FEDERAL REGISTER

Vol. 87 Monday

No. 6 January 10, 2022

Pages 1061–1316

OFFICE OF THE FEDERAL REGISTER

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 87 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 87, No. 6

Monday, January 10, 2022

Agriculture Department
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1106

Centers for Disease Control and Prevention
NOTICES
Requests for Nominations:
Advisory Committee on Breast Cancer in Young Women, 1149–1150

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Head Start Grant Application, 1150

Civil Rights Commission
NOTICES
Meetings:
Georgia Advisory Committee, 1109–1110

Coast Guard
RULES
Safety Zone:
Deep Creek, Elizabeth River, Chesapeake, VA, 1076–1078
Lower Mississippi River, Mile Markers 636–655, Modoc, AR, 1078–1080
San Diego Bay, San Diego, CA, 1074–1076

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Consumer Product Safety Commission
PROPOSED RULES
Safety Standard for Magnets, 1260–1316

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Package for Day of Service Project Collection Tool, 1127
Application Package for Schools of National Service Collection Formerly the Segal Education Award Matching Program, 1127–1128

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
North Carolina Sales Tax Certification, 1148–1149

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Borrower Defenses Against Loan Repayment, 1129–1130
Education Stabilization Fund-Elementary and Secondary School Emergency Relief Fund Recipient Data Collection Form, 1128–1129
Student Assistance General Provisions, Annual Fire Safety Report, 1128
Student Assistance General Provisions, Non-Title IV Revenue Requirements (90/10), 1130

Employee Benefits Security Administration
NOTICES
Exemption:
Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG, Zurich, Switzerland, 1186–1200

Energy Department
See Federal Energy Regulatory Commission
RULES
Civil Monetary Penalty Inflation Adjustment, 1061–1065
NOTICES
Importation or Exportation of Liquified Natural Gas or Electric Energy; Applications, Authorizations, etc.:
Venture Global Calcasieu Pass, LLC, 1131–1132
Venture Global CP2 LNG, LLC, 1133–1134
Meetings:
Secretary of Energy Advisory Board, 1130–1131

Environmental Protection Agency
PROPOSED RULES
Pesticides:
Expansion of Crop Grouping Program VI, 1091–1105

Farm Service Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Special Priorities Assistance, 1106–1107

Federal Aviation Administration
RULES
Special Conditions:
Dassault Aviation Model Falcon 6X Airplane; Hydrophobic Windshield Coatings in Lieu of Windshield Wipers, 1066–1068
Vector Aerospace Helicopter Services USA, Airbus Helicopters Model AS350B2 and AS350B3 Helicopters; Stability Augmentation System and Automatic Flight Control System, 1068–1070
PROPOSED RULES
Airworthiness Directives:
Bell Textron Canada Limited Helicopters, 1083–1086

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1144–1147

Federal Deposit Insurance Corporation
RULES
Unsafe and Unsound Banking Practices:
Brokered Deposits, 1065–1066

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 1147

Federal Emergency Management Agency
NOTICES
Flood Hazard Determinations, 1165–1171

Federal Energy Regulatory Commission
NOTICES
Application:
City of Idaho Falls, 1141–1142
Exelon Generation Co., LLC, 1139–1140
FirstLight CT Hydro, LLC, 1140–1141
Combined Filings, 1138–1139, 1142–1144
Environment Issues:
WBI Energy Transmission, Inc.; Wahpeton Expansion Project, 1135–1138
Filing:
City of Azusa, CA, 1142
City of Banning, CA, 1140
City of Colton, CA, 1135
City of Pasadena, CA, 1134
City of Riverside, CA, 1134–1135

Federal Housing Finance Agency
NOTICES
Annual Adjustment of the Cap on Average Total Assets that Defines Community Financial Institutions, 1147

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Hearing, 1248–1249
Vision, 1250–1254

Federal Railroad Administration
NOTICES
Establishment of an Emergency Relief Docket for Calendar Year 2022, 1254

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 1147–1148
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 1148

Federal Trade Commission
RULES
Adjustments to Civil Penalty Amounts, 1070–1072

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Policy for Evaluation of Conservation Efforts When Making Listing Decisions, 1179–1180

Food and Nutrition Service
NOTICES
Summer Food Service Program 2022 Reimbursement Rates, 1107–1109

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Powell Ranger District; Utah; Powell Travel Management Project; Withdrawal, 1109

General Services Administration
RULES
Federal Management Regulation:
Internet GOV Domain, 1080–1081
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
North Carolina Sales Tax Certification, 1148–1149

Government Accountability Office
NOTICES
Requests for Nominations:
Medicare Payment Advisory Commission, 1149

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Requests for Nominations:
Center for Indigenous Innovation and Health Equity Tribal Advisory Committee, 1153–1154

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Data System for Organ Procurement and Transplantation Network, 1151–1153

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Privacy Act; Systems of Records, 1171–1178

Housing and Urban Development Department
NOTICES
Meetings:
Housing Counseling Federal Advisory Committee, 1178–1179

Indian Health Service
NOTICES
Urban Indian Education and Research Program, 1154–1162

Interior Department
See Fish and Wildlife Service
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1256–1258

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Softwood Lumber Products from Canada, 1114–1117

Pentafluoroethane (R–125) from the People's Republic of China, 1110–1112
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, 1120–1122
Welded Line Pipe from the Republic of Korea, 1112–1114
Sales at Less Than Fair Value; Determinations, Investigations, etc.:
Pentafluoroethane (R–125) from the People's Republic of China, 1117–1120

Justice Department
NOTICES
Proposed Consent Decree:
Clean Air Act, 1186
Proposed Settlement Agreement, Stipulation, Order, and Judgment, etc.:
Toxic Substances Control Act, 1186

Labor Department
See Employee Benefits Security Administration

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
North Carolina Sales Tax Certification, 1148–1149

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Customer Service, Demographic, and Smoking/Tobacco Use Information from the National Cancer Institute's Cancer Information Service, 1164–1165
Meetings:
Center for Scientific Review, 1162–1164
National Center for Complementary and Integrative Health, 1165
National Institute of Allergy and Infectious Diseases, 1164
National Institute of Neurological Disorders and Stroke, 1163
National Institute of Nursing Research, 1162–1163
National Institute on Alcohol Abuse and Alcoholism, 1163

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
New England Fishery Management Council, 1122

National Park Service
NOTICES
Intent to Repatriate Cultural Items:
Beloit College, Logan Museum of Anthropology, Beloit, WI, 1180–1181
Nebraska State Historical Society DBA History Nebraska, Lincoln, NE, 1181–1182
Inventory Completion:
Fowler Museum at the University of California Los Angeles, Los Angeles, CA; Correction, 1184–1185
State University at Buffalo, Department of Anthropology, Buffalo, NY, 1183–1184
Repatriation of Cultural Items:
Berkshire Museum, Pittsfield, MA, 1185–1186
Requests for Nominations:
Advisory Committee on Reconciliation in Place Names Establishment, 1182–1183

National Telecommunications and Information Administration
NOTICES
Infrastructure Investment and Jobs Act Implementation, 1122–1126

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 1200

Pension Benefit Guaranty Corporation
NOTICES
Performance Review Board Members, 1201

Postal Service
NOTICES
International Product Change:
Priority Mail Express International, Priority Mail International, First-Class Package International Service and Commercial ePacket Agreement, 1201

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 1246–1247
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 1201–1203
MIAX PEARL, LLC, 1203–1231
Nasdaq BX, Inc., 1231–1238
Nasdaq PHLX LLC, 1238–1246
NYSE Arca, Inc., 1238

State Department
RULES
Acquisition Regulation:
Access to Contractor Records, 1081–1082
Department of State 2022 Civil Monetary Penalties Inflationary Adjustment, 1072–1074
NOTICES
Culturally Significant Object Being Imported for Exhibition:
Fictions of Emancipation: Carpeaux Recast, 1247
Lygia Pape: Tecelar, 1247
Women and the Making of Joyce's Ulysses, 1247

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1254–1256

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications, 1087–1091

Separate Parts In This Issue

Part II
Consumer Product Safety Commission, 1260–1316

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
207.....1061
218.....1061
429.....1061
431.....1061
490.....1061
501.....1061
601.....1061
820.....1061
824.....1061
851.....1061
1013.....1061
1017.....1061
1050.....1061

12 CFR
337.....1065

14 CFR
25.....1066
27.....1068

Proposed Rules:
39.....1083

16 CFR
1.....1070

Proposed Rules:
1112.....1260
1262.....1260

22 CFR
35.....1072
103.....1072
127.....1072
138.....1072

33 CFR
165 (3 documents) 1074, 1076, 1078

38 CFR

Proposed Rules:
21.....1087

40 CFR

Proposed Rules:
180.....1091

41 CFR
102–173.....1080

48 CFR
615.....1081
652.....1081

Rules and Regulations

Federal Register
Vol. 87, No. 6
Monday, January 10, 2022

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 ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 820, 824, 851, 1013, 1017, and 1050

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') publishes this final rule to adjust DOE's civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective on January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8078, *preeti.chaudhari@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Method of Calculation
III. Summary of the Final Rule
IV. Final Rulemaking
V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act required agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, notwithstanding 5 U.S.C. 553. DOE's initial catch-up adjustment interim final rule was published June 28, 2016 (81 FR 41790), and adopted as final without amendment on December 30, 2016 (81 FR 96349). The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

In accordance with the 2015 Act, the Office of Management and Budget (OMB) must issue annually guidance on adjustments to civil monetary penalties. This final rule to adjust civil monetary penalties for 2022 is issued in accordance with applicable law and OMB's guidance memorandum on implementation of the 2022 annual adjustment.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to the aforementioned OMB guidance memorandum, the adjustment multiplier for 2022 is 1.06222. In order to complete the 2022 annual adjustment, each CMP is multiplied by the 2022 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

III. Summary of the Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment.

DOE authority containing civil monetary penalty	Before adjustment	After adjustment
10 CFR 207.7	$10,949	$11,630.
10 CFR 218.42	$23,714	$25,189.
10 CFR 429.120	$474	$503.
10 CFR 431.382	$474	$503.
10 CFR 490.604	$9,180	$9,751.
10 CFR 501.181	−$97,014	−$103,050.
	−$8/mcf	−$8/mcf.
	−$39/bbl.	−$41/bbl.
10 CFR 601.400 and appendix A	−minimum $20,731	−minimum $22,021.
	−maximum $207,314	−maximum $220,213.
10 CFR 820.81	$216,628	$230,107.
10 CFR 824.1	$154,806	$164,438.
10 CFR 824.4	$154,806	$164,438.
10 CFR 851.5 and appendix B	$100,535	$106,790.
10 CFR 1013.3	$11,803	$12,537.
10 CFR 1017.29	$278,786	$296,132.
10 CFR 1050.303	$21,135	$22,450.
42 U.S.C. 2282(a)[2]	$105,563	$112,131.
50 U.S.C. 2731[3]	$9,476	$10,066.

[1] OMB's annual guidance memorandum was issued on December 15, 2021, providing the 2022 adjustment multiplier and addressing how to apply it.

IV. Final Rulemaking

The 2015 Act requires that annual adjustments for inflation subsequent to the initial ''catch-up'' adjustment be made notwithstanding 5 U.S.C. 553.

V. Regulatory Review

A. Executive Order 12866

This rule has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed previously, the 2015 Act requires that annual inflation adjustments subsequent to the initial catch-up adjustment be made notwithstanding 5 U.S.C. 553. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule.

D. Paperwork Reduction Act

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

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

I. Treasury and General Government Appropriations Act, 2001

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

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory

[2] Adjustment applies only to violations of 42 U.S.C. 2077(b), consistent with Public Law 115–232 (August 13, 2018).

[3] Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

L. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National defense, Nuclear energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 20, 2021, by Samuel Walsh, General Counsel, 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 December 28, 2021.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 207—COLLECTION OF INFORMATION

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.;* 15 U.S.C. 791 *et seq.;* E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

■ 2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * *

(1) Any person who violates any provision of this subpart or any order issued pursuant thereto shall be subject to a civil penalty of not more than $11,630 for each violation. * * *

* * * * *

PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

■ 3. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 *et seq.;* 15 U.S.C. 787 *et seq.;* 42 U.S.C. 6201 *et seq.;* 42 U.S.C. 7101 *et seq.;* E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 4. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) * * *

(1) Any person who violates any provision of this part or any order issued pursuant thereto shall be subject to a civil penalty of not more than $25,189 for each violation.

* * * * *

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) may be subject to assessment of a civil penalty of no more than $503 for each violation.

* * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 8. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $503 for each violation.

* * * * *

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 9. The authority citation for part 490 continues to read as follows:

Authority: 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq;* 28 U.S.C. 2461 note.

■ 10. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 shall be subject to a civil penalty of not more than $9,751 for each violation.

* * * * *

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

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

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8301 *et seq.;* 42 U.S.C. 8701 *et seq.;* E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * *

(1) Any person who violates any provisions of the Act (other than section 402) or any rule in this subchapter or order under this subchapter or the Act will be subject to the following civil penalty, which may not exceed $103,050 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $8 for each MCF of natural gas or up to $41 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601—NEW RESTRICTIONS ON LOBBYING

■ 13. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

■ 14. Section 601.400 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 601.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part shall be subject to a civil penalty of not less than $22,021 and not more than $220,213 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required by this part, shall be subject to a civil penalty of not less than $22,021 and not more than $220,213 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $22,021, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $22,021 and $220,213, as determined by the agency head or his or her designee.

* * * * *

Appendix A to Part 601 [Amended]

■ 15. Appendix A to part 601 is amended by:

■ a. Removing ''$20,731'' wherever it appears and adding in its place ''$22,021''; and

■ b. Removing ''$207,314'' wherever it appears and adding in its place ''$220,213''.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 16. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 17. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed $230,107 for each such violation. * * *

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 18. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.,* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 19. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulations in this chapter, or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $164,438 for each violation. * * *

■ 20. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $164,438 for each violation.

* * * * *

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 21. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.;* 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 28 U.S.C. 2461 note.

■ 22. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to $106,790 for each such violation. * * *

* * * * *

■ 23. Appendix B to part 851 is amended by:

■ a. Revising the last sentences of paragraphs (b)(1) and (2) in section VI; and

■ b. Revising paragraph 1.(e)(1) in section IX.

The revisions read as follows:

Appendix B to Part 851—General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

* * * * *

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $106,790.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($53,395).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to $106,790 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

■ 24. The authority citation for part 1013 continues to reads as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

■ 25. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 1013.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $12,537 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $12,537 for each such statement.

* * * * *

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

■ 26. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2168; 28 U.S.C. 2461 note.

■ 27. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§ 1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $296,132 for each violation.

* * * * *

PART 1050—FOREIGN GIFTS AND DECORATIONS

■ 28. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

■ 29. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as follows:

§ 1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $22,450.

[FR Doc. 2021–28446 Filed 1–7–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064–ZA30

Unsafe and Unsound Banking Practices: Brokered Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notification of additional designated business relationship that meets the primary purpose exception.

SUMMARY: The FDIC is identifying an additional business relationship, or ''designated exception,'' that meets the ''primary purpose'' exception to the deposit broker definition. The business relationship relates to specific, non-discretionary custodial services offered by third parties to depositors or depositors' agents. Entities that meet the criteria detailed below will be permitted to rely upon the primary purpose exception without submitting a notice or application.

DATES:

Effective date: January 10, 2022.

Applicability date: December 29, 2021.

