclosure sale, and the investor's opportunity cost of funds. For example, the average unpaid principal balance of mortgage loans in forbearance as of February 2021 was reported to be approximately $200,000.[170] Assuming that investors would invest foreclosure sale proceeds in short-term U.S. Treasury bills, using the six-month U.S. Treasury rate of approximately 0.06 percent in March 2021, the cost of delaying receipt of $200,000 by four months would be approximately $40. Assuming instead that investors would invest foreclosure sale proceeds at the Prime rate, 3.25 percent in March 2021, the cost of delaying receipt of $200,000 by four months would be approximately $2,170.

In addition, as discussed above, the provision may delay some borrowers' engagement in the loan modification and loss mitigation process. For some borrowers, notification of foreclosure process initiation may provide the impetus to engage with the servicer to discuss options for avoiding foreclosure. If this causes some borrowers to resolve their delinquencies later than they would have under the baseline, the servicer may incur additional costs of servicing non-performing loans during the period before those consumers resolve their delinquencies. Such additional costs would be qualitatively similar to the additional costs associated with a delay in foreclosure sales.

Servicers would also incur costs to ensure the provision is not violated. The relative simplicity of the provision may mean the direct cost of developing systems to ensure compliance is not too great. However, servicers that meet procedural safeguard requirements and seek to pursue foreclosure (for example, when a borrower is unresponsive) will incur additional costs to ensure that the procedural safeguard requirements are in fact met so that they do not inadvertently violate the provision.

The costs to servicers described above may be mitigated somewhat by a reduction in foreclosure-related costs, to the extent that the additional time for certain borrowers to be considered for loss mitigation options prevents some foreclosures from being initiated. Often, a borrower who is able to obtain a loss mitigation option in the months before foreclosure would otherwise be initiated would also be able to obtain that option shortly after foreclosure is initiated. In such cases, a delay in initiating foreclosure could mean servicers avoid the costs of initiating and then terminating, the foreclosure process. For example, servicers may avoid certain costs, such as the cost of engaging local foreclosure counsel, that they generally incur during the initial stages of foreclosure and that they may not be able to pass on to borrowers. Even absent the rule, servicers may choose to delay initiating foreclosure for loans that are more than 120 days delinquent, subject to investor requirements, if the probability of recovery is high enough that the benefit of waiting, and potentially avoiding foreclosure-related costs, outweighs the expected cost of delaying an eventual foreclosure sale. By requiring servicers to delay initiating foreclosure until on or after January 1, 2022, the rule will cause servicers to delay foreclosure in some cases even when they perceive the net benefit of doing so to be negative, and therefore any benefit servicers would receive from delayed foreclosures is expected to be smaller on average than the cost to servicers arising from the delay.

Alternative Approach: Special Pre-Foreclosure Review Period

In the proposed rule, the Bureau proposed an alternative in which servicers would not be allowed to initiate the foreclosure process for any loans during a special pre-foreclosure review period that would have taken place between the effective date of the rule and December 31, 2021.

Such an alternative could provide larger benefits for certain borrowers whose loans are more than 120 days delinquent and either not eligible for the special procedural safeguards or loans where the procedural safeguards are met. In general, the benefits of a pre-foreclosure review period would be lower for borrowers whose loans are not affected by the procedural safeguard requirements. For example, if the servicer has already determined a borrower is not eligible for any loss mitigation options the borrower would be less likely to obtain a loss mitigation option even if afforded additional time. However, the alternative could permit some borrowers to benefit from the additional time for loss mitigation review in situations where a borrower's eligibility changes within a relatively short period of time, as may happen during this particular economic crisis, as certain businesses may begin to reopen or open more completely based on when different State and local jurisdictions make adjustments to their COVID–19-related restrictions. The Bureau is not aware of data that could reasonably quantify the number of borrowers for whom such circumstances mean the alternative would provide significant benefits.

Similarly, the benefits of the alternative approach would likely be lower for borrowers whom the servicer is unable to reach. Where servicers are unable to reach a delinquent borrower, the borrower is less likely to apply for or be considered for a loss mitigation option. Moreover, the first notice or filing for foreclosure could prompt communication from some consumers who are otherwise unresponsive to servicer communication attempts. However, there may be some consumers whom the servicer cannot contact within the time required by the final rule but who would benefit from the additional time to be considered for loss mitigation options if they were to contact their servicer later in the pre-foreclosure review period. The Bureau is not aware of data that could reasonably quantify the number of borrowers who meet the final rule's criteria for unresponsiveness and, of those, the number for whom such an additional time before foreclosure could be initiated would meaningfully increase their benefits from the rule. Similarly, the Bureau is not aware of data that could reasonable quantify the number of borrowers for whom the final rule might provide a greater benefit than the alternative because permitting a first

[170] As of February 2021, there were an estimated $2.7 million loans in forbearance representing a total unpaid principle balance of $537 billion, for an average loan size of approximately $198,000. *See* Black Jan. 2021 Report, *supra* note 44, at 7.

notice or filing for foreclosure may prompt them to engage with their servicer regarding loss mitigation options.

This alternative approach would generally impose greater costs on servicers than the final rule because it would delay the initiation of foreclosure for a larger number of loans. If servicers were unable to initiate the foreclosure process for any loans until after December 31, 2021, more loans would experience a delay of the overall foreclosure timeline. The loans that would not be affected by the final rule's procedural safeguard requirements may be loans that are particularly likely to move to foreclosure, so may be the loans for which the cost of preventing an earlier initiation of foreclosure is greatest. The extent of such costs depends on the number of loans that would be covered by these circumstances and the extent to which those loans are in fact loans for which the alternative's pre-foreclosure review period would not have increased the likelihood of finding a loss mitigation option.

Alternative Approach: ''Grace Period'' Rather Than Date Certain

The Bureau considered an alternative to the special procedural safeguard requirements in which servicers would be prohibited from making the first notice or filing for foreclosure until a certain number of days (*e.g.,* 60 or 120 days) after a borrower exits their forbearance program.

Such an approach would provide additional benefits to some borrowers in forbearance programs compared to the final rule, while reducing the benefit to other borrowers who are delinquent but not in forbearance programs. For borrowers who are in a forbearance program that ends well after the effective date of the rule, this alternative approach would provide a longer period than in the rule during which the borrower would be protected from the initiation of foreclosure. For example, a borrower whose forbearance ends on November 30, 2021 and whose loan is subject to the special procedural safeguard requirements would be protected from initiation of foreclosure for approximately one month under the final rule, and approximately four months under this alternative. A large share of the borrowers currently in forbearance programs entered into forbearance after April 2020 and could extend their forbearances until November 2021 or later, and borrowers continue to be eligible to enter into forbearance programs. Although some of these borrowers may not in fact extend their forbearances to the maximum allowable extent, many would receive a longer protection from foreclosure under the alternative, which could provide them with a greater opportunity to work with servicers to obtain an alternative to foreclosure.

The alternative would not provide protection for borrowers who do not enter into forbearance programs, meaning that borrowers who are or become delinquent and do not enter forbearance would not receive any benefit from the alternative beyond the existing prohibition on initiating foreclosures until the borrower has been delinquent for more than 120 days.

For servicers, the alternative approach would, like the final rule, delay foreclosure for many of the affected borrowers. The cost of delay, on a per-loan and per-month basis, would not be appreciably different under the alternative than under the final rule, but the number of foreclosures delayed would likely differ. Whether the number of loans delayed, and the total cost of delay, are larger or smaller under the alternative than under the final rule depends on whether the effect of additional delay of loans in forbearance programs that expire after the beginning of the pre-foreclosure review period is greater than the effect of eliminating the delay for loans that are not in forbearance programs but are more than 120 days delinquent during the period that the proposed pre-foreclosure review period would be in effect.

The alternative could be significantly more costly for servicers to implement because it would require servicers to track a new pre-foreclosure review period for each loan exiting a forbearance program and to revise their compliance systems to ensure that they do not initiate foreclosure for loans that are within that pre-foreclosure review period. The alternative could require servicer systems to account for loan-specific fact patterns, such as cases in which a borrower's forbearance period expires but the borrower subsequently seeks to extend the forbearance period. This could introduce complexity that would make the alternative more costly to come into compliance with compared to the final rule, which would apply to all covered loans until a certain date. The Bureau does not have data to estimate such additional costs relative to the final rule.