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision: Rae-Ann Miller, Associate Director, (202) 898–3898, *rmiller@fdic.gov.* Legal Division: Vivek V. Khare, Counsel, (202) 898–6847, *vkhare@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2020, the FDIC adopted a final rule on brokered deposits and the interest rate restrictions that apply to less than well capitalized insured depository institutions (''IDIs'').[1] For brokered deposits, the final rule established a new framework for analyzing certain parts of the ''deposit broker'' definition, including a new interpretation for the ''primary purpose'' exception and the business relationships that meet the exception. The final rule took effect on April 1, 2021. Full compliance with the rule was extended to January 1, 2022.

II. Primary Purpose Exception

Section 29 of the FDI Act provides that the primary purpose exception applies to an ''agent or nominee whose primary purpose is not the placement of funds with depository institutions.'' [2] In the final rule, the FDIC provided that the primary purpose exception will apply when the primary purpose of the agent or nominee's business relationship with its customers is not the placement of funds with depository institutions.[3] In addition, the FDIC identified a number of business relationships (or ''designated exceptions'') that meet the ''primary purpose'' exception. The final rule also provided that, as part of the enumerated list of designated exceptions, the FDIC would make publicly available any additional business arrangements not described in the rulemaking that the FDIC later determines meet the primary purpose exception (without requiring an application).[4]

III. Additional Designated Exception

As described below, the FDIC has identified the following additional business arrangement that meets the primary purpose exception and intends

[1] 86 FR 6742 (Jan. 22, 2021); 12 CFR 337.6.

[2] 12 U.S.C. 1831f.

[3] 86 FR 6742, 6749 (Jan. 22, 2021).

[4] *Id.* at 6755; 12 CFR 337.6(a)(5)(v)(I)(*1*)(*xiv*).

to make conforming changes to the Call Report instructions in coordination with the Federal Financial Institutions Examination Council.[5]

The agent or nominee is ''engaged in the business of placing'' customer funds at IDIs, in a custodial capacity, based upon instructions received from a depositor or depositor's agent specific to each IDI and deposit account, and the agent or nominee neither plays any role in determining at which IDI(s) to place any customers' funds, nor negotiates or set rates, terms, fees, or conditions, for the deposit account.

Over the past several months, in response to questions received, the FDIC has been considering the role that certain custodial agents play in various deposit placement arrangements. Specifically, in some deposit placement arrangements, a depositor, or a depositor's agent, uses a custodial agent in placing depositor or customer funds at IDIs. Based on the ''deposit broker'' definition, these agents likely meet the ''engaged in the business of placing'' part of the definition because they receive third party funds and place those funds at more than one IDI.[6]

The FDIC recognizes, however, that in certain arrangements, the agent or nominee, in a custodial capacity, places deposits but has no discretion over where the deposits are placed and acts solely upon instructions given by the depositor or the depositor's agent specific to each deposit account. Moreover, in these arrangements, when the agent or nominee, acting in a custodial capacity, places deposits based upon instructions received from a depositor or depositor's agent, it does so without playing any role in determining at which banks the depositor's funds are to be placed nor does the agent negotiate or set rates, terms, fees, or conditions for the deposit account.

As such, in these specific arrangements, it is the FDIC's view that the agent or nominee's primary purpose in placing deposits at IDIs is to provide non-discretionary custodial services on behalf of the depositor or depositor's agent. Therefore, such entities will be deemed to meet the primary purpose exception. Accordingly, through this Notice, the FDIC is identifying this specific business relationship as a designated business relationship that meets the primary purpose exception. Entities that meet the criteria described in this Notice will be permitted to rely upon the exception without the submission of an application or notice.

As noted above, a custodial agent that plays any role in determining at which IDI(s) to place any customers' funds will not be eligible for the designated exception. As an example, a custodial agent that plays any role in creating, operating, or using an algorithm that is used to determine or recommend at which IDI(s) any customer funds are placed would be viewed as playing a role in determining at which banks the depositor's funds are to be placed and thus not eligible for the designated exception.

Involvement of Additional Third Party Deposit Brokers

The FDIC notes that a depositor or depositor's agent that meets the deposit broker definition and uses the services of a custodial agent that meets this designated exception to place deposits would result in such deposits being classified as brokered deposits. The involvement of the non-discretionary custodial agent does not change the classification of deposits placed by, or through the facilitation of, an entity that otherwise meets the deposit broker definition.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 29, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–28540 Filed 1–7–22; 8:45 am]

BILLING CODE 6714–01–P

[5] The additional designated exception will be posted to the FDIC's Banker Resource Center (Brokered Deposits web page), available at: *https://www.fdic.gov/resources/bankers/brokered-deposits/, will be updated to reflect this additional designated business exception.*

[6] 12 CFR 337.6(a)(5)(i)(A).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–1075; Special Conditions No. 25–599A–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Hydrophobic Windshield Coatings in Lieu of Windshield Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions, amendment.

SUMMARY: These amended special conditions are issued for the Dassault Model Falcon 6X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is hydrophobic windshield coatings in lieu of windshield wipers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, AIR–625, Performance and Environment Section, Technical Innovation Policy Branch, Policy and Innovation Division, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone and fax 404–474–5558, email *Paul.Pellicano@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for their new Model Falcon 5X airplane. Special conditions were issued for that design on September 15, 2015 (80 FR 55226). However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for their Model Falcon 5X airplane under new Model Falcon 6X. This amendment to the original special conditions reflects the model-name change. This airplane is a twin-engine business jet with seating for 19 passengers and a maximum takeoff weight of 77,460 pounds. The Dassault Model Falcon 6X airplane design remains unchanged from the Model Falcon 5X in all material respects other than different engines.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Dassault Aviation must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they

are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 6X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Model Falcon 6X airplane flight deck design incorporates a hydrophobic coating as a primary means to provide adequate windshield view in the presence of atmospheric precipitation. Reliance on such a coating, in lieu of wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards.

Discussion

Section 25.773(b)(1) requires a means to maintain a clear portion of the windshield for both pilots operating a transport-category airplane to have a sufficiently extensive view along the flight path during precipitation conditions. The regulations require this means to maintain such an area of clear vision during heavy-rain precipitation at airplane speeds up to 1.5 V_{SR1}.

This requirement has existed in principle since 1953 in part 4b of the ''Civil Air Regulations'' (CAR). Section 4b.351(b)(1) required that ''Means shall be provided for maintaining a sufficient portion of the windshield clear so that both pilots are afforded a sufficiently extensive view along the flight path in all normal flight attitudes of the airplane. Such means shall be designed to function under the following conditions without continuous attention on the part of the crew: (i) In heavy rain at speeds up to 1.6 V_{S1}, flaps retracted.''

Effective December 26, 2002, Amendment 25–108 changed the speed for effectiveness of the means to maintain an area of clear vision from up to 1.6 V_{S1} to 1.5 V_{SR1} to accommodate the redefinition of the reference stall speed from the minimum speed in the stall, V_{S1}, to greater than or equal to the 1g stall speed, V_{SR1}. As noted in the preamble to the final rule for that amendment, the reduced factor of 1.5 on V_{SR1} is to maintain approximately the same speed as the 1.6 factor on V_{S1}.

The requirement that the means to maintain a clear area of forward vision must function at high speeds and high precipitation rates is based on the use of windshield wipers as the means to maintain an adequate area of clear vision in precipitation conditions. The requirement in 14 CFR 121.313(b) and 125.213(b) to provide ''. . . a windshield wiper or equivalent for each pilot station . . .'' has remained unchanged since at least 1953.

The effectiveness of windshield wipers to maintain an area of clear vision normally degrades as airspeed and precipitation rates increase. It is assumed that because high speeds and high precipitation rates represent limiting conditions for windshield wipers, they will also be effective at lower speeds and precipitation levels. Accordingly, § 25.773(b)(1)(i) does not require maintenance of a clear area of forward vision at lower speeds or lower precipitation rates.

A forced airflow blown directly over the windshield has also been used to maintain an area of clear vision in precipitation. The limiting conditions for this technology are comparable to those for windshield wipers. Accordingly, introduction of this technology did not present a need for special conditions to maintain the level of safety embodied in the existing regulations.

Hydrophobic windshield coatings may depend to some degree on airflow to maintain a clear-vision area. The heavy rain and high speed conditions specified in the current rule do not necessarily represent the limiting condition for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear-vision area of the windshield in low-speed flight or during surface operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher-than-normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear-vision area on the windshield.

In addition to potentially depending on airflow to function effectively, hydrophobic coatings may also be dependent on water-droplet size for effective precipitation removal. For example, precipitation in the form of a light mist may not be sufficient for the coating's properties to result in maintaining a clear area of vision.

The current regulations identify speed and precipitation rate requirements that represent limiting conditions for windshield wipers and blowers, but not for hydrophobic coatings. Likewise, it is necessary to issue special conditions to maintain the level of safety represented by the current regulations.

These special conditions provide an appropriate safety standard for the hydrophobic-coating technology as the means to maintain a clear area of vision by requiring the coating to be effective at low speeds and low precipitation rates, as well as at the higher speeds and precipitation rates identified in the current regulation.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued *Final special conditions, request for comment* Special Conditions No. 25–599–SC for the Dassault Model Falcon 5X airplane, which was published in the **Federal Register** on September 15, 2015 (80 FR 55226). No comments were received, and the special conditions are adopted as proposed, with amendments.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Dassault Model Falcon 6X airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Dassault Model Falcon 6X airplanes.

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the ground or flight path in normal taxi and flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the flightcrew, in conditions from light misting precipitation to heavy rain, at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Kansas City, Missouri, on January 4, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–00129 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. FAA–2021–0705; Special Conditions No. 27–056–SC]

Special Conditions: Vector Aerospace Helicopter Services USA, Airbus Helicopters Model AS350B2 and AS350B3 Helicopters; Stability Augmentation System and Automatic Flight Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Helicopters (Airbus) Model AS350B2 and AS350B3 helicopters. These helicopters, as modified by Vector Aerospace Helicopter Services USA (Vector), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for helicopters. This design feature is the installation of a stability augmentation system and automatic flight control system (SAS/AFCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective January 10, 2022. Send comments on or before February 24, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2021–0705 using any of the following methods:

- *Federal eRegulations 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 (DOT), 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, 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: 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 *http://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this document.

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 document 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 document, 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 the indicated comments will not be placed in the public docket of this document. Submissions containing CBI should be sent to Marie Hogestad, Aircraft Information Systems Section, AIR–620, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 S 216th Street, Des Moines, WA 98198; telephone 206–231–3157; email *Marie.Hogestad@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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 Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aircraft Information Systems Section, AIR–620, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 S 216th Street, Des Moines, WA 98198; telephone 206–231–3157; email *Marie.Hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice of, and opportunity for prior public comment hereon are unnecessary because substantially identical special conditions have been previously subject to the public comment process in several prior instances such that the FAA is satisfied that new comments are unlikely. For the same reason, the FAA finds that good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On February 21, 2019, Vector applied for a supplemental type certificate for the installation of SAS/AFCS on the Airbus Model AS350B2 and AS350B3 helicopters. The Airbus Model AS350B2 and AS350B3 helicopters are 14 CFR part 27 normal category, single turbine

engine, conventional helicopters designed for civil operation. These helicopters can carry up to six passengers with one pilot and have a maximum takeoff weight of up to 6,173 pounds, depending on the model configuration. The major design features include a three-blade main rotor, an anti-torque tail rotor system, skid landing gear, and a visual flight rule basic avionics configuration. Vector proposes to modify these model helicopters by installing the Thales Compact Autopilot System (CAPS), which is a 4-axis SAS/AFCS.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Vector must show that the Airbus Model AS350B2 and AS350B3 helicopters, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. H9EU or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 27) do not contain adequate or appropriate safety standards for the Airbus Model AS350B2 and AS350B3 helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Airbus Model AS350B2 and AS350B3 helicopters will incorporate the following novel or unusual design feature: SAS/AFCS. An AFCS is a system used to control the trajectory of an aircraft without constant input from the pilot. The AFCS allows the pilot to focus on other aspects of the operation, such as weather and other systems. SAS is another automatic control system; however, instead of maintaining the aircraft on a predetermined attitude or flight path, the SAS will reduce pilot workload by dampening the aircraft buffeting regardless of the attitude or flight path.

Discussion

The Thales CAPS (SAS/AFCS) utilizes serial and parallel actuators installed in each control axis to provide an enhancement to basic aircraft stability and handling qualities and allow fully automatic vertical and lateral autopilot coupling. Consequently, the Thales CAPS installed in the Airbus Model AS350B2 and AS350B3 helicopters may include failure modes that could prevent continued safe flight and landing.

When § 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems whose failures could result in ''Catastrophic'' or ''Hazardous/Severe-Major'' failure conditions, or complex systems whose failures could result in ''Major'' failure conditions, as defined in FAA Advisory Circular 27–1B *Certification of Normal Category Rotorcraft* (AC 27–1B). Accordingly, the crew's interaction with these types of systems and awareness of their behavior and operating condition was not addressed. Paragraph (c) of these special conditions addresses the crew's interaction with information concerning unsafe system operating conditions. An unsafe system operating condition would cause serious injuries or fatalities. Therefore, 14 CFR 27.1309 (b) and (c) do not adequately address the safety requirements to certify this type of system installation.

The Airbus Model AS350B2 and AS350B3 helicopters type certification basis as modified by Vector does not contain adequate airworthiness standards for the SAS/AFCS. Therefore these special conditions require Vector to provide the FAA with a systems safety assessment (SSA) for the final SAS/AFCS installation configuration to adequately address the safety objectives established by the functional hazard assessment (FHA) required by § 27.1309. This process will ensure that Vector adequately address all failure conditions and effects for the installed SAS/AFCS.

The SSA process is part of the overall safety assessment process discussed in AC 27–1B and Society of Automotive Engineers document Aerospace Recommended Practice 4761, *Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment.*

These special conditions require that the SAS/AFCS installed on Airbus Model AS350B2 and AS350B3 helicopters meet the requirements to address the failure effects identified by the FHA adequately and subsequently verified by the SSA, within the defined design integrity requirements.

Failure conditions are classified according to the severity of their effects on the rotorcraft. Radio Technical Commission for Aeronautics, Inc. (RTCA) Document DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* provides software design assurance levels most commonly used for the major, hazardous/severe-major, and catastrophic failure condition categories. The SAS/AFCS equipment should be qualified for the expected installation environment. The FAA recognizes the test procedures prescribed in RTCA Document DO–160G, *Environmental Conditions and Test Procedures for Airborne Equipment,* as acceptable methodologies for finding compliance with the environmental requirements. Equivalent environment test standards may also be acceptable.

The environmental qualification provides data to show that the SAS/AFCS can perform its intended function under the expected operating condition. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the SAS/AFCS equipment, including considerations for other equipment that may also be affected environmentally by the SAS/AFCS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model AS350B2 and AS350B3 helicopters with the SAS/AFCS installed. Should Vector apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. H9EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Airbus Model AS350B2 and AS350B3 helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these helicopters.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus Helicopters (Airbus) Model AS350B2 and AS350B3 helicopters, as modified by Vector Aerospace Helicopter Services USA.

For certification of the stability augmentation system and automatic flight control system (SAS/AFSC) installed on Airbus Model AS350B2 and AS350B3 helicopters, instead of the requirements of 14 CFR 27.1309(b) and (c), the following must be met:

(a) These systems and their equipment must be designed and installed so that they do not adversely affect the safety of the rotorcraft or its occupants.

(b) These systems and their associated components considered separately and in relation to other systems must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any hazardous failure condition is extremely remote; and

(3) The occurrence of any major failure condition is remote.

(c) Information concerning an unsafe system operating condition must be provided in a timely manner to the crew to enable them to take appropriate corrective action. An appropriate alert must be provided if immediate pilot awareness and immediate or subsequent corrective action are required. These systems and their controls, including indications and annunciations, must be designed to minimize crew errors that could create additional hazards.