2. Evaluation of Loss Mitigation Applications

Section 1024.41(c)(2)(vi) extends certain exceptions from § 1024.41(c)(2)(i)'s general requirement to evaluate only a complete loss mitigation application to certain streamlined loan modifications made available to borrowers experiencing a COVID–19-related hardship, such as certain modifications offered through the GSEs' flex modification programs, FHA's COVID–19 owner-occupant loan modification, and other comparable programs. Once a borrower accepts an offer made under § 1024.41(c)(2)(vi), for any loss mitigation application the borrower submitted before that offer, a servicer is no longer required to comply with § 1024.41(b)(1)'s requirements regarding reasonable diligence to collect a complete loss mitigation application, and a servicer also is no longer required to comply with § 1024.41(b)(2)'s evaluation and notice requirements. If the borrower fails to perform under a trial loan modification plan offered pursuant to § 1024.41(c)(2)(vi)(A) or if the borrower requests further assistance, a servicer must immediately resume reasonable diligence efforts as required under § 1024.41(b)(1) with regard to any incomplete loss mitigation application a borrower submitted before the servicer's offer of a trial loan modification plan, and must send the notice required under § 1024.41(b)(2) with regard to the most recent loss mitigation application the borrower submitted prior to the offer the servicer made under the exception, unless the servicer has already sent that notice.

Benefits and costs to consumers. The exception will benefit borrowers to the extent that they may be able to receive a loan modification more quickly or may be more likely to obtain a loan modification at all, without having to submit a complete loss mitigation application. Where the exception to the complete application requirement applies, it will generally result in a reduction in the time necessary to gather required documents and information. In some cases, if borrowers would not otherwise complete a loss mitigation application and could not otherwise obtain a different loss mitigation option, the provision could enable borrowers to obtain a loan modification in the first place.[171] For some borrowers, a loan modification may be their only opportunity to

[171] Under existing § 1024.41(c), servicers may under some circumstances evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option based on the incomplete application if the application has remained incomplete for a significant period of time. Section 1024.41(c)(2)(ii). By providing additional conditions under which servicers may offer certain loss mitigation options based on an incomplete application, the final rule may increase the likelihood that a borrower is able to qualify for a loss mitigation option after submitting an incomplete application.

become or remain current and avoid foreclosure. Thus, for some borrowers who obtain a loan modification under the exception, the benefit of the provision is the value of obtaining a loan modification or obtaining a loan modification more quickly, potentially preventing delinquency fees and foreclosure.

As discussed above in part II, an estimated 2.2 million borrowers had mortgage loans that were in a forbearance program as of April 2021. Of these, an estimated 14 percent are serviced by small servicers, leaving approximately 1.9 million whose servicers are covered by the rule. Many of these borrowers may recover before the rule's effective date, however the large number and the ongoing economic crisis suggest that many borrowers will be in distress at that time. The Bureau does not have data to estimate the number of distressed borrowers who, as of the rule's effective date, would not be able to complete a loss mitigation application if they were required to complete the application to receive a loan modification offer. However, the Bureau believes that in the present circumstances that percentage could be substantial due to limitations in servicer capacity and the challenges some borrowers face in dealing with the social and economic effects of the COVID–19 pandemic and related economic crisis. As discussed above in part II, if borrowers who are currently in an eligible forbearance program request an extension to the maximum time offered by the government agencies, those loans that were placed in a forbearance program early in the pandemic (March and April 2020) will reach the end of their forbearance period in September and October of 2021. Black Knight data suggest there could be as many as 760,000 borrowers exiting their forbearance programs after 18 months of forborne payments in September and October of 2021.[172] Although some fraction of the borrowers with loans in these forbearance programs may be able to resume contractual payments at the end of the forbearance period, many may not be able to do so and may seek to modify their loans. Processing complete loss mitigation applications for all these borrowers in a short period of time would likely strain many servicers' resources.[173] This might lead to more borrowers who have incomplete applications that never reach completion and who could therefore not be considered for a loan modification under the baseline compared to what might occur under standard market conditions. The Bureau also does not have data available to predict how many borrowers with loans currently in a forbearance or a delinquency would experience foreclosure but for a loan modification offered under the exception.

The provision may create costs for borrowers if it prevents them from considering, and applying for, loss mitigation options that they would prefer to a streamlined loan modification. Borrowers who are considered for a streamlined loan modification after submitting an incomplete application may not be presented with other loss mitigation options that might be offered if they were to submit a complete application. In the 2013 RESPA Servicing Final Rule, the Bureau explained its view that borrowers would benefit from the complete application requirement, in part because borrowers would generally be better able to choose among available loss mitigation options if they are presented simultaneously. The Bureau acknowledges that borrowers accepting an offer made under § 1024.41(c)(2)(vi) could be prevented from considering loss mitigation options that they may prefer to a streamlined loan modification in connection with an incomplete loss mitigation application submitted before the offer. However, if a borrower is interested in and eligible for another form of loss mitigation besides a streamlined loan modification, under the rule a borrower who receives a streamlined loan modification after evaluation of an incomplete application will still retain the ability under § 1024.41 to submit a complete loss mitigation application and receive an evaluation for all available options after the loan modification is in place.

Benefits and costs to covered persons. Servicers will benefit from the reduction in burden from the requirement to process complete loss mitigation applications for streamlined loan modifications that are eligible for the exception. Given the number of loans that are currently delinquent, and in particular the number of such loans in a forbearance program that will end during a short window of time, this benefit could be substantial. Without the provision, in each case, the servicers would further need to exercise reasonable diligence to collect the documentation needed for a complete loss mitigation application, evaluate the complete application, and inform the borrower of the outcome of the application for all available options. The Bureau understands that the process of conducting this evaluation and communicating the decision to consumers can require considerable staff time, including time spent talking to consumers to explain the outcome of the evaluation for all options.[174] This could make the cost of evaluating borrowers for all available options particularly acute in light of staffing challenges servicers may face during the COVID–19 pandemic and associated economic crisis and the large number of borrowers who may be seeking loss mitigation at the same time.

In addition to the reduced costs associated with evaluation for streamlined loan modifications, the provision may reduce servicer costs when evaluating borrowers for other loss mitigation options, by freeing resources that can be used to work with borrowers who may not qualify for streamlined loan modifications or for whom streamlined loan modifications may not be the borrower's preferred option. Many servicers are likely to need to process a large number of applications in a short period of time while complying with the timelines and other requirements of the servicing rules. This may place strain on servicer resources that lead to additional costs, such as the need to pay overtime wages or to hire and train additional staff to process loss mitigation applications. The provision will reduce this strain and may thereby reduce overall servicing costs.

The Bureau does not have data to quantify the reduction in costs to servicers from the provision. The Bureau understands that working with borrowers to complete applications and to communicate decisions on complete applications often requires significant one-on-one communication between servicer personnel and borrowers. Even a modest reduction in staff time needed for such communication, given the large numbers of borrowers who may be seeking loan modifications, could lead to substantial cost savings.

[172] Black Apr. 2021 Report, *supra* note 7, at 9. An estimated 14 percent of all loans are serviced by small servicers, and if that percentage applies to these loans, then an estimated roughly 650,000 loans subject to the final rule would exit forbearance in these months.

[173] Servicers have reported challenges in customer-facing staff capacity during the pandemic. *See* Caroline Patane, *Servicers report biggest challenges implementing COVID–19 assistance programs,* Fed. Nat'l Mortg. Ass'n, Perspectives Blog (Jan. 12, 2021), *https://www.fanniemae.com/research-and-insights/perspectives/servicers-report-biggest-challenges-implementing-covid-19-assistance-programs.* Such challenges could become even more significant if a large number of borrowers seek foreclosure avoidance options during a short period of time after forbearances end.

[174] 2013 RESPA Servicing Rule Assessment Report, *supra* note 11, at 155–156.

3. Live Contact and Reasonable Diligence Requirements

Section 1024.39(e) temporarily requires servicers to provide additional information to certain borrowers during live contacts established under existing requirements. In general, for borrowers that are not in forbearance at the time live contact is established, if the owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID–19-related hardship, § 1024.39(e)(1) requires servicers to inform the borrower that forbearance programs are available for borrowers experiencing such a hardship. Unless the borrower states they are not interested, the servicer must list and briefly describe available forbearance programs to those borrowers and the actions a borrower must take to be evaluated. Additionally, the servicer must identify at least one way the borrower can find contact information for homeownership counseling services. In general, proposed § 1024.39(e)(2) requires that, for borrowers who are in a forbearance program made available to those experiencing a COVID–19-related hardship at the time of live contact, servicers must provide specific information about the borrower's current forbearance program and list and briefly describe available post-forbearance loss mitigation options during the required live contact that occurs at least 10 days but no more than 45 days before the scheduled end of the forbearance period. Servicers must also identify at least one way the borrower can find contact information for homeownership counseling services. The rule does not require servicers to make good faith efforts to establish live contact with a borrower beyond those already required by § 1024.39(a).