Issued in Kansas City, Missouri, on January 4, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–00096 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: Effective January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Attorney (202–326–3368), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [1] directs agencies to adjust the civil penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.[2]

Commission Rule 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.[3] As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to address inflation since its prior 2021 adjustment. The following adjusted amounts will take effect on January 10, 2022:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from $43,792 to $46,517;
- Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from $23,266 to $24,714;
- Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*) (unfair or deceptive acts or practices)—Increase from $43,792 to $46,517;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from $43,792 to $46,517;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from $43,792 to $46,517;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from $576 to $612;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from $576 to $612;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from $576 to $612;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from $576 to $612;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from $576 to $612;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from $474 to $503;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from $23,266 to $24,714;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from $43,792 to $46,517;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from $4,111 to $4,367;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from $15,482 to $16,445; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from $1,246,249 to $1,323,791.

Calculation of Inflation Adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment.[4] The cost-of-living

[1] Public Law 114–74, 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (''FCPIAA''), Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

[2] 81 FR 42476 (2016); 82 FR 8135 (2017); 83 FR 2902 (2018); 84 FR 3980 (2019), 85 FR 2014 (2020); 86 FR 2539 (2021).

[3] 16 CFR 1.98.

[4] 28 U.S.C. 2461 note (4).

adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year.[5] Based on that formula, the cost-of-living adjustment multiplier for 2021 is 1.06222. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission's jurisdiction.

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

Citation	Description	2021 Penalty level ($)	Adjustment multiplier	2022 Penalty level (rounded to the nearest dollar)
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	$43,792	1.06222	$46,517
16 CFR 1.98(b): 15 U.S.C. 21(*l*)	Violations of cease and desist orders	23,266	1.06222	24,714
16 CFR 1.98(c): 15 U.S.C. 45(*l*)	Unfair or deceptive acts or practices	43,792	1.06222	46,517
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Unfair or deceptive acts or practices	43,792	1.06222	46,517
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Unfair or deceptive acts or practices	43,792	1.06222	46,517
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	576	1.06222	612
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	576	1.06222	612
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	576	1.06222	612
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	576	1.06222	612
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	576	1.06222	612
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations	474	1.06222	503
16 CFR 1.98(*l*): 42 U.S.C. 6395(a)	Recycled oil labeling violations	23,266	1.06222	24,714
16 CFR 1.98(*l*): 42 U.S.C. 6395(b)	Willful violations	43,792	1.06222	46,517
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations	4,111	1.06222	4,367
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	15,482	1.06222	16,445
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies.	1,246,249	1.06222	1,323,791

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective date.[6] These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the **Federal Register**, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (''RFA'') also do not apply.[7] Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

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

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

■ 1. The authority citation for subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after January 10, 2022, including those penalties whose associated violation predated January 10, 2022.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$46,517;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$24,714;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$46,517;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$46,517;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$46,517;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$612;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$612;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.SC. 68d(b)—$612;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$612;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$612;

[5] *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M–22–07, *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2021), available at: *https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf.*

[6] 28 U.S.C. 2461 note (6).

[7] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$503;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$24,714 and $46,517, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$4,367;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note—$16,445;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,323,791; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

April Tabor,

Secretary.

[FR Doc. 2022–00213 Filed 1–7–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127, and 138

[Public Notice: 11617]

RIN 1400–AF43

Department of State 2022 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2021 guidance from the Office of Management and Budget. The new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, *kottmyeram@state.gov.* ATTN: Regulatory Change, CMP Adjustments, (202) 647–2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114–74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a ''catch-up'' adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule in June 2016 [1] to implement the ''catch-up'' provisions; and annual updates to its CMPs in January 2017,[2] January 2018,[3] March 2019 (delayed due to the Government shutdown),[4] January 2020,[5] and February 2021 (delayed due to transition issues).[6]

On December 15, 2021, OMB notified agencies that the annual cost-of-living adjustment multiplier for 2021, based on the Consumer Price Index, is 1.06222. Additional information may be found in OMB Memorandum M–22–07 at: *https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf.* This final rule amends Department CMPs for fiscal year 2022.

Overview of the Areas Affected by This Rule

Within the Department of State (title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801–3812;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), and 2780(k)); and

(4) Part 138, which implements Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract.

Specific Changes to 22 CFR Made by This Rule

I. Part 35

The PFCRA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims. In addition to applying the annual adjustment, this rule also corrects a typographical error made in the Code of Federal Regulations (CFR). On January 14, 2020, a rule (85 FR 2020) was published in the **Federal Register** noting the inflationary adjustment in § 35.3 for 2020. Although the rule correctly listed the maximum amount at $349,969, an error was made in amending the CFR itself, with the amount entered as $343,969. The inflationary adjustment for 2021 (86 FR 7804 (February 2, 2020)) then applied the correct multiplier (1.01182), but to the erroneously entered number. The maximum amount was listed for 2021 as $348,035 but should have been $354,106.

This rule corrects those errors, and for the 2022 inflationary adjustment uses the proper $354,106 multiplied by the inflationary adjustment for 2022 (1.06222), resulting in a maximum liability of $376,138. The amounts for the maximum penalty for each false claim or statement were correctly entered in both 2020 and 2021. Consequently, applying the 2022 multiplier, the new maximum penalty is $12,537 for each false claim or statement, up to a maximum of $376,138.

II. Part 103

The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761. Applying the 2021 multiplier, the new maximum amounts are as follows: Prohibited acts related to inspections, $42,163; for recordkeeping violations, $8,433.

III. Part 127

The Assistant Secretary of State for Political-Military Affairs is responsible

[1] 81 FR 36771 (Jun. 8, 2016).

[2] 82 FR 3168 (Jan. 11, 2017).

[3] 83 FR 234 (Jan. 3, 2018).

[4] 84 FR 9957 (Mar. 19, 2019).

[5] 85 FR 2020 (Jan. 14, 2020).

[6] 86 FR 7804 (Feb. 2, 2021).

for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC).

(1) AECA Section 38(e)

Applying the 2021 multiplier, the new maximum penalty under 22 U.S.C. 2778 (22 CFR 127.10(a)(1)(i)) is $1,272,251.

(2) AECA Section 39A(c)

Applying the multiplier, the new maximum penalty under 22 U.S.C. 2779a (22 CFR 127.10(a)(1)(ii)) is $925,041, or five times the amount of the prohibited payment, whichever is greater.

(3) AECA Section 40(k)

Applying the multiplier, the new maximum penalty under 22 U.S.C. 2780 (22 CFR 127.10(a)(1)(iii)) is $1,101,061.

IV. Part 138

Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, provides penalties for recipients of Federal contracts, grants, and loans who use appropriated funds to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

Applying the 2021 multiplier, the maximum penalties for both improper expenditures and failure to disclose, is: For first offenders, $21,665; for others, not less than $22,021, and not more than $220,213.

Summary

2022 MULTIPLIER: 1.06222

Citation in 22 CFR	Corrected FY21 max penalties [7]	New (FY 22) max penalties
§ 35.3	$11,803 up to $354,106	$12,537 up to $376,138.
§ 103.6(a)(1) *Prohibited Acts*	$39,693	$42,163.
§ 103.6(a)(2) *Recordkeeping Violations*	$7,939	$8,433.
§ 127.10(a)(1)(i)	$1,197,728	$1,272,251.
§ 127.10(a)(1)(ii)	$870,856 or 5 times the amount of the prohibited payment, whichever is greater.	$925,041 or 5 times the amount of the prohibited payment, whichever is greater.
§ 127.10(a)(1)(iii)	$1,036,566	$1,101,061.
§ 138.400 *First Offenders*	$20,396	$21,665.
§ 138.400	$20,731 up to $207,314	$22,021 up to $220,213.

Effective Date of Penalties

The revised CMP amounts will go into effect on the date this rule is published. All violations for which CMPs are assessed on or after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the **Federal Register** no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the ''good cause'' exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory and entirely without agency discretion; it implements Public Law 114–74. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because this rulemaking is exempt from 5 U.S.C. 553, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule does not involve a mandate that will 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

This rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Orders 12866 and 13563

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. Pursuant to M–22–07, OIRA has determined that agency regulations that (1) exclusively implement the annual adjustment, (2) are consistent with this guidance, and (3) have an annual impact of less than $100 million, are generally not significant regulatory actions under E.O. 12866. Therefore, agencies are generally not required to submit regulations satisfying those criteria to OIRA for review. This regulation satisfies all of those criteria.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and

[7] See discussion relating to 22 CFR 35.3.

will not preempt Tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

PART 35—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 35.3 [Amended]

■ 2. In § 35.3:
■ a. Remove ''$11,803''and add in its place ''$12,537'', wherever it occurs.
■ b. In paragraph (f), remove ''$348,035'' and add in its place ''$376,138''.

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

■ 3. The authority citation for part 103 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 103.6 [Amended]

■ 4. In § 103.6:
■ a. In paragraph (a)(1), remove ''$39,693'' and add in its place ''$42,163''; and
■ b. In paragraph (a)(2), remove ''$7,939'' and add in its place ''$8,433''.

PART 127—VIOLATIONS AND PENALTIES

■ 5. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

§ 127.10 [Amended]

■ 6. In § 127.10:
■ a. In paragraph (a)(1)(i), remove ''$1,197,728'' and add in its place ''$1,272,251'';
■ b. In paragraph (a)(1)(ii), remove ''$870,856'' and add in its place ''$925,041''; and
■ c. In paragraph (a)(1)(iii), remove ''$1,036,566'' and add in its place ''$1,101,061''.

PART 138—RESTRICTIONS ON LOBBYING

■ 7. The authority citation for part 138 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114–74, 129 Stat. 584.

§ 138.400 [Amended]

■ 8. In § 138.400:
■ a. Remove ''$20,731'' and ''$207,314'' and add in their place ''$22,021'' and ''$220,213'', respectively, wherever they occur.
■ b. In paragraph (e), remove ''$20,396'' and add in its place ''$21,665''.

Kevin E. Bryant,

Deputy Director, Office of Directives Management.

[FR Doc. 2022–00235 Filed 1–7–22; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0931]

RIN 1625–AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters in the vicinity of the Coronado Bridge in San Diego Bay, San Diego, CA, in support of a U.S. Navy exercise. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Diego.

DATES: This rule is effective from 5 p.m. on January 10, 2022 through 3 p.m. on January 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0931 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this safety zone by January 10, 2022. This urgent safety zone is required to protect the maritime public and the surrounding waterways from hazards associated with a U.S. Navy exercise. The Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the exercise scheduled to begin on January 10, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Diego (COTP) has determined that the potential hazards associated with the U.S. Navy exercise scheduled to begin on January 10, 2022 poses a potential safety concern in the regulated area. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters of San Diego Bay during the exercise.

IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. on January 10, 2022 through 3 p.m. on January 11, 2022. The safety zone will cover all navigable waters of San Diego Bay within a 200-foot radius centered at position: 32°41′12.2″ N 117°09′40.4″ W. The purpose of the safety zone is to protect persons, vessels, and the marine environment in the navigable waters of San Diego Bay during the exercise. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or his designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the San Diego Bay. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 22 hours that will prohibit entry within a 200-foot radius of a designated coordinate in the vicinity of the Coronado Bridge in San Diego Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–088 to read as follows:

§ 165.T11–088 Safety Zone; San Diego Bay; San Diego, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of San Diego Bay, from surface to bottom, within a 200-foot radius centered at position: 32°41′12.2″ N, 117°09′40.4″ W (WGS 84).

(b) *Definitions.* The term ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, and other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port San Diego in the enforcement of the regulated area.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 5 p.m. on January 10, 2022 through 3 p.m. on January 11, 2022.

Dated: January 5, 2022.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2022–00276 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0011]

RIN 1625–AA00

Safety Zone; Deep Creek, Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of Deep Creek and the Elizabeth River. The safey zone is needed to safeguard personnel and vessels from potential hazards associated with an incident involving an adrift barge that has struck a power transmission tower in the waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Virginia or designated respresentative.

DATES: This rule is effective without actual notice from January 10, 2022 until January 19, 2022. For the purposes of enforcement, actual notice will be used from January 4, 2022, until January 10, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0011 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: 757–668–5580, email: *virginiawaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On January 3, 2022, an adrift barge struck a power transmission tower in the navigable waters of Deep Creek and the Elizabeth River causing the tower to lean. The structural integrity of the transmission tower is unknown at this time creating a potential hazard to navigation including the potential for de-energized power lines to enter the waterway. Every effort is being made to ensure the structure is supported until power lines can be disconnected and the tower is removed. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to public interest. The Coast Guard received information about this potential hazard to navigation on January 3, 2022. Immediate action is needed to protect transiting vessels from the damaged transmission tower causing a potential hazard to navigation which includes the potential for de-energized power lines to enter the waterway.

For those same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action to restrict vessel traffic is needed to protect life, property and the environment. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting personnel and vessel from the immediate potential hazard, enhancing maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined a potential hazardous situation in Deep Creek, Southern Branch of the Elizabeth River, requires the establishment of a safety zone to protect personnel and vessels transiting the area.

IV. Discussion of the Rule

The U.S. Coast Guard is establishing a temporary safety zone on certain navigable waters in the vicinity of Deep Creek, Southern Branch of the Elizabeth River north of the I–64/High Rise Bridge. This rule will be in effect from January 4, 2022, through January 19, 2022. The duration of the zone is intended to protect vessels from a damaged power transmission tower causing potential hazard to navigation in the waterway and to protect personnel performing repair and recovery. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the safety zone being in effect for a limited duration; this is a portion of the waterway with minimal vessel traffic; and the Coast Guard will continue to make notifications via maritime broadcasts.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for 15 days that will prohibit entry within certain navigable waters of the Southern Branch of the Elizabeth River. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T05–0861to read as follows:

§ 165.T05–0861 Safety Zone; Deep Creek, Elizabeth River, Chesapeake, VA.

(a) *Location.* The following area is a safety zone: The waters enclosed by the shoreline and the following lines: A line drawn across Deep Creek, Elizabeth River from 36–45.71N 076–18.52W to 36–45.64N 076 18.52W and a line drawn across Deep Creek, Elizabeth River from 36–45.74N 076–18.30W to 36–45.66N 076–18.30W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF/FM Chanel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced January 4, 2022, through January 19, 2022, unless canceled sooner by the COTP.

Dated: January 4, 2022.

Samson C. Stevens,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2022–00168 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0917]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Markers 636–655, Modoc, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), between Mile Marker 636 and 655. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with rock placement operations in the vicinity of Modoc, AR. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from January 10, 2022 through April 1, 2022. For the purposes of enforcement, actual notice will be used from January 5, 2022 until January 10, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0917 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with rock placement operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with rock placement operations in the vicinity of Modoc, AR starting January 5, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with rock placement operations between Mile Marker (MM) 636 and 655, scheduled to start on January 5, 2022, will be a safety concern for all persons and vessels on the LMR between MM 636 and MM 655 through April 1, 2022. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while rock placement operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from January 5, 2022 through April 1, 2022. The safety zone will cover all navigable waters of the Lower Mississippi River (LMR) from MM 636 to MM 655. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during rock placement operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector LMR. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 314–269–2332. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone will temporarily restrict navigation on the LMR from MM 636 through MM 655, from January 5, 2022 through April 1, 2022. Moreover, the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0917 to read as follows:

§ 165.T08–0917 Safety Zone; Lower Mississippi River, Mile Markers 636–655, Modoc, AR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 636 through MM 655.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned,

warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from January 5, 2022 through April 1, 2022.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: January 3, 2022.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2022–00126 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–173

[FMR Case 2021–02; Docket No. GSA–FMR–2021–0022; Sequence 01]

RIN 3090–AK52

Federal Management Regulation (FMR); Internet GOV Domain

AGENCY: Office of Information Integrity and Access, Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Interim rule.