In conjunction with § 1024.39(e)(2), the final rule adds a new comment 41(b)1–4.iv, which states that if the borrower is in a short-term payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency that was offered based on evaluation of an incomplete application, a servicer must contact the borrower no later than 30 days before the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer should exercise reasonable diligence to complete the application before the end of the forbearance period. The servicer must also continue to exercise reasonable diligence to complete the loss mitigation application before the end of forbearance. Comment 41(b)(1)–4.iii already requires servicers to take these steps before the end of the short-term payment forbearance program offered based on the evaluation of an incomplete application, but does not specify how soon before the end of the forbearance program the servicer must make these contacts.

Benefits and costs to consumers and covered persons. Section 1024.39(e)(1) will benefit borrowers who are eligible for a forbearance program but not currently in one, by potentially making it more likely that such borrowers are able to take advantage of such programs. Although most borrowers who have missed mortgage payments are in forbearance programs, a significant number of delinquent borrowers are not. Research has found that some borrowers are not aware of the availability of forbearance or misunderstand the terms of forbearance.[175] Similarly, § 1024.39(e)(2), together with comment 41(b)1–4.iv, will benefit borrowers who are delinquent and are nearing the end of a forbearance period by making it more likely that they are aware of their options at the end of the forbearance period in time to take the action most appropriate for their circumstances.

For both provisions, the extent of the benefit depends to a large degree on whether servicers are already taking the actions required by the applicable provision. The Bureau understands that many servicers already have a practice of informing borrowers about the availability of general or specific forbearance programs, and options when exiting forbearance programs, as part of live contact communications.[176] The Bureau is not aware of how many servicers provide general as opposed to specific information about forbearance programs or post-forbearance options that are available to a particular borrower. The Bureau does not have data that could be used to quantify the number of borrowers who will benefit from the provision. As discussed above, an estimated 2.2 million borrowers were in forbearance programs as of April 2021 and an estimated 191,000 borrowers had loans that were seriously delinquent and not in a forbearance program. Although some fraction of the borrowers with loans in a forbearance program may be able to resume contractual payments at the end of the forbearance period, many may benefit from more specific information about the options available to them.

The costs to covered persons of complying with the provision also depend on the extent to which servicers are already taking the actions required by the provision. Servicers that do not currently take these actions will need to revise call scripts and make similar changes to their procedures when conducting live contact communications.[177] Even servicers that do currently take actions that comply with the provisions will likely incur one-time costs to review policies and procedures and potentially make changes to ensure compliance with the rule. The Bureau does not have data to determine the extent of such one-time costs. Although the changes are limited, the short timeframe to implement the changes, and the fact that they would be required at a time when servicers are faced with a wide array of challenges related to the pandemic, will tend to make any changes more costly.[178]

[175] For example, recent survey evidence finds that among borrowers who reported needing forbearance but had not entered forbearance, the fact that they had not entered forbearance was explained by factors including a lack of understanding about how forbearance plans work or whether the borrower would qualify, or a lack of understanding about how to request forbearance. *See* Lauren Lambie-Hanson *et al., Recent Data on Mortgage Forbearance: Borrower Uptake and Understanding of Lender Accommodations,* Fed. Reserve Bank of Phila. (Mar. 2021), *https://www.philadelphiafed.org/consumer-finance/mortgage-markets/recent-data-on-mortgage-forbearance-borrower-uptake-and-understanding-of-lender-accommodations.*

[176] For example, Fannie Mae requires servicers to begin attempts to contact the borrower no later than 30 days prior to the expiration of the forbearance plan term to, among other things, determine the reason for the delinquency and educate the borrower on the availability of workout options, as appropriate. Fed. Nat'l Mortg. Ass'n, *Lender Letter (LL–2021–02*) (Feb. 25, 2021), *https://singlefamily.fanniemae.com/media/24891/display.* Servicers that are already complying with such guidelines may already be providing many of the benefits, and incurring many of the costs, that would otherwise be generated by the provision.

[177] Servicers should already have access to the information they would need to provide under the provision, because servicers are required to have policies and procedures to maintain and communicate such information to borrowers under 12 CFR 1024.40(b)(1)(i) and 1024.38(b)(2)(i).

[178] One recent survey of mortgage servicing executives found that they identified adapting to investor policy changes as the biggest challenge in implementing COVID–19 assistance programs. *See* Caroline Patane, *Servicers report biggest challenges implementing COVID–19 assistance programs,* Fed. Nat'l Mortg. Ass'n, Perspectives Blog (Jan. 12, 2021), *https://www.fanniemae.com/research-and-insights/perspectives/servicers-report-biggest-challenges-implementing-covid-19-assistance-programs.*

E. Potential Specific Impacts of the Rule

Insured Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau believes that a large majority of depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans qualify as ''small servicers'' for purposes of Regulation X because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. In the past, the Bureau has estimated that more than 95 percent of insured depositories and credit unions with $10 billion or less in total assets service 5,000 mortgage loans or fewer.[179] The Bureau believes that servicers that service loans that they neither own nor originated tend to service more than 5,000 loans, given the returns to scale in servicing technology. Small servicers are exempt from the rule and are therefore not be directly affected by the rule.

With respect to servicers that are not small servicers but are depository institutions with $10 billion or less in total assets, the Bureau believes that the consideration of benefits and costs of covered persons presented above generally describes the impacts of the rule on depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans.

Impact of the Provisions on Consumer Access to Credit

Restrictions on servicers' ability to foreclose on mortgage loans could, in theory, reduce the expected return to mortgage lending and cause lenders to increase interest rates or reduce access to mortgage credit, particularly for loans with a higher estimated risk of default. The temporary nature of the rule means that it is unlikely to have long-term effects on access to mortgage credit. In the short run, the Bureau cannot rule out the possibility that the rule will have the effect of increasing mortgage interest rates or delaying access to credit for some borrowers, particularly for borrowers with lower credit scores who may have a higher likelihood of default in the first few months of the loan term. The Bureau does not have a way of quantifying any such effect but notes that it would be limited to the period before January 1, 2022. The exemption of small servicers from the rule will help maintain consumer access to credit through these providers.

[179] 81 FR 72160 (Oct. 19, 2016).

Impact of the Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights. These servicers may be small servicers that are exempt from the rule, although they may already provide most of the benefits to consumers that the rule is designed to provide.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[180] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[181] The Bureau certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[182]

Consistent with the proposed rule, the final rule does not apply to entities that are ''small servicers'' for purposes of the Regulation X: Generally, servicers that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated. A large majority of small entities that service mortgage loans are small servicers and are therefore not directly affected by the rule. Although some servicers that are small entities may service more than 5,000 loans and not qualify as small servicers for that reason, the Bureau has previously estimated that approximately 99 percent of small-entity servicers service 5,000 loans or fewer. The Bureau does not have data to indicate whether these institutions service loans that they do not own and did not originate. However, as discussed in the preamble to the 2013 RESPA Servicing Final Rule, the Bureau believes that a servicer that services 5,000 loans or fewer is unlikely to service loans that it did not originate because a servicer that services loans for others is likely to see servicing as a stand-alone line of business and would likely need to service substantially more than 5,000 loans to justify its investment in servicing activities.[183] Therefore, the Bureau has concluded that the final rule will not have an effect on a substantial number of small entities.

Accordingly, the Acting Director hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal.

[180] 5 U.S.C. 601 *et seq.*

[181] 5 U.S.C. 609.

[182] 86 FR 18840, 18877 (Apr. 9, 2021).

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation X have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0016. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

The Bureau has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: The Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov.*

X. Congressional Review Act

Pursuant to the Congressional Review Act,[184] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's

[183] 2013 RESPA Servicing Final Rule, *supra* note 11, at 10866. For example, one industry participant estimated that most servicers would need a portfolio of 175,000 to 200,000 loans to be profitable. Bonnie Sinnock, *Servicers Search for 'Goldilocks' Size for Max Profits,* Am. Banker (Sept. 10, 2015), *https://www.americanbanker.com/news/servicers-search-for-goldilocks-size-for-max-profits.*

[184] 5 U.S.C. 801 *et seq.*

published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. List of Subjects in 12 CFR Part 1024

Banks, banking, Condominiums, Consumer protection, Credit unions, Housing, Mortgage insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

XII. Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation X, 12 CFR part 1024, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart C—Mortgage Servicing

■ 2. Amend § 1024.31 by adding, in alphabetical order, a definition of ''COVID–19-related hardship'' to read as follows:

§ 1024.31 Definitions.

* * * * *

COVID–19-related hardship means a financial hardship due, directly or indirectly, to the national emergency for the COVID–19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)).

* * * * *

■ 3. Section 1024.39 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Live Contact.* Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate, and take the actions described in paragraph (e) of this section, if applicable.