SUMMARY: This interim rule implements certain provisions of the DOTGOV Act of 2020 applicable to GSA, which was enacted as part of the Consolidated Appropriations Act, 2021. It removes provisions to the existing jurisdiction of the DOTGOV domain that had been delegated to the General Services Administration in 1997 by the Federal Networking Council with guidance in the form of internet Engineering Task Force (IETF) Informational RFC 2146, which was further expanded to include State, local, or territorial government entities in 2003 by the Intergovernmental Cooperation Act (IGCA). This interim rule implements provisions of the DOTGOV Act of 2020 that transfer ownership, management and operation of the DotGov Domain Program from the General Services Administration (GSA) to the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA).

DATES:

Effective date: January 10, 2022.

Applicability Date: As of January 10, 2022, this interim rule applies to all newly issued, already in operation, and/or renewed .gov domains.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before March 11, 2022 to be considered in the formation of the final rule.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marina Fox, Office of Government-wide Policy, Office of Information, Integrity, and Access, at 202–253–6448, or by email at *marina.fox@gsa.gov.* For information pertaining to the status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FMR Case 2021–02.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

For more than 20 years, GSA supported government organizations and worked to make .gov a trusted space.gov domain exists so that the online services of bona fide U.S.-based government organizations are easy to identify on the internet. Increasing and normalizing .gov use helps the public know where to find official government information. .gov is critical infrastructure: It's central to the availability and integrity of thousands of online services relied upon by millions of users. Since the .gov domain underpins communication with and within these institutions, cybersecurity significance of all aspects of .gov's administration has been increasing rapidly. To provide additional cybersecurity support and expand .gov usage among public entities, the DOTGOV Act of 2020 (or the DOTGOV Act of 2019) was introduced in the U.S. Senate on October 30, 2019, directing GSA to transfer the DotGov program to CISA.

On December 27, 2020, the DOTGOV Act of 2020 was signed into law and enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). The Act transfers the DotGov (.gov) internet domain program, as operated by the General Services Administration under title 41, Code of Federal Regulations, to DHS CISA. The Act also orders that on the date CISA begins operational administration of the DotGov internet domain program, the GSA Administrator shall rescind the requirements in part 102–173 of title 41, Code of Federal Regulations applicable to any Federal, State, local, or territorial government entity, or other publicly controlled entity, including any Tribal government recognized by the Federal Government or a State government that is registering or operating a .gov internet domain. Finally, the Act orders that in place of the requirements in part 102–173 of title 41, Code of Federal Regulations, CISA, in consultation with the Director of Management and Budget (OMB), establishes and publishes a new set of requirements for the registration and operation of .gov domains.

On April 26, 2021, GSA transferred ownership, management and operation of DotGov Domain Program to the Department of Homeland Security (DHS), CISA, and CISA published new .gov domain issuance guidance for government entities in place of the existing INTERNET GOV DOMAIN requirements in FMR. To comply with the DOTGOV Online Trust in Government Act of 2020 (Title IX, Division U, H.R. 133, Consolidated Appropriations Act, 2021), GSA is amending the Federal Management Regulation to remove all requirements in part 102–173 ''INTERNET GOV DOMAIN''.

DotGov Program History

The DotGov program was created in 1997, and GSA OGP became the designated authority for the top level Domain ''DOT GOV'' registry and registrar and the subdomain registrar for FED.US by a delegation of the National Science Foundation through consensus of the Federal Networking Council and Department of Commerce on October 1, 1997. To provide additional support, GSA entered into an agreement with the Department of the Interior's Bureau of Indian Affairs to facilitate the registration of Native Sovereign Nations (NSNs) in the dot-gov domain. In 2003, GSA began using the Intergovernmental Cooperation Act (IGCA) as the authority to provide services to U.S. state and local governments, and began issuing

.gov domains to state and local government entities.

Under GSA's DotGov program management and operations, domain registrations were approved based on established criteria, detailed in Federal Networking Council request for comments (RFC) 2146, May 1997 and in the Code of Federal Regulations—41 CFR Part 102–173. GSA's management of the DotGov program also included DotGov DNS Security (DNSSEC), which gives DNS queries origin authenticity and data integrity. This was accomplished by the inclusion of public keys and the use of digital signatures to DNS information. DNSSEC was deployed on the top level Gov domain root zone in January 2008 in accordance with OMB Memorandum M–08–23.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. GSA 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. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined that this is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it applies to agency management or personnel. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

VI. Determination To Issue an Interim Rule

As discussed above, Congress mandated through the DOT Gov Online Trust in Government Act that GSA rescind the regulations contained in part 102–173 of title 41, Code of Federal Regulations. As Congress has directed a specific regulator outcome through statute, this constitutes good cause to issue this as an interim rule with comment period.

List of Subjects in 41 CFR Part 102–173

Government property management; Internet Gov Domain.

Robin Carnahan,
Administrator.

PART 102–173—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of the DOTGOV Online Trust in Government Act of 2020 (Title IX, Division U, H.R. 133, Consolidated Appropriations Act, 2021), GSA removes 41 CFR part 102–173.

[FR Doc. 2021–28421 Filed 1–7–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF STATE

48 CFR Parts 615 and 652

[Public Notice: 11611]

RIN 1400–AE60

Acquisition Regulation: Access to Contractor Records

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) is finalizing an amendment to the Department of State Acquisition Regulation (DOSAR), to add a new contract clause relating to Department requests for examination of contractor records.

DATES: This final rule is effective February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Tandra A. Jones, Senior Procurement, Email: *AcquisitionPolicy@state.gov.*

SUPPLEMENTARY INFORMATION: On July 2, 2021, the Department published a notice of proposed rulemaking, proposing to add 48 CFR part 615, section 615.209–70, *Examination of Records,* and 48 CFR part 652, section 652.209–70, *Examination of Records,* to the Department of State Acquisition Regulation (DOSAR). 86 FR 35257. The Department provided 60 days for public comment. No comments were received. Accordingly, the Department is publishing this final rule.

What is the authority for this rule?

Title 41 of the U.S. Code, section 4706, provides that the head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to 41 U.S.C. chapter 35 with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to:

- The proposal for the contract or subcontract;
- the discussions conducted on the proposal;
- pricing of the contract or subcontract; or
- performance of the contract or subcontract.

The Federal Acquisition Regulation (FAR), 48 CFR 15.209(b), *Solicitation provisions and contract clauses,* states (in summary) that, when contracting by negotiation, except as provided in paragraph (b)(2) of § 15.209,[1] the contracting officer shall insert the clause at § 52.215–2, Audit and Records-Negotiation, in solicitations and contracts except those for

- Acquisitions not exceeding the simplified acquisition threshold;
  - The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or
  - The acquisition of commercial items exempted under § 15.403–1.

[1] Paragraph (b)(2) relates to contracts using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Why is the Department publishing this rule?

The DOSAR implements the FAR (and therefore, the statute, 41 U.S.C. 4706) for the Department of State.[2] The Department has determined, after a review of the existing regulations, that further clarity is required regarding implementation of 41 U.S.C. 4706 as it relates to contracts *other than* contracts by negotiation (which, as noted, are already covered by FAR § 15.209(b)).

For these reasons, the Department is adding § 615.209–70 to the DOSAR, requiring the contracting officer to insert a new clause, *Examination of Records* (proposed § 652.215–70), in all solicitations and contracts other than contracts by negotiation.

Regulatory Findings

Administrative Procedure Act

In accordance with the provisions of the Administrative Procedure Act, the Department published this rulemaking as a proposed rule, and provided 60 days for public comment. This final rule will be effective 30 days after publication.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on small entities. This determination is based on the fact that this rulemaking clarifies within the DOSAR the authority of the Department to examine contractor records, which is already provided by statute.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804(2).

Unfunded Mandates Act of 1995

This 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 Act of 1995.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of this rule outweigh any costs, which the Department assesses to be minimal. As noted, this rule does not impose any new requirements on contractors. The Office of Information and Regulatory Affairs has determined that this regulation is ''not significant'' under E.O. 12866.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rulemaking will not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not add or revise any information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Parts 615 and 652

Administrative practice and procedure, Government procurement.

Accordingly, the Department of State amends 48 CFR chapter 6 as follows:

PART 615—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for part 615 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

■ 2. Section 615.209–70 is added to read as follows:

615.209–70 Examination of records.

The contracting officer shall insert the clause at 652.215–70, Examination of Records, in all solicitations and contracts other than those described in Federal Acquisition Regulation 15.209(b)(1).

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 652 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1

■ 4. Section 652.215–70 is added to read as follows:

652.215–70 Examination of records.

As prescribed in 615.209–70, insert the following clause.

Examination of Records

(a) With respect to matters related to this contract or a subcontract hereunder, the Department of State Office of the Inspector General, or an authorized representative, shall have upon request:

(1) Complete, prompt, and free access to all Contractor and Subcontractor files (in any format), documents, records, data, premises, and employees, except as limited by law; and

(2) The right to interview any current Contractor and Subcontractor personnel, individually and directly, with respect to such matters.

(b) This clause may not be construed to require the contractor or any subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(c) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (c), in all subcontracts under this contract other than acquisitions described in Federal Acquisition Regulation 15.209(b)(1).

(End of clause)

Michael W. Derrios,

Senior Procurement Executive, Office of the Procurement Executive, U.S. Department of State.

[FR Doc. 2022–00073 Filed 1–7–22; 8:45 am]

BILLING CODE 4710–24–P

[2] 48 CFR 601.303.

Proposed Rules

Federal Register
Vol. 87, No. 6
Monday, January 10, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

Republication

Editorial Note: Rule document 2021–28089 was originally published on pages 73708 through 73712 in the issue of Tuesday, December 28, 2021. At the bottom of page 73711, Figure 3 to paragraph (g) was inadvertently split between pages 73711 and 73712. The corrected document is republished in its entirety.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 429 helicopters. This proposed AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). This proposed AD would require revising the existing rotorcraft flight manual supplement (RFMS) for your helicopter and disabling the traffic alert and collision avoidance system (TCAS) POP-UP feature for certain DUs. 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 February 11, 2022.

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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1078; 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, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@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–2021–1078; Project Identifier MCAI–2020–01574–R'' 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.

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 Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2020–18R1, dated November 27, 2020 (Transport Canada AD CF–2020–18R1), to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, serial numbers 57001 through 57369, 57371, and 57373. Transport Canada advises that it has received in-service reports of the loss of display and subsequent recovery of the DU manufactured by Rogerson Kratos (RK). During an instrument flight rules approach, a Bell Textron Canada

Limited Model 429 helicopter lost its center DU display, which then rebooted, and subsequently lost its right-hand side (RHS) DU display, which then also rebooted. Investigation revealed that the DUs' power cycle occurred while in Map-Mode, which was caused by the RK DUs' limited processing capability for excessive null waypoints generated by the Garmin GTN 750/650 GPS/NAV/COMM/MFD.

Transport Canada also advises that the use of Map-Mode to the center DU should be limited only for Bell Textron Canada Limited Model 429 helicopters equipped with RK DUs and Garmin GTN 750/650 main software version 6.21 or later and that the use of Map-Mode should be prohibited on both the RHS DU and left-hand side DU, if installed. In addition, Transport Canada advises that a new emergency and malfunction procedure in the event of center DU failure should be implemented.

If not addressed, a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021, which specifies procedures for disabling the TCAS POP-UP feature for certain DUs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing RFMS for your helicopter and disabling the TCAS POP-UP feature for certain DUs.

Differences Between This Proposed AD and the Transport Canada AD

Transport Canada AD CF–2020–18R1 requires operators to ''advise all flight crews'' of the changes introduced by the RFMS revision. However, this proposed AD would not specifically require that action. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFMS. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFMS would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable. The flight manual supplement changes proposed in this AD would also apply to the emergency and malfunction procedures section of the existing RFMS for your helicopter. FAA regulations mandate compliance only with the operating limitations section of the flight manual. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability operate in accordance with the revised emergency and malfunction procedures specified in this proposed AD.

This proposed AD would also propose to require disabling the TCAS POP-UP feature for certain DUs, which is not required in Transport Canada AD CF–2020–18R1. The FAA has coordinated this requirement with Transport Canada, and Transport Canada stated that it is planning to include this action in a future rulemaking action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 88 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the RFMS for your helicopter takes about 1 work-hour for an estimated cost of $85 per helicopter and $7,480 for the U.S. fleet.

Disabling the TCAS POP-UP feature for your helicopter takes about 0.5 work-hours for an estimated cost of $43 per helicopter and $3,784 for the U.S. fleet.

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, 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:

Bell Textron Canada Limited: Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, certificated in any category, serial numbers 57001 through 57369 inclusive, 57371, and 57373.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3100, Indicating/Recording System.

(e) Unsafe Condition

This AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). The FAA is issuing this AD to address a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs, which if not addressed, could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

(f) Compliance

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

(g) Revising the Rotorcraft Flight Manual Supplement (RFMS)

Within 30 days after the effective date of this AD: Revise the Types of Operation—Limitations (section 1–3–A.) of the existing RFMS for your helicopter to include the information in the ''Limitations'' procedure specified in figure 1 to paragraph (g) of this AD, revise the Configuration (section 1–5.) of the existing RFMS for your helicopter to include the information in the ''Configuration'' specified in figure 2 to paragraph (g) of this AD, and revise the Emergency and Malfunction Procedures (section 3) of the existing RFMS for your helicopter to include the information in the ''CENTER DU FAILURE'' specified in figure 3 to paragraph (g) of this AD.

BILLING CODE 0099–10–P

Figure 1 to paragraph (g) – *Limitations procedure revision*

1-3-A. LIMITATIONS

Safe Taxi® and Chart View, if installed, shall not be used as primary means for flight crews to orient themselves on the airport surface.

Use of the GTN for primary navigation for latitudes above 89.00°N and below 89.00°S is not authorized.

Use of MAP mode on the Pilot and Co-pilot (if installed) Rogerson Kratos (RK) DU is prohibited. Use of MAP mode may cause a power cycle of the DU.

MAP mode on the center RK DU shall not be selected during a DME Arc approach, as this may cause a power cycle of the DU.

MAP mode on the center RK DU shall not be selected during search pattern operations. Excessive search pattern legs in DU MAP mode may cause a power cycle of the DU.

The SD card or Flight Stream 510 (MMC) shall be present in each unit at all times.

Demo mode shall not be used in flight.

Figure 2 to paragraph (g) – *Configuration revision*

1-5. CONFIGURATION

Garmin GTN 750/650 main software shall be Version 4.00 with GPS software 5.00 or main software 6.21 with GPS software 5.2, or main software 6.62 with GPS software 5.2.

Flight Stream 510, if installed, shall be version 2.32 or later.

Both GTN units shall have the same software versions.

TCAS POP-UP mode shall be DISABLED on the Rogerson Kratos (RK) DU.

Figure 3 to paragraph (g) – *Emergency and Malfunction Procedures revision*

3-14-B. CENTER DU FAILURE

- INDICATIONS:

  DU screen momentarily goes blank.

  Pilot and Co-pilot (if installed) DU goes into composite mode.

- PROCEDURE:

  NOTE

  MAP mode on center DU is defaulted ON with Weather Radar (if installed).

  Center DU — Deselect MAP mode.

  Pilot/Copilot DU — Select flight mode, as desired.

BILLING CODE 0099–10–C

Note 1 to paragraph (g): The information in the ''CENTER DU FAILURE'' specified in figure 3 to paragraph (g) of this AD can be found in Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revisions 3, 4, 5, and 6.

(h) Disabling the Traffic Alert and Collision Avoidance System (TCAS) POP-UP Feature

Within 30 days after the effective date of this AD: Disable the TCAS POP-UP mode, including those helicopters equipped with the TCAS kit, in the parameter setup page on all RK DUs, in accordance with paragraph 3. of the Accomplishment Instructions of Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in Transport Canada AD CF–2020–18R1, dated November 27, 2020. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1078.

Issued on December 16, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. R1–2021–28089 Filed 1–6–22; 4:15 pm]

BILLING CODE 0099–10–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AQ91

Modifications of Approval Requirements for Courses Designed To Prepare Individuals for Licensure or Certifications

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations to implement the provisions of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016. In this proposed rule, we would add new approval requirements as specified in the statutory provisions for accredited and nonaccredited programs designed to prepare an individual for licensure and certification in a State. We would also implement VA's new authority to waive the added approval requirements under certain circumstances and adjust the authority of a State approving agency to add new approval criteria. In addition, we would add a circumstance for disapproval of a program designed to prepare an individual for licensure and certification, as prescribed by the law we are implementing.

DATES: Comments must be received on or before March 11, 2022.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AQ91(P)—Modifications of Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications.'' Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief, Policy and Regulation Development Staff, (225C), Education Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9800. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Prior to the passage of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 (Pub. L. 114–315), there were discrepancies among the States regarding the requirements for approval of programs of education designed to prepare someone for State licensure or certification or board certification. There were reports of GI Bill participants who were unable to secure employment following graduation because their program of education did not meet the standards required for licensure, certification, State board approval, or employment. There were also concerns that State approving agencies (SAAs) were exercising their authority to subject nonaccredited courses to additional approval criteria as they deemed necessary in a manner that treated private for-profit educational institutions substantially and detrimentally differently than their public or private not-for-profit counterparts. Further, while SAAs had the authority to impose additional approval criteria for approval of nonaccredited courses under 38 U.S.C. 3676, they had no authority to deem additional approval criteria necessary with respect to accredited courses.

To addresses these concerns, Public Law 114–315, sec. 409, amended 38 U.S.C. 3676(c), further amended by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116–315, sec. 1016, to add the following approval requirements for educational programs that are designed to prepare individuals for licensure or certification in a State, regardless of whether the program is ''deemed approved'' (meaning it satisfies the requirements of 38 U.S.C. 3672(b)(2)(A)):

- If a course is designed to prepare an individual for licensure or certification in a State, the course must meet all instructional curriculum licensure or certification requirements of such State.
- If a course is designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course must meet such standards.
- If a course is designed to prepare an individual for licensure to practice law in a State, the course must be accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State (at this time, the only organization that satisfies this criterion is the American Bar Association).

Section 409 also added the provision in 38 U.S.C. 3676(f)(1) that allows the Secretary of VA to waive the additional approval requirements if he or she determines all of the following:

- The educational institution is not accredited by an agency or association recognized by the Secretary of Education.
- The course did not meet the additional requirements at any time during the 2-year period preceding the date of the waiver.
- The waiver furthers the purposes of the educational assistance programs administered by the Secretary or would further the education interests of individuals eligible for assistance under such programs.
- The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

We would add the new requirements for approval of educational programs designed to prepare individuals for licensure or certification contained in the amended sec. 3676(c) to 38 CFR 21.4253(d)(9) and 38 CFR 21.4254(c)(14). We would also specify in 38 CFR 21.4253(d)(9) and 38 CFR 21.4254(c)(14) that the Secretary or designee may waive the added approval requirements if conditions specified in sec. 3676(f)(1) are met and indicate the process for applying for a waiver. The waiver decision will be made by the Education Service Director or other designated personnel. *See* 38 U.S.C. 512 (Secretary has broad authority to ''delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department, to such officers and employees as the Secretary may find necessary''); 38 CFR 21.4001(a) (''authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Education Service, designated by him or her to make findings and decisions under 38 U.S.C. Chapters 34 and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.'')

Section 409 also amended 38 U.S.C. 3679 to require VA or an SAA to disapprove a course of education designed to prepare an individual for licensure or certification unless the educational institution providing the course publicly discloses ''in a prominent manner'' any conditions or additional requirements, including

training, experience, or examinations, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation. We would add a new paragraph (e) to § 21.4259 to indicate that VA or an SAA would be required to disapprove a licensing or certification program if the institution fails to publicly and prominently disclose additional approval requirements. The disclosure would be considered to be sufficiently prominent if the educational institution publishes the conditions or requirements on a publicly facing website, in their catalog, and in any publication which explicitly mentions ''educational assistance benefits for servicemembers (and their dependents) or veterans (and their dependents)'' or which, in the view of the Secretary, is intended for VA educational assistance beneficiaries.

Furthermore, under sec. 409(f), an individual enrolled in a program subject to disapproval under any of the amendments made by sec. 409 must be allowed to complete any program if he or she remains continuously enrolled at the same educational institution (*i.e.,* the student must be allowed to be ''grandfathered''). Thus, we would include a statement in § 21.4259(e) that an individual may complete a program of education even if it is subject to disapproval under any of the amendments made by sec. 409 provided that the individual remains continuously enrolled at the same educational institution.

Section 410 of Public Law 114–315 adjusted the SAAs' authority to add additional approval criteria for approving either accredited or nonaccredited programs by requiring SAAs to consult with VA before imposing such criteria and by requiring a VA determination about the criteria. VA must find the criteria both (1) necessary and (2) equitable in its treatment of public, private, and proprietary for-profit educational institutions. Therefore, in proposed §§ 21.4253(d)(10) and 21.4254(c)(15), we would include a requirement that prior to an SAA being allowed to impose any additional criteria, the SAA must present a written proposal to the Secretary, or designee, justifying the need for the additional criteria. The proposal is necessary to ensure that any additional criteria imposed by an SAA are necessary and equitable regardless of whether the criteria are imposed on public, private, or for-profit institutions. The proposal would have to describe the problem and explain how the imposition of the additional criteria will correct the problem. It would also have to state whether State or Federal laws, regulations, or policies require the imposition of the additional criteria, and explain whether alternative means of correcting the problem were considered. In addition, the written proposal would have to contain an attestation that the additional criteria will be equitable regardless of whether they are imposed on public, private, or for-profit institutions. The Secretary, or designee, would determine whether the criteria are necessary and equitable and could change the determination if, after implementation, it becomes apparent that the criteria were unnecessary or treated schools inequitably in practice.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). VA has determined that, although there may be a number of educational training facilities and SAAs considered small entities which may be affected by this proposed rule, they would not be not significantly impacted by this rule.

Allowing waiver of the added approval requirements under certain circumstances, as well as requiring SAAs to present a written proposal to VA justifying the need for adding additional approval criteria for approving either accredited or nonaccredited programs, would likely have some impact on both educational training institutions and SAAs. However, the impact would be minimal. VA estimates that five educational facilities will request a waiver per year and that the estimated cost for any educational institution seeking a waiver will be less than $300. Also, VA estimates that approximately eleven requests per year from SAAs will be received to add additional approval criteria and the estimated cost for SAAs making these requests will also be less than $300. Therefore, the number of schools and SAAs affected is not substantial and the impact on each is not significant. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions that would constitute new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate they are submitted to in response to ''RIN 2900–AQ91—Modifications of Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications.''

OMB is required to make a decision concerning the collections of information contained in this

rulemaking within 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collections of information contained in 38 CFR 21.4253(d)(9), 21.4254(c)(14), 21.4253(d)(10), and 38 CFR 21.4254(c)(15) are described immediately following this paragraph.

Title: Waiver of Additional Licensing and Certification Approval Requirements.

OMB Control No: 2900–XXXX (New/TBD).

CFR Provision: 38 CFR 21.4253(d)(9), 21.4254(c)(14).

Summary of collection of information: The new collection of information in proposed §§ 21.4253(d)(9) and 21.4254(c)(14) would allow educational institutions to apply for a waiver of additional approval requirements for educational programs that are designed to prepare individuals for licensure or certification in a State.

Description of need for information and proposed use of information: This collection of information is necessary to allow VA to determine whether to waive additional approval requirements for educational programs designed to prepare individuals for licensure or certification in a State when waiver is requested. The information will be used by VA to determine if the educational institution's request for a waiver of the additional approval requirements may be granted.

Description of likely respondents: Educational institutions that apply to VA, through their State approving agency of jurisdiction, for a waiver of additional approval requirements.

Estimated number of respondents: 5 in FY 2021.

Estimated frequency of responses: This is a one-time collection.

Estimated average burden per response: 2 hours.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 10 burden hours.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $270.70 (5 applicants per year × 2 hours per application × $27.07*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $27.07 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Request for Additional Approval Requirements for Licensing and Certification Programs.

OMB Control No: 2900–XXXX (New/TBD).

CFR Provision: 38 CFR 21.4253(d)(10), 21.4254(c)(15).

Summary of collection of information: The new collection of information in proposed §§ 21.4253(d)(10) and 21.4254(c)(15) would require an SAA seeking to impose additional approval requirements for educational programs that are designed to prepare individuals for licensure and certification programs to present a written proposal to VA that justifies the need for the additional criteria.

Description of need for information and proposed use of information: The information will be used by VA to determine if the additional approval criteria presented by an SAA are necessary and equitable for educational institutions offering programs designed to prepare an individual for licensure and certification in a State.

Description of likely respondents: State approving agencies.

Estimated number of respondents: 11 in FY 2021.

Estimated frequency of responses: This is a one time collection.

Estimated average burden per response: 1 hour.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 11 burden hours.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $297.77 (11 applicants per year × 1 hour per application x $27.07*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $27.07 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Schools, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 20, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

■ 2. In § 21.4253, amend paragraph (d) by revising the last sentence of the introductory text and adding paragraphs (9) and (10).

§ 21.4253 Accredited courses.

* * * * *

(d) * * * The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions:

* * * * *

(9)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (d)(9). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (d)(9) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(10) Before requiring a school and its accredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private or for-profit institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably based on the proposal and any additional information submitted. The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

(i) The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

* * * * *

(Authority: 38 U.S.C. 3675(b)(3), 3676(c), (f))

■ 3. Amend § 21.4254 by revising paragraph (c)(14) and adding paragraph (c)(15).

§ 21.4254 Nonaccredited Courses.

* * * * *

(c) * * *

(14)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (c)(14). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (c)(14) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(15) Such additional reasonable criteria as may be deemed necessary by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably

based on a proposal and any additional information submitted.

(i) Before requiring a school and its nonaccredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private or for-profit institutions. The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

(iii) The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

* * * * *

(Authority: 38 U.S.C. 3676(c), (f))

■ 4. Amend § 21.4259 by adding paragraph (e) to read as follows:

§ 21.4259 Suspension or disapproval.

* * * * *

(e) The Secretary or the appropriate State approving agency will disapprove a licensing and certification program of education if the educational institution providing the program of education fails to publicly disclose in a prominent manner any conditions or additional requirements, including training, experience, or examinations required to obtain the license, certification, or approval for which the program of education is designed to provide preparation.

(1) The Secretary will determine whether a disclosure is sufficiently prominent; however, at a minimum, the educational institution must publish the conditions or requirements on a publicly facing website and in their catalog, and include them in any publication (regardless of medium) which explicitly mentions ''educational assistance benefits for servicemembers (and their dependents) or veterans (and their dependents)'' or which, in the view of the Secretary, is intended for VA educational assistance beneficiaries.

(2) Individuals continuously enrolled at the same educational institution pursuing a program of education subject to disapproval under paragraph (e) of this section may complete the program of education.

(Authority: 38 U.S.C. 3679(d))

[FR Doc. 2021–27942 Filed 1–7–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–5031–12–OCSPP]

RIN 2070–AJ28

Pesticides; Expansion of Crop Grouping Program VI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to its pesticide tolerance crop grouping regulations, which allow the establishment of tolerances for multiple related crops based on data from a representative set of crops. EPA is proposing amendments to Crop Group 6: Legume Vegetables; Crop Group 7: Foliage of Legume Vegetables; Crop Group 15: Cereal Grains; and Crop Group 16: Forage, Fodder and Straw of Cereal Grains. EPA is also proposing amendments to the associated commodity definitions. This is the sixth in a series of planned crop group updates expected to be prepared over the next several years.

DATES: Comments must be received on or before March 11, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0766, through the Federal eRulemaking Portal at *https://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 *https://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19. The EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sara Kemme; Mission Support Division (7101M), Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number 202–566–1217; email address: *kemme.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, pesticide manufacturer, or food manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532)

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

The EPA is initiating this rulemaking to amend the existing crop grouping regulations under section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which authorizes EPA to establish ''general procedures and requirements to implement [section 408].'' 21 U.S.C. 346a(e)(1)(C). Under FFDCA section 408, EPA is authorized to establish tolerances for pesticide chemical residues in food. EPA establishes tolerances for each pesticide based on data on the pesticide residues and the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural commodities and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group.

C. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

D. What action is the Agency taking?

This proposed rule is the sixth in an ongoing series of crop group updates, including additional updates expected to be promulgated in the next several years. EPA is proposing revisions to EPA's regulations governing crop group tolerances for pesticides. Specifically, this rule is proposing revisions to Crop Group 6: Legume Vegetables (Succulent or Dried) Group; Crop Group 7: Foliage of Legume Vegetables Group; Crop Group 15: Cereal Grains Group; and Crop Group 16: Forage, Fodder, and Straw of Cereal Grains Group. The proposed changes include changes to the terminology in the names of Crop Groups 6, 7 and 16, the addition of commodities, and changes that advance international harmonization. In addition, the proposed changes include revisions to the subgroups for Crop Group 6 and the addition of subgroups for Crop Group 15. EPA is also proposing additions and revisions to associated commodity definitions at 40 CFR 180.1(g). Unit III of this proposal includes a detailed description of the proposed changes.

E. Why is the Agency taking this action?

EPA sets tolerances, which are the maximum amount of a pesticide allowed to remain in or on a food, as part of the process of regulating pesticides that may leave residues in food. Crop groups are established when residue data for certain representative crops are used to establish pesticide tolerances for a group of crops that are botanically or taxonomically related. Representative crops of a crop group or subgroup are those crops whose residue data can be used to establish a tolerance for the entire group or subgroup.

With the establishment of crop groups such as the ones being revised in this proposed rule, EPA seeks to:

- Enhance our ability to conduct food safety evaluations on crops for tolerance-setting purposes;
- Promote global harmonization of food safety standards;
- Reduce regulatory burden; and
- Ensure food safety for agricultural goods.

F. What are the estimated incremental economic impacts of this action?

EPA prepared an Economic Analysis which concludes that this is a burden-reducing regulation (Ref. 1). Crop grouping permits the results of pesticide residue studies for some crops, called representative crops, to be applied to other, similar crops in the group. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes, both domestically and in countries that export food to the U.S.

The estimate of cost savings from the proposed revisions to Crop Group 6: Legume Vegetables (Succulent or Dried) Group are around $38.0 million annually. There are no cost savings from the proposed revisions to Crop Group 7: Foliage of Legume Vegetables Group. The estimate of cost savings from the proposed revisions to Crop Group 15: Cereal Grains Group are around $89.9 million annually. The estimate of cost savings from the proposed revisions to Crop Group 16: Forage, Fodder, and Straw of Cereal Grains Group are around $76.7 million annually. The total estimated cost savings from the rule is $204.6 million annually. This cost savings value should be considered an overestimate. The methodology used to estimate cost savings implicitly assumes that all of the new crops being added to the group have a residue field trial that is replaced by the residue field trials of the representative crops. However, some of these crops would never have been the subject of a pesticide tolerance petition that required a residue field trial. Therefore, it does not reflect actual savings, but merely a potential savings if a registrant or Interregional Research Project Number 4 (IR–4) were planning to submit residue field trial data to support a tolerance petition.

The Agency anticipates that revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, the environment, or human health. In particular, specialty crop producers may gain access to pesticides that are registered on the crop group that would not have been available when the crop was not part of the group. Although this rule may make it possible to get a pesticide tolerance on a larger number of crops within a group, it will not necessarily increase the amount of pesticides released into the environment and will expand the choice of pesticides for crop producers, which may result in the use of safer pesticides.