* * * * *

(e) *Temporary COVID–19-Related Live Contact.* Until October 1, 2022, in complying with the requirements described in paragraph (a) of this section, promptly after establishing live contact with a borrower the servicer shall take the following actions:

(1) *Borrowers not in forbearance programs at the time of live contact.* At the time the servicer establishes live contact pursuant to paragraph (a) of this section, if the borrower is not in a forbearance program and the owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID–19-related hardship, the servicer shall inform the borrower of the following information:

(i) That forbearance programs are available for borrowers experiencing a COVID–19-related hardship and, unless the borrower states that they are not interested in receiving information about such programs, the servicer shall list and briefly describe to the borrower any such forbearance programs made available at that time and the actions the borrower must take to be evaluated for such forbearance programs.

(ii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

(2) *Borrowers in forbearance programs at the time of live contact.* If the borrower is in a forbearance program made available to borrowers experiencing a COVID–19-related hardship, during the live contact established pursuant to paragraph (a) of this section that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program or, if the scheduled end date of the forbearance program occurs between August 31, 2021 and September 10, 2021, during the first live contact made pursuant paragraph (a) of this section after August 31, 2021, the servicer shall inform the borrower of the following information:

(i) The date the borrower's current forbearance program is scheduled to end;

(ii) A list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower by the owner or assignee of the borrower's mortgage loan at the time of the live contact, and the actions the borrower must take to be evaluated for such loss mitigation options; and

(iii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

■ 4. Section 1024.41 is amended by:

■ a. Revising paragraphs (c)(2)(i), and (c)(2)(v)(A)(*1*);

■ b. Adding paragraph (c)(2)(vi); and

■ c. Adding paragraph (f)(3).

The additions and revisions read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(c) * * *

(2) * * * (i) *In general.* Except as set forth in paragraphs (c)(2)(ii), (iii), (v), and (vi) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(v) * * * (A) * * *

(*1*) The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''covered amounts'' includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a COVID–19-related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056); it also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing a COVID–19-related hardship. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''the term of the mortgage loan'' means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

* * * * *

(vi) *Certain COVID–19-related loan modification options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loan modification based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(*1*) The loan modification extends the term of the loan by no more than 480 months from the date the loan

modification is effective and, for the entire modified term, does not cause the borrower's monthly required principal and interest payment to increase beyond the monthly principal and interest payment required prior to the loan modification.

(*2*) If the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates, those amounts do not accrue interest.

(*3*) The loan modification is made available to borrowers experiencing a COVID–19-related hardship.

(*4*) Either the borrower's acceptance of an offer pursuant to this paragraph (c)(2)(vi)(A) ends any preexisting delinquency on the mortgage loan or the loan modification offered pursuant to this paragraph (c)(2)(vi)(A) is designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification.

(*5*) The servicer does not charge any fee in connection with the loan modification, and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification.

(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(vi)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification described in paragraph (c)(2)(vi)(A) of this section. However, if the borrower fails to perform under a trial loan modification plan offered pursuant to paragraph (c)(2)(vi)(A) of this section or requests further assistance, the servicer must immediately resume reasonable diligence efforts as required under paragraph (b)(1) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the trial loan modification plan and must provide the borrower with the notice required by paragraph (b)(2)(i)(B) of this section with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification described in paragraph (c)(2)(vi)(A) of this section, unless the servicer has already provided such notice to the borrower.

* * * * *

(f) * * *

(3) *Temporary Special COVID–19 Loss Mitigation Procedural Safeguards.* (i) *In general.* To give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one of the procedural safeguards described in paragraph (f)(3)(ii) of this section has been met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency under paragraph (f)(1)(i) if:

(A) The borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and

(B) The statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022.

(ii) *Procedural safeguards.* A procedural safeguard is met if:

(A) *Complete loss mitigation application evaluated.* The borrower submitted a complete loss mitigation application, remained delinquent at all times since submitting the application, and paragraph (f)(2) of this section permitted the servicer to make the first notice or filing required for foreclosure;

(B) *Abandoned property.* The property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; or

(C) *Unresponsive borrower.* The servicer did not receive any communications from the borrower for at least 90 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and all of the following conditions are met:

(*1*) The servicer made good faith efforts to establish live contact with the borrower after each payment due date, as required by § 1024.39(a), during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process;

(*2*) The servicer sent the written notice required by § 1024.39(b) at least 10 days and no more than 45 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process;

(*3*) The servicer sent all notices required by this section, as applicable, during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; and

(*4*) The borrower's forbearance program, if applicable, ended at least 30 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(iii) *Sunset date.* This paragraph (f)(3) does not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022.