II. Background

A. Tolerance-Setting Requirements and Petitions From the Interregional Research Project Number 4 (IR–4) To Expand the Existing Crop Grouping System

EPA is authorized to establish tolerances under FFDCA section 408 (21 U.S.C. 346a). EPA establishes pesticide tolerances only after determining that they are safe, *i.e.,* that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) enforce compliance with tolerance limits.

Traditionally, tolerances are established for a specific pesticide and commodity combination. However, under EPA's crop grouping regulations (40 CFR 180.40 and 180.41), a single tolerance may be established that applies to a group of related commodities. For example, Crop Group 15: Cereal Grains Group is proposed to include 60 commodities. Crop group tolerances may be established based on residue data from designated representative commodities within the group. Representative commodities are selected based on EPA's determination that they are likely to bear the maximum level of residue that could occur on any crop within the group. The proposed representative commodities for Crop Group 15–XX are wheat, barley, field corn, sweet corn, rice, and either grain sorghum or proso millet. Once a crop group tolerance is established, the tolerance level applies to all commodities within the group.

This proposed rule is the sixth in a series of planned crop group amendments expected to be completed over the next several years. The previous five crop group amendment rules were finalized on December 7, 2007 (72 FR 69150) (FRL–8343–1); December 8, 2010 (75 FR 76284) (FRL–8853–8); August 22, 2012 (77 FR 50617)

(FRL–9354–3); May 3, 2016 (81 FR 26471) (FRL–9944–87); and November 6, 2020 (85 FR 70976) (FRL–10015–19). Specific information and details regarding the history of the crop group regulations, the previous amendments to the regulations, and the process for amending crop groups can be found in *Pesticide Tolerance Crop Grouping Program; Proposed Expansion; Proposed Rule,* **Federal Register** (72 FR 28920, May 23, 2007) (FRL–8126–1), and in the docket for these actions under docket identifier EPA–HQ–OPP–2006–0766 at *http://regulations.gov.* Specific information regarding how the Agency implements crop group amendments can be found in 40 CFR 180.40.

The proposed changes identified in this action have been informed by petitions developed by the International Crop Grouping Consulting Committee (ICGCC) workgroup and submitted to EPA by a nation-wide cooperative project, IR–4 (Refs. 2 and 3). The petitions and the supporting monographs, as well as EPA's analyses of the petitions (Refs. 4–11), are included in the docket for this action. Additional petitions seeking future amendments and changes to the crop grouping regulations (40 CFR 180.40 and 180.41) from the ICGCC workgroup and IR–4 have been submitted and are being evaluated by EPA.

B. Regulatory Burden Reductions and Cost Savings Achieved Through the Expansion of the Existing Crop Grouping System

In 2007, EPA prepared an Economic Analysis (EA) of the potential costs and benefits associated with the first proposed rule issued in this series of updates, entitled ''Economic Analysis Proposed Expansion of Crop Grouping Program'' (Ref. 12). EPA considers the findings of the 2007 EA to apply to each subsequent crop group rulemaking, including this proposal, due to the similarity in purpose and scope of each of those rulemakings.

As discussed in the 2007 EA, EPA believes that crop grouping rulemakings are burden-reducing and cost-saving regulations. However, the impacts in the 2007 EA were measured primarily on a qualitative basis. For example, the crop grouping rules provide for greater sharing of data by permitting the results from a magnitude of residue field trial study in one crop to be applied to other, similar crops. The primary beneficiaries are minor crop producers and pesticide registrants. Minor crop producers benefit because lower registration costs will encourage more products to be registered on minor crops, providing additional tools (*i.e.,* pesticides) for pest control. Pesticide registrants are expected to benefit as expanded markets for pesticide products will lead to increased sales. Additionally, the IR–4, which is publicly funded, is also expected to benefit from this rule as it will help IR–4 use its resources more efficiently in its efforts to ensure that minor or specialty crop growers have access to legal, registered uses of essential pest management tools such as pesticides and biopesticides. The Agency is also expected to benefit from broader operational efficiency gains, which result from fewer emergency pesticide use requests from specialty crop growers, the ability to conduct risk assessments based on crop groupings, greater ease of establishing tolerances, greater capacity to assess risks of pesticides used on crops grown both in the United States and not grown in the United States, further harmonization of crop classification and nomenclature, harmonized commodity import and export standards, and increased potential for resource sharing between EPA and other pesticide regulatory agencies.

While the 2007 EA provides a qualitative assessment of the benefits of the crop grouping rulemaking activities, EPA has developed a new burden reduction and cost savings assessment specific to the crop group amendments proposed in this rule, titled ''Burden Reduction from the Proposed Expansion of Crop Grouping Program'' (Ref. 1). Although there are some uncertainties in the evaluation, for this final rule, EPA estimates that the cost savings from these proposed amendments to be approximately $204.6 million annually.

EPA's full analysis on the estimated burden reductions and cost savings is provided in the docket for this action at regulations.gov using Docket ID EPA–HQ–OPP–2006–0766. EPA welcomes feedback on the assumptions made in developing these estimates, as well as any additional information that may help the Agency to refine these estimates.

C. International Efforts and Considerations

1. United States-Mexico-Canada Agreement Partner Involvement in the Proposal

EPA's Office of Pesticide Programs' Chemistry Science Advisory Council (ChemSAC), an internal Agency peer review committee, provided detailed analyses for each proposed crop group to IR–4, Canada's Pest Management Regulatory Agency (PMRA), and the government of Mexico for their review and comment, and invited these parties to participate in the ChemSAC meeting to finalize the EPA's recommendations on responses to each IR–4 petition. The results of the ChemSAC meetings finalizing the recommendations for proposal in this action are provided in the docket (Ref. 4–11).

PMRA has indicated that it will, in parallel with the United States effort and under the authority of Canada's Pest Control Products (PCP) Act (2002), establish equivalent crop groups. Additionally, once the new crop groups become effective in the United States, Mexico will have them as a reference for the establishment of maximum residue limits in Mexico.

2. Relationship of Proposal to Codex Activities

When Codex establishes Maximum Residue Limits (MRL) for a pesticide chemical residue and EPA is not establishing tolerances at that same level, section 408 of the FFDCA calls for EPA to provide an explanation for its reasons for departing from that Codex level. In implementing this provision, EPA works to harmonize tolerance determinations with a Codex MRL whenever possible. This activity facilitates free trade and international movement of goods produced in the United States. When a Codex crop group is established, EPA will work to harmonize with Codex to the extent feasible. Both Canada and Codex have adopted their own crop group schemes that are synchronized with and complement the efforts and goals of the crop grouping rulemaking efforts.

D. Scheme for Organization of Revised and Pre-Existing Crop Groups

The generic crop group regulations include an explicit scheme for how revised crop groups will be organized in the regulations. In brief, the regulations at 40 CFR 180.40(j) specify that when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will retain the pre-existing crop group in 40 CFR 180.41 and insert the new, related crop group immediately after the pre-existing crop group in the CFR. Although EPA will initially retain pre-existing crop groups that have been superseded by new crop groups, 40 CFR 180.41(j) states that EPA will not establish new tolerances under the pre-existing groups and that EPA will convert tolerances for any pre-existing crop groups to tolerances with the coverage of the new crop group. Conversions to revised crop groups are implemented through the registration review process and in the course of

establishing new tolerances for a pesticide.

III. Specific Proposed Revisions

This unit explains the proposed amendments to the crop group regulations.

A. Proposed Amendments to Crop Group 6: Legume Vegetables (Succulent or Dried) Group, and Associated Commodity Definitions

EPA is proposing to amend ''Crop Group 6: Legume Vegetables (Succulent or Dried)'' to update the commodity listings in the group. EPA also proposes to name the new crop group ''Crop Group 6–XX Legume Vegetable Group.'' The following paragraphs describes this crop grouping in more detail.

1. Commodities

Based on similarities of growth habits and edible plant parts that are exposed to pesticides, geographical distribution, comparison of established tolerances, and for international harmonization purposes, EPA is proposing to include 121 commodities in Legume Vegetable Crop Group 6–XX. The commodities are distinguished based on the specific plant part that is edible, such as edible podded beans and peas, succulent shelled beans and peas, and dried seeds of beans and peas, which is consistent with how legume vegetables are classified. The commodities proposed for inclusion in Crop Group 6–XX are as follows: African yam bean, dry seed, *Sphenostylis stenocarpa* (Hochst. ex A. Rich.) Harms; American potato bean, dry seed, *Apios americana* Medik.; Bean (*Lupinus* spp.), succulent shelled (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); Bean (*Lupinus* spp.), dry seed (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); Bean (*Phaseolus* spp.), edible podded (including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean); Bean (*Phaseolus* spp.), succulent shelled (including, but not limited to, lima bean, scarlet runner bean, and wax bean); Bean (*Phaseolus* spp.), dry seed (including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean); Bean (*Vigna* spp.), edible podded (including, but not limited to asparagus bean, catjang bean, Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean); Bean (*Vigna* spp.), succulent shelled (including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean and southern pea); Bean (*Vigna* spp.), dry seed (including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); Broad bean (fava bean), succulent shelled, *Vicia faba* L. subsp. *faba* var. *faba;* Broad bean (fava bean), dry seed, *Vicia faba* L. subsp. *faba* var. *faba;* Chickpea (garbanzo), edible podded, *Cicer arietinum* L.; Chickpea (garbanzo), succulent shelled, *Cicer arietinum* L.; Chickpea (garbanzo), dry seed, *Cicer arietinum* L.; Goa bean (asparagus pea and winged bean), edible podded, *Psophocarpus tetragonolobus* (L.) DC.; Goa bean (asparagus pea and winged bean), succulent shelled, *Psophocarpus tetragonolobus* (L.) DC.; Goa bean, dry seed (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC.; Grass pea, edible podded, *Lathyrus sativus* L.; Grass pea, dry seed, *Lathyrus sativus* L.; Guar bean, edible podded, *Cyamopsis tetragonoloba* (L.) Taub.; Guar bean, dry seed, *Cyamopsis tetragonoloba* (L.) Taub.; Horse gram, dry seed, *Macrotyloma uniflorum* (Lam.) Verdc.; Jackbean, edible podded, *Canavalia ensiformis* (L.) DC.; Jackbean, succulent shelled, *Canavalia ensiformis* (L.) DC.; Jackbean, dry seed, *Canavalia ensiformis* (L.) DC.; Lablab bean (hyacinth bean), edible podded, *Lablab purpureus* (L.) Sweet subsp. *purpureus;* Lablab bean (hyacinth bean), succulent shelled, *Lablab purpureus* (L.) Sweet subsp. *purpureus;* Lablab bean (hyacinth bean), dry seed, *Lablab purpureus* (L.) Sweet subsp. *purpureus;* Lentil, edible podded, *Lens culinaris* Medik. subsp. *culinaris;* Lentil, succulent shelled, *Lens culinaris* Medik. subsp. *culinaris;* Lentil, dry seed, *Lens culinaris* Medik. subsp. *culinaris;* Morama bean, dry seed, *Tylosema esculentum* (Burch.) A. Schreib.; Pea (*Pisum* spp.), edible podded (including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea); Pea (*Pisum* spp.), succulent shelled (including, but not limited to English pea, garden pea, and green pea); Pea (*Pisum* spp.), dry seed (including, but not limited to dry pea, field pea, garden pea, and green pea); Pigeon pea, edible podded, *Cajanus cajan* (L.) Huth; Pigeon pea, succulent shelled, *Cajanus cajan* (L.) Huth; Pigeon pea, dry seed, *Cajanus cajan* (L.) Huth; Soybean, seed, *Glycine max* (L.) Merr.; Sword bean, edible podded, *Canavalia gladiata* (Jacq.) DC.; Sword bean, dry seed, *Canavalia gladiata* (Jacq.) DC.; Vegetable soybean, edible podded (edamame), *Glycine max* (L.) Merr.; Vegetable soybean, succulent shelled (edamame), *Glycine max* (L.) Merr.; Vegetable soybean, dry seed (edamame), *Glycine max* (L.) Merr.; Velvetbean, edible podded, *Mucuna pruriens* (L.) DC.; Velvetbean, succulent shelled, *Mucuna pruriens* (L.) DC.; Velvetbean, dry seed, *Mucuna pruriens* (L.) DC.; Winged pea, edible podded, *Lotus tetragonolobus* L.; Winged pea, dry seed, *Lotus tetragonolobus* L. Also included are cultivars, varieties, and/or hybrids of these commodities. In the parentheticals of this paragraph EPA has provided examples of succulent shelled, dry seed, and edible podded beans and peas that are included within the species listed and covered by this crop group. EPA requests comment on whether there are other examples that would be helpful to stakeholders.

This list of 121 commodities includes several new commodities that EPA is proposing to add to Crop Group 6–XX. These include the African yam bean, *Sphenostylis stenocarpa* (Hochst. ex A. Rich.); American potato bean, *Apios americana* Medik; Goa bean (asparagus pea and winged bean) *Psophocarpus tetragonolobus* (L.) DC.; Grass pea, *Lathyrus sativus L.;* Horse gram, *Macrotyloma uniflorum* (Lam.) Verdc.; Morama bean, *Tylosema esculentum* (Burch.) A. Schreib.; Velvetbean, *Mucuna pruriens* (L.) DC.; and Winged pea, *Lotus tetragonolobus* L.

Updating and expanding the commodities included in Crop Group 6–XX will have many benefits. Many minor legume orphan crops have become more popular in some countries and areas today than they were over twenty years ago. Increased globalization of trade has resulted in additional commodities to be enjoyed that are grown worldwide. Being excluded from the crop groups means that tolerances requested for these commodities would have to be established individually and based on separate residue studies. Also, this crop group regulation will facilitate the establishment of pesticide tolerances for residues of numerous pesticides that are needed to control a wide diversity of bean and pea pests, as well as to facilitate integrated pest management (IPM). Those IPM programs incorporate reduced risk pesticides, organic and biopesticides, as well as cultural practices to reduce the development of pesticide resistance. Some of these ''minor'' crops have great potential to be

grown on a larger scale in some areas in the future due to their unique nutritional and medicinal values. Because the demand for both pea and bean crops keeps increasing in the United States, these crops may provide local market growers new revenue opportunities for legume vegetable crops with high returns per acre. Finally, this proposal more closely aligns the commodities in the U.S. legume crop group and subgroups with the commodities in the Codex legume crop group and subgroups.

In addition to these commodity additions, EPA is proposing to remove ''Succulent or Dried'' from the old group name ''Legume Vegetables (Succulent or Dried)'' since this qualification is not needed. EPA does not believe these terms belong in the title because they are unclear (for example ''succulent'' would include the edible podded and succulent shelled). For years, this phrase has not been used to describe the crop group when establishing crop group 6 tolerances.

2. Representative Commodities

EPA is proposing the following seven representative commodities for proposed Crop Group 6–XX: Bean (*Phaseolus* spp. or *Vigna* spp.; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); Pea (*Pisum* spp.; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); and Soybean, seed.

Representative commodities are those crops that are most likely to contain the highest residues, are major in terms of production and/or consumption, and are similar in morphology, growth habit, pest problems and edible portion to the related commodities within a group or subgroup. Based on these criteria, EPA is proposing to add *Vigna* spp. as an alternate representative commodity to bean, *Phaseolus* spp. These representative commodities represent over 98% of the total legume vegetable harvested acres reported in the USDA Census of Agriculture (Ref. 13) and are the highest consumed commodities on a per capita basis in the group.

In addition to adding *Vigna* spp. as an option, EPA is proposing a revision of the representative commodity expression for Crop Group 6 from ''Bean (*Phaseolus* spp.; one succulent cultivar and one dried cultivar); pea (*Pisum* spp.; one succulent cultivar and one dried cultivar); and soybean'' to read:

> Bean (*Phaseolus* spp. or *Vigna* spp.; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); Pea (*Pisum* spp; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); and Soybean, seed.

This revision does not imply an increase in data requirements. The term ''succulent cultivar'' in the current representative commodity expression for Crop Group 6 has always been understood to mean both ''edible podded cultivar'' and ''succulent shelled cultivar.'' The current Crop Field Trial Guideline (Guideline 860.1500) provides some guidance on how these terms have been used together. In Table 2 of the Guideline, the entry for legume vegetables (succulent or dried) requires 12 field trials for the representative commodities of succulent bean and 9 field trials for the representative commodity succulent pea, although the footnote for each of those requirements clarifies that the actual number of field trials is divided between edible podded beans (or peas) and succulent shelled beans (or peas). (Refs. 14 and 15). While EPA's proposal for the updated Crop Group 6 explicitly identifies edible podded representative commodities as separate from succulent shelled representative commodities, the number of field trials is intended to remain the same.

3. Subgroups

Currently, Legume Vegetables (Succulent or Dried) Crop Group 6 includes three subgroups:

- Subgroup 6A—Edible podded legume vegetables subgroup,
- Subgroup 6B—Succulent shelled pea and bean subgroup, and
- Subgroup 6C—Dried shelled pea and bean (except soybean) subgroup.

Nine legume subgroups were originally proposed at the 2002 IR–4/USDA International Crop Grouping Symposium. (Ref. 16). Those nine subgroups included the original three subgroups, plus an additional six subgroups that divided the original three subgroups into separate bean and pea subgroups. This proposal, however, only includes six subgroups (the original three subgroups divided into their respective bean and pea subgroups). EPA believes these subgroups should provide a better understanding of which legumes are included in the appropriate subgroup and provide greater flexibility and efficiency in obtaining subgroup tolerances. Moreover, EPA believes the proposed reorganization of the subgroups would put EPA's regulations in better alignment with the legume subgroups established by Codex.

Legume vegetables are vegetables with edible parts that are harvested above ground. Some legumes have edible parts that are enclosed in pods, which are removed before marketing or consumption; these are called succulent shelled or dried shelled legumes, depending on whether they have edible succulent immature seeds which are removed from the pod or mature dried seeds which are removed from the pod. In both cases, the pod is discarded. For other legumes, the edible parts include the pod, which is generally consumed; these are classified as edible podded legumes. The types of beans and peas and how they are consumed make for logical crop subgroups.

Therefore, EPA proposes the following six subgroups:

- Crop Subgroup 6–XXA, Edible podded bean subgroup;
- Crop Subgroup 6–XXB, Edible podded pea subgroup;
- Crop Subgroup 6–XXC, Succulent shelled bean subgroup,
- Crop Subgroup 6–XXD, Succulent shelled pea subgroup;
- Crop Subgroup 6–XXE, Dried shelled bean, except soybean, subgroup; and
- Crop Subgroup 6–XXF, Dried shelled pea subgroup.

EPA notes that under the proposal ''soybean, seed'' stands by itself as a member of Crop Group 6 but is not proposed to be in one of the subgroups. Soybean seed is a major crop with many uses and is an important dietary item. EPA does not expect the residues to be the same for soybean seed as they would be for the subgroups. (Refs. 9 and 10). EPA notes that vegetable soybean (edamame) is in subgroup 6–XXA (edible podded beans) and 6–XXC (succulent shelled beans).

The edible podded bean subgroup 6–XXA and edible podded pea subgroup 6–XXB are based on the entire unripe pod with its small immature (green) seeds. The succulent shelled bean subgroup 6–XXC and succulent shelled pea subgroup 6–XXD have edible succulent immature seeds, which are removed from the pod, and the pod is discarded. The dried shelled bean subgroup 6–XXE and the dried shelled pea subgroup 6–XXF have mature dried seeds, which are removed from the dried pods. The respective representative commodities and commodity listings are provided in (i) through (vi).

i. Crop Subgroup 6–XXA: Edible podded bean subgroup. (Representative commodity—Any cultivar of edible podded bean, Phaseolus spp. or Vigna spp.).

EPA is proposing to include the following commodities in new subgroup 6–XXA: Bean (*Phaseolus* spp.; including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean); Bean (*Vigna*

spp.; including, but not limited to asparagus bean, catjang bean, Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean); goa bean; guar bean; jackbean; lablab bean; vegetable soybean (edamame); sword bean; winged pea; and velvetbean; as well as cultivars, varieties, and/or hybrids of these commodities.

ii. Crop Subgroup 6–XXB: Edible podded pea subgroup. (Representative commodity—Any cultivar of edible podded pea, Pisum spp).

EPA is proposing the following commodities in new subgroup 6–XXB: Pea (*Pisum* spp.; including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea); grass pea; lentil; pigeon pea; and chickpea; as well as cultivars, varieties, and/or hybrids of these commodities.

iii. Crop Subgroup 6–XXC: Succulent shelled bean subgroup. (Representative commodity—Any succulent shelled cultivar of bean, Phaseolus spp., or Vigna spp.).

EPA is proposing the following commodities in new subgroup 6–XXC: Bean (*Phaseolus* spp.; including, but not limited to lima bean, scarlet runner bean, and wax bean); Bean (*Vigna* spp.; including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean, and southern pea); Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); broad bean; jackbean; goa bean; lablab bean; vegetable soybean (edamame); and velvetbean; as well as cultivars, varieties, and/or hybrids of these commodities.

iv. Crop Subgroup 6–XXD: Succulent shelled pea subgroup. (Representative commodity—Any succulent shelled cultivar of garden pea, Pisum spp.).

EPA is proposing the following commodities in new subgroup 6–XXD: Chickpea; lentil; Pea (*Pisum* spp.; including, but not limited to English pea, garden pea, and green pea); and pigeon pea; as well as cultivars, varieties, and/or hybrids of these commodities.

v. Crop Subgroup 6–XXE: Dried shelled bean, except soybean, subgroup. (Representative commodity—Any one dried seed of bean, Phaseolus spp., or Vigna spp.).

EPA is proposing the following commodities in new subgroup 6–XXE: African yam bean; American potato bean; Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); Bean (*Phaseolus* spp.; including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean); Bean (*Vigna* spp.; including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); broad bean; guar bean; goa bean; horse gram; jackbean; lablab bean; morama bean; sword bean; winged pea; velvetbean, seed; and vegetable soybean (edamame); as well as cultivars, varieties, and/or hybrids of these commodities.

vi. Crop Subgroup 6–XXF: Dried shelled pea subgroup. (Representative commodity—Any one dried seed of pea, Pisum spp.).

EPA is proposing the following commodities in new subgroup 6–XXF: Pea (*Pisum* spp.; including, but not limited to, dry pea, field pea, green pea, and garden pea); chickpea; grass pea; lentil; and pigeon pea; as well as cultivars, varieties, and/or hybrids of these commodities.

4. Commodity Definitions

To ensure commodities are clearly defined and specific to which part of the plant the commodity covers, EPA is proposing to modify and add several definitions to 40 CFR 180.1(g) that are relevant to Crop Groups 6 and 7.

EPA proposes to revise the commodity definition entries for ''Bean,'' ''Bean, succulent,'' ''Pea,'' and ''Pea, succulent.'' For ''Bean'' and ''Pea,'' the revisions to the commodity definitions reflect the updates to the commodity listings in the proposed Crop Groups 6–XX and 7–XX since the commodities are more clearly identified. The current definition-based tolerance listings for ''Bean, succulent'' and ''Pea, succulent'' are ambiguous in terms of how they should be translated into subgroup tolerance listings. EPA proposes to revise ''Bean, succulent'' and ''Pea, succulent'' to incorporate both edible podded and succulent shelled forms. EPA also proposes to add new definitions for ''Bean, succulent shelled,'' ''Bean, edible podded,'' ''Pea, succulent shelled,'' and ''Pea, edible podded'' so these terms are defined individually.

EPA is proposing to remove the entries for ''Bean, dry'' and ''Pea, dry,'' because the commodity definitions are not as useful as they once were since the beans and peas are more clearly listed in the commodity lists for the amended crop groups. These commodity definitions are therefore proposed to be replaced with new definitions for ''Bean, dry, seed'' and ''Pea, dry, seed,'' which are more accurate and reflect the proposed changes to the crop groupings previously discussed. The ''Bean, dry, seed'' commodities are in crop subgroup 6–XXE, Dried shelled bean subgroup, except soybean, subgroup and the ''Pea, dry, seed'' commodities are in crop subgroup 6–XXF, Dried shelled pea subgroup.

B. Proposed Amendments to Crop Group 7: Foliage of Legume Vegetables Group, and Associated Commodity Definitions

EPA is proposing to amend ''Crop Group 7: Foliage of Legume Vegetables Group'' by changing the name to ''Crop Group 7–XX: Forage and Hay of Legume Vegetables Group.'' The name change of this crop group is proposed to reflect current tolerance nomenclature and uses of the crop group commodities. The commodities in this group are livestock feed commodities, and only forage and hay residue field trials are required. Foliage is a more general term, while forage and hay are specific for the raw agricultural commodities included in this crop group.

In addition to the title change, EPA is proposing to update the commodity listings in the group. The following paragraphs describes this crop grouping in more detail.

1. Commodities

The description of the current commodities is as follows: ''Plant parts of any legume vegetable included in the legume vegetables that will be used as animal feed.'' EPA proposes to change this description to the following: ''Plant parts of any legume vegetable listed in crop group 6–XX that will be used as animal feed.''

EPA notes that tolerances can be requested independently on CG 6 and CG 7. Even though CG 7 includes ''plant parts of any legume vegetable . . . that will be used as animal feed,'' in practice the only commodities that meet that description are cowpeas and field peas that are specifically used for forage crops. This is why cowpea is being added to the representative commodities. Different varieties of cowpeas and field peas are grown to produce edible podded, succulent shelled or dry seed beans/peas and for forage and hay of legume vegetables. Additionally, they are grown in different parts of the country.

2. Representative Commodities

The current crop group has the following description of the

representative commodities: ''any cultivar of bean (*Phaseolus* spp.) and field pea (*Pisum* spp.), and soybean (*Glycine max*).'' EPA proposes to change the representative commodities to ''Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).''

The only bean commodity currently used as a livestock feedstuff is cowpea (*Vigna unguiculata* (L.) Walp.). At this time, there is no *Phaseolus* spp. that is a significant livestock feed. However, since many beans (*Phaseolus* spp.) are being researched as forage crops, in the future there may be a *Phaseolus* spp. crop that will also have only livestock uses. *Phaseolus* spp. residue data that has been submitted with current petitions can substitute for cowpea residue data. Specific varieties of field pea such as ''Austrian winter peas'' have been developed for use as a forage crop only. While residue data for vines and hay are required for field peas, vines of field peas are typically referred to as forage for the current Crop Subgroup 7A. Residue data for forage and hay are required for soybeans. Therefore, to reflect current practice, EPA is proposing to change the representative commodities to ''Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).''

3. Crop Subgroups

EPA is proposing to revise the name of ''Crop Subgroup 7A. Foliage of legume vegetables (except soybeans) subgroup'' to be ''Crop Subgroup 7–XXA. Forage and hay of legume vegetables (except soybeans) subgroup,'' EPA is also proposing several revisions to the crop subgroup to parallel the changes being made to the commodities and representative commodities of crop Group 7–XX, as follows:

i. Commodities.

The following commodities are proposed for Crop Subgroup 7–XXA: Plant parts of any legume vegetable listed in crop group 6–XX (except soybeans) that will be used as animal feed.

ii. Representative commodities.

EPA is proposing the following representative commodities for proposed Crop Subgroup 7–XXA: Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.).

C. Proposed Amendments to Crop Group 15: Cereal Grains Group

EPA is proposing to change the name of Crop Group 15: Cereal Grains Group to Crop Group 15–XX: Cereal Grain Group. Additionally, EPA is proposing changes to the commodities and representative commodities and EPA is proposing to add subgroups.

1. Commodities

EPA is proposing to add additional commodities to Crop Group 15–XX. These additions are based on similarities of growth habits and edible plant parts (grain, seeds, or achenes) that are exposed similarly to pesticides, wide geographical distribution, comparison of established tolerances, and for international harmonization purposes. Adding these commodities into a group will benefit growers by enabling tools for crop protection. Many minor cereal grain orphan crops have become more popular in the United States and other countries and regions today than when Crop Group 15 was first established. Some of these ''minor'' crops have great potential to be grown on a larger scale in some areas in the future due to their unique nutritional and medicinal values. Being excluded from the crop groups means that tolerances requested for these commodities would have to be established based on separate residue studies. Also, this proposal would facilitate the establishment of pesticide tolerances on numerous pesticides that are needed to control a wide diversity of cereal grain pests, and will support IPM programs to incorporate reduced risk pesticides and biopesticides, and to reduce the development of pesticide resistance. Because the demand for cereal grain crops keeps increasing in the United States, as well as older varieties such as spelt wheat and emmer wheat (popularly called farro) becoming mainstream, these crops may provide local market growers new revenue opportunities with high returns per acre. Also, this proposal is more closely aligned with the Codex cereal grain crop group and subgroups.

EPA is proposing to include the following 60 cereal grains in Crop Group 15–XX: Amaranth, grain, *Amaranthus* spp.; amaranth, purple, *Amaranthus cruentus* L.; baby corn, *Zea mays* L. subsp. *mays;* barley, *Hordeum vulgare* L. subsp. *vulgare;* buckwheat, *Fagopyrum esculentum* Moench; buckwheat, tartary, *Fagopyrum tataricum* (L.) Gaertn; canarygrass, annual, *Phalaris canariensis* L.; cañihua, *Chenopodium pallidicaule* Aellen; chia, *Salvia hispanica* L.; corn, field, *Zea mays* L. subsp. *mays;* corn, sweet, *Zea mays* L. subsp. *mays;* cram cram, *Cenchrus biflorus* Roxb; fonio, black, *Digitaria iburua* Stapf; fonio, white, *Digitaria exilis* (Kippist) Stapf; Grain sorghum, *Sorghum bicolor* (L.) Moench; huauzontle, grain, *Chenopodium berlandieri* Moq. subsp. *nuttalliae* (Saff.) H. D. Wilson & Heiser and *Chenopodium berlandieri* Moq.; Inca wheat, *Amaranthus caudatus* L.; Job's tears, *Coix lacryma-jobi* L., *Coix lacryma-jobi* L. var. ma-yun (Rom. Caill.) Stapf; millet, barnyard, *Echinochloa frumentacea* Link; millet, finger, *Eleusine coracana* (L.) Gaertn. subsp. *coracana;* millet, foxtail, *Setaria italica* (L.) P. Beauv. subsp. *italic;* millet, little, *Panicum sumatrense* Roth; millet, pearl, *Pennisetum glaucum* (L.) R. B. r; Millet, proso, *Panicum miliaceum* L. subsp. *miliaceum;* oat, *Avena spp.;* oat, Abyssinian, *Avena abyssinica* Hochst. ex A. Rich.; Oat, common, *Avena sativa* L.; oat, naked, *Avena nuda* L.; oat, sand, *Avena strigosa* Schreb.; Popcorn, *Zea mays* L. subsp. *mays;* princess feather, *Amaranthus hypochondriacus* L.; psyllium, *Plantago arenaria* Waldst. & Kit.; psyllium, blond, *Plantago ovata* Forssk.; quinoa, *Chenopodium quinoa* Willd. subsp. *quinoa;* rice, *Oryza sativa* L.; rice, African, *Oryza glaberrima* Steud.; rye, *Secale cereale* L. subsp. *cereale;* teff, *Eragrostis tef* (Zuccagni) Trotter; Teosinte, *Zea mays* L. subsp. *mexicana* (Schrad.) H. H. Iltis.; triticale, X *Triticosecale* spp.; wheat, *Triticum* spp.; wheat, club, *Triticum aestivum* L. subsp. *compactum* (Host) Mackey; wheat, common, *Triticum aestivum* L. subsp. *aestivum;* wheat, durum, *Triticum turgidum* L. subsp. *durum* (Desf.) van Slageren; wheat, einkorn, *Triticum monococcum* L. subsp. *monococcum;* wheat, emmer, *Triticum turgidum* L. subsp. *dicoccon* (Schrank) Thell.; wheat, macha, *Triticum aestivum* L. subsp. *macha* (Dekapr. & Menabde) Mackey; wheat, oriental, *Triticum turgidum* L. subsp. *turanicum* (Jakubz.) Á. Löve & D. Löve; wheat, Persian, *Triticum turgidum* L. subsp. *carthlicum* (Nevski) Á. Löve & D. Löve.; wheat, Polish, *Triticum turgidum* L. subsp. *polonicum* (L.) Thell.; wheat, poulard, *Triticum turgidum* L. subsp. *turgidum;* wheat, shot, *Triticum aestivum* L. subsp. *sphaerococcum* (Percival) Mackey; wheat, spelt, *Triticum aestivum* L. subsp. *spelta* (L.) Thell.; wheat, timopheevi, *Triticum timopheevii* (Zhuk.) Zhuk. subsp. *timopheevii;* wheat, vavilovi, *Triticum vavilovii* Jakubz.; wheat, wild einkorn, *Triticum monococcum* L. subsp. *aegilopoides* (Link) Thell; wheat, wild emmer, *Triticum turgidum* L. subsp. *dicoccoides*

(Körn. ex Asch. & Graebn.) Thell; wheatgrass, intermediate, *Iseilema prostratum* (L.) Andersson; wild rice, *Zizania palustris* L.; wild rice, eastern, *Zizania aquatica* L., and cultivars, varieties, and hybrids of these commodities.