* * * * *

■ 5. In Supplement I to Part 1024:

■ a. Under *§ 1024.39—Early intervention requirements for certain borrowers, 39(a) Live contact,* revise ''*39(a) Live contact*'';

■ b. Under § 1024.41—*Loss mitigation procedures,* revise ''*41(b)(1) Complete loss mitigation application*''; and

■ *c. Under § 1024.41*—Loss mitigation procedures, *after* 41(f) Prohibition on Foreclosure Referral, *add paragraphs* 41(f)(3) Temporary Special COVID–19 Loss Mitigation Procedural Safeguards and 41(f)(3)(ii)(C) Unresponsive borrower.

The revisions and addition read as follows:

Supplement I to Part 1024—Official Interpretations

Subpart C—Mortgage Servicing

* * * * *

§ 1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of $2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of $2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.,* on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of $2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year; the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will

meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. *See* § 1024.33(c)(1) and comment 33(c)(1)–2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas ''good faith efforts'' to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, ''good faith efforts'' to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. However, if a borrower is in a situation such that the additional live contact information is required under § 1024.39(e) or if a servicer relies on the temporary special COVID–19 loss mitigation procedural safeguards provision in § 1024.41(f)(3)(ii)(C)(1), providing no more than a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication would not be a reasonable step, under the circumstances, to make good faith efforts to establish live contact. Comment 39(a)-6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

4. *Promptly inform if appropriate.*

i. *Servicer's determination.* Except as provided in § 1024.39(e), it is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. Except as provided in § 1024.39(e), a servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. When the borrower is in a forbearance program made available to borrowers experiencing a COVID–19-related hardship such that the additional live contact information is required under § 1024.39(e)(2) or if a servicer relies on the temporary special COVID–19 loss mitigation procedural safeguards provision in § 1024.41(f)(3)(ii)(C)(1), the servicer is not maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41 in a way that would comply with § 1024.39(a) if the servicer has only sent the notices required by § 1024.41(b)(2)(i)(B) and (c)(2)(iii) and has had no further ongoing contact with the borrower concerning the borrower's loss mitigation application. A servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

* * * * *

§ 1024.41—Loss Mitigation Procedures

* * * * *

41(b)(1) Complete Loss Mitigation Application

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. For example:

i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.

ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has indicated such a preference, but the servicer may stop collecting such documents and information once the servicer receives information confirming that the borrower has an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.

2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any ''prequalification'' for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is ''prequalified'' for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.

3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence for purposes of § 1024.41(b)(1) includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation.

iv. If the borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID–19-related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stability Act, section 4022 (15 U.S.C. 9056), that was offered to the borrower based on evaluation of an incomplete application, and the borrower remains delinquent, a servicer must contact the borrower no later than 30 days before the scheduled end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance period.

5. *Information not in the borrower's control.* A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.

* * * * *

41(f)(3) Temporary Special COVID–19 Loss Mitigation Procedural Safeguards

1. *Record retention.* As required by § 1024.38(c)(1), a servicer shall maintain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer. If the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process before January 1, 2022, these records must include evidence demonstrating compliance with § 1024.41(f)(3), including, if applicable, evidence that the servicer satisfied one of the procedural safeguards described in § 1024.41(3)(ii). For example, if the procedural safeguards are met due to an unresponsive borrower determination as described in § 1024.41(f)(3)(ii)(C), the servicer must maintain records demonstrating that the servicer did not receive communications from the borrower during the relevant time period and that all four elements of § 1024.41(f)(3)(ii)(C) were met. For example, records demonstrating that the servicer did not receive any communications from the borrower during any relevant time period may include, for example: (1) Call logs, servicing notes, and other systems of record cataloguing communications showing the absence of written or oral communication from the borrower during the relevant period; and (2) a schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account, as required by § 1024.38(c)(2)(i). The method of retaining these records must comply with comment 31(c)(1)–1.

41(f)(3)(ii)(C) Unresponsive Borrower

1. *Communication.* For purposes of § 1024.41(f)(3)(ii)(C), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, has not successfully established live contact with the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation. A servicer

has received a communication from the borrower if, for example, the borrower discusses loss mitigation options with the servicer, even if the borrower does not submit a loss mitigation application or agree to a loss mitigation option offered by the servicer.

2. *Borrower's representative.* A servicer has received a communication from the borrower if the communication is from an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the communication as having been submitted by the borrower.

* * * * *

Dated: June 25, 2021.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

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