Twenty-one of these commodities simply reflect specific terms for commodities already included in the current crop group (*i.e.,* baby corn and the different varieties of oat and wheat). Twenty-four of these commodities would be new for the proposed Crop Group 15–XX: Amaranth, purple amaranth, tartary buckwheat, annual canarygrass, cañihua, chia, cram cram, black fonio, white fonio, huauzontle, Inca wheat, Job's tears, barnyard millet, finger millet, foxtail millet, little millet, princess feather, psyllium, blond psyllium, quinoa, African rice, teff, intermediate wheatgrass, and eastern wild rice.

2. Subgroups

EPA is proposing to create 6 subgroups: Crop Subgroup 15–XXA, Wheat subgroup; Crop Subgroup 15–XXB, Barley subgroup; Crop Subgroup 15–XXC, Field corn subgroup; Crop Subgroup 15–XXD, Sweet corn subgroup; Crop Subgroup 15–XXE, Grain sorghum and millet subgroup; and Crop Subgroup 15–XXF, Rice subgroup. The following are a description of the proposed subgroups:

i. Crop Subgroup 15–XXA: Wheat subgroup. (Representative commodity—Wheat).

EPA is proposing the following commodities for inclusion in subgroup 15–XXA: Amaranth, grain; Amaranth, purple; Cañihua; Chia; Cram cram; Huauzontle, grain; Inca wheat; Princess feather; Psyllium; Psyllium, blond; Quinoa; Rye; Triticale; Wheat; Wheat, club; Wheat, common; Wheat, durum; Wheat, einkorn; Wheat, emmer; Wheat, macha; Wheat, oriental; Wheat, Persian; Wheat, Polish; Wheat, poulard; Wheat, shot; Wheat, spelt; Wheat, timopheevi; Wheat, vavilovi; Wheat, wild einkorn; Wheat, wild emmer; and Wheatgrass, intermediate; as well as cultivars, varieties, and hybrids of these commodities.

ii. Crop Subgroup 15XXB: Barley Subgroup. (Representative commodity—Barley).

EPA is proposing the following commodities for inclusion in subgroup 15–XXB: Barley; Buckwheat; Buckwheat, tartary; Canarygrass, annual; Oat; Oat, Abyssinian; Oat, common; Oat, naked; and Oat, sand; as well as cultivars, varieties, and hybrids of these commodities.

iii. Crop Subgroup 15–XXC: Field corn subgroup. (Representative commodity—Field corn).

EPA is proposing the following commodities for inclusion in subgroup 15–XXC: Corn, field; Popcorn; and Teosinte; as well as cultivars, varieties, and hybrids of these commodities.

iv. Crop Subgroup 15–XXD: Sweet corn subgroup. (Representative commodity –Sweet corn).

EPA is proposing the following commodities for inclusion in subgroup 15–XXD: Baby corn; and Corn, sweet; as well as cultivars, varieties, and hybrids of these commodities.

v. Crop Subgroup 15–XXE: Grain sorghum and millet subgroup. (Representative commodities—Grain sorghum or Proso millet).

EPA is proposing the following commodities for inclusion in subgroup 15–XXE: Fonio, black; Fonio, white; Grain sorghum; Job's tears; Millet, barnyard; Millet, finger; Millet, foxtail; Millet, little; Millet, pearl; Millet, Proso; and Teff; as well as cultivars, varieties, and hybrids of these commodities.

vi. Crop Subgroup 15–XXF: Rice subgroup. (Representative commodity—Rice).

EPA is proposing the following commodities for inclusion in subgroup 15–XXF: Rice; Rice, African; Wild rice; and Wild rice, eastern; as well as cultivars, varieties, and hybrids of these commodities.

3. Representative Commodities

EPA is proposing to include the current representative commodities for Crop Group 15, add barley as a representative crop to accommodate the new Barley Subgroup (15–XXB), and add proso millet as an alternative representative commodity for better harmonization of the Grain Sorghum and Millet Subgroup (15–XXD). In practice, the residue field trial requirement could be fulfilled by providing the required number of trials on just grain sorghum, just proso millet, or a combination of the two commodities. EPA notes that barley is a representative crop in Canada and barley is also the representative commodity for the recently adopted Codex subgroup 020B, Barley, similar grains and pseudocereals with husks. EPA does not intend the addition of barley as a representative commodity to increase the number of required field trials for the group. EPA plans to split the current requirement for wheat trials into wheat and barley. Wheat and barley are mostly grown in similar field trial regions. Studies unique only to wheat or barley would include only the respective crop in the appropriate regions. The total number of trials for wheat and barley would be the same as when wheat was the only representative crop. (Refs. 3–5, 7, and 13–15). Specifically, this would replace the current requirement of 15 field trials for wheat with 6 of barley and 9 of wheat, resulting in no net increase in field trials (Ref. 5). This change applies only to the total number of field trials required for Crop Group 15; this change has no impact on the number of field trials required to establish a tolerance for wheat alone, the wheat subgroup, barley alone, or the barley subgroup. With respect to the newly proposed option of proso millet as a representative commodity in lieu of or in combination with grain sorghum, EPA notes that OPPTS 860.1500—Crop Field Trials (Ref. 14) currently provides for 12 (9 if part of the group) field trials for grain sorghum and 5 for proso millet. EPA plans to implement the revised Crop Group 15–XX with 9 field trials of grain sorghum or 9 of proso millet, or a mixture of grain sorghum and proso millet totaling 9. This would not affect the number of field trials to establish a tolerance for proso millet alone. EPA intends to update OPPTS 860.1500—Crop Field Trials (Ref. 14) to reflect these changes when EPA wholistically updates the guideline at, or around, the conclusion of this series of rulemakings revising the pesticide tolerance crop grouping regulations.

Proso millet is a member of the current Cereal Grain Crop Group 15. EPA is now proposing it to be an alternate representative commodity for the Grain sorghum and millet crop subgroup 15–XXE and for crop group 15. Codex also adopted Subgroup 020D Grain Sorghum and Millet subgroup with grain sorghum as the representative commodity. Canada does not grow grain sorghum but does grow proso millet and there is sufficient production of millet in Canada with field trial requirements already established. The United States grows both commodities. By having grain sorghum or proso millet as the representative commodities for crop subgroup 15–XXE, trade irritants with Canada would be avoided. Therefore, for the proposed revised U.S. subgroup 15–XXE the representative commodities are expressed as grain sorghum or proso millet. OPPTS 860.1500—Crop Field Trials (Ref.14) currently specifies 5 field trials for proso millet and 12 (9 if part of a crop group) field trials for grain sorghum. Under these revisions, the subgroup could be obtained with 12 field trails (12 for proso millet or 12 for grain sorghum, or a combination of the

two totaling 12). EPA intends to update OPPTS 860.1500- Crop Field Trials (Ref. 14) to reflect this change when EPA wholistically updates the guideline at, or around, the conclusion of this series of rulemakings revising the pesticide tolerance crop grouping regulations.

D. Proposed Amendments to Crop Group 16: Forage, Fodder, and Straw of Cereal Grains Group, and Associated Commodity Definitions

EPA is proposing to amend Crop Group 16: Forage, Fodder and Straw of Cereal Grains Group to update the commodity listings in the group. EPA also proposes to name the new crop group ''Crop Group 16–XX: Forage, Hay, Stover, and Straw of Cereal Grain Group.'' EPA is proposing this change because corn fodder is an antiquated term referring to the entire corn plant (either fresh or dried) and including the ears. Modern harvesting methods since 1950s remove the ear at harvest and leave only the whole stalk, which is referred to as stover. Thus, EPA is proposing to replace fodder with stover to update the commodity terminology. Due to the change in harvesting methods, fodder no longer has any meaning for most cereal grains, including all the representative commodities in the proposed group 15–XX.

Consistent with the changes proposed for Crop Group 15–XX, EPA is proposing to add the same additional commodities to Crop Group 16–XX. These additions are based on similarities of growth habits and edible plant parts that are exposed similarly to pesticides, wide geographical distribution, comparison of established tolerances, and for international harmonization purposes.

EPA is proposing to include the following in Forage, Hay, Stover, and Straw of Cereal Grain Crop Group 16–XX: The forage, hay, stover and straw of the commodities included in proposed Cereal Grain Crop Group 15–XX.

EPA is not proposing to create subgroups for Crop Group 16–XX and is not proposing changes to the representative commodities. The representative commodities would continue to be corn, wheat, and any other cereal grain crop.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. EPA, ''Burden Reduction from the Expansion of Crop Group Program,'' September 28, 2021.

2. USDA IR–4 Petition. William P. Barney. Proposed revisions to Legume Vegetables (Succulent or Dried), Crop Group 6 and Foliage of Legume Vegetables, Crop Group 7, Technical Amendment to 40 CFR 180.41(c)(6) and (c) IR–4 PR #11237 (Legume Vegetable) and PR# 11238 (Foliage of Legume Vegetables). Volumes 1–4. July 9, 2013.

3. USDA IR–4 Petition. William P. Barney. Proposed revisions to Cereal Grains, Crop Group 15 and Forage, Fodder and Straw of Cereal Grains Crop Group 16, Technical Amendment to 40 CFR 180.41(c)(9); IR–4 PR #11394. Volumes 1–3. February 18, 2014.

4. Schneider, Bernard A. Recommendations for Amending Crop Group 15 Cereal Grains and Crop Group 16 Forage, Fodder and Straw of Cereal Grains to Approve Its Members, Representative Commodities, Crop Subgroups, and Commodity Definitions Including Grasses for Sugar and Syrup Production September 6, 2018, Updated April 29, 2020.

5. Schneider, Bernard A. EPA Memorandum: Crop Grouping—Part XX: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(22) and Commodity Definitions [40 CFR 180.1(g)] Related to the Crop Group 15: Cereal Grains and the Forage, Fodder and Straw of Cereal Grains Group 16 [40 CFR 180.41(c)(23)], and Commodity Definition ''Grasses for Sugar and Syrup Production. June 8, 2018, updated April 29, 2020, Updated October 19, 2021.

6. USEPA. Chemistry Science Advisory Council (ChemSAC) Minutes. Response to Questions by the Crop Group Implementation Focus Group (CGIFG) on Amending the Cereal Grain Crop Group 15 and the Forage, Fodder, and Straw of the Cereal Grain Crop Group 16. April 8, 2020.

7. Schneider, Bernard A. EPA Memorandum: Response to Questions by the Crop Group Implementation Focus Group (CGIFG) on Amending the Cereal Grain Crop Group 15 and the Forage, Fodder and Straw of Cereal Grain Crop Group 16. November 18, 2019, Updated December 11, 2019 and April 8, 2020.

8. USEPA. Chemistry Science Advisory Council (ChemSAC) Minutes. Recommendations to the HED Chemistry Science Advisory Council Regarding Updates to Crop Groups 6 (Legume Vegetables) and 7 (Foliage of Legume Vegetables). October 25, 2017.

9. Schneider, Bernard A. EPA Memorandum. Crop Grouping Part XVII: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(7) and Commodity Definitions (40 CFR 180.1(g)) Related to the Crop Group 6 Legume Vegetables. September 27, 2016, updated February 7, 2017.

10. Schneider, Bernard A. Recommendations for Amending Crop Group 6 Legume Vegetable to Approve Its Members, Representative Commodities, Crop Subgroups, and Associated Commodity Definitions. February 8, 2017.

11. Schneider, Bernard A. Recommendations for Amending Crop Group 7 Foliage of Legume Vegetable to Approve Its Members, Representative Commodities, Crop Subgroups, and Associated Commodity definitions. September 29, 2016.

12. U.S. EPA, ''Economic Analysis of the Proposed Expansion of the Crop Group Program,'' February 12, 2007.

13. U.S.D.A. 2017 Census of Agriculture, available at *https://www.nass.usda.gov/Publications/AgCensus/2017/index.php#full_report.*

14. U.S. EPA. Series 860—Residue Chemistry Test Guideline, OPPTS 860.1500—Crop Field Trials. EPA 712–C–96–183. August 1996.

15. U.S. EPA. Series 860—Residue Chemistry Test Guideline, OPPTS 860.1000—Background (August 1998), see footnotes 13 and 51.

16. IR–4/USDA International Crop Grouping Symposium Proceedings, 2002, available at *http://www.ir4.rutgers.edu/Other/USDACropGroupingSymposium.pdf.*

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735; October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection requirements that would require additional review or approval by OMB under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* However, this action is expected to reduce potential future paperwork burdens associated with seeking a tolerance. These crop groupings will enhance our ability to conduct food safety evaluations on crops for tolerance-setting purpose; allowing for tolerances to be established for the defined crop groups rather than individually for each crop. This action will also have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme than would otherwise be required.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden (Ref. 1).

This proposed action provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops. Rather than having any adverse impact on small businesses, this proposal would relieve regulatory burden for all directly regulated small entities. We have therefore concluded that this proposed action would, if finalized, relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 4, 1999). It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175; Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175 (62 FR 19985, April 23, 1997) because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this proposed action.

G. Executive Order 13045; Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045. This proposed action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed action does not involve technical standards as specified in NTTAA section 12(d), 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This proposed action does not address human health or environmental risks or otherwise have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Commodities, Environmental protection, Pesticides and pests.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.1, amend the table to paragraph (g) by:
■ a. Revising the entry of ''Bean'';
■ b. Removing the entry of ''Bean, dry'';
■ c. Adding in alphabetical order entries for ''Bean, dry, seed'' and ''Bean, edible podded'';
■ d. Revising the entry of ''Bean, succulent'';
■ e. Adding in alphabetical order an entry for ''Bean, succulent shelled'';
■ f. Revising the entry of ''Pea'';
■ g. Removing the entry of ''Pea, dry'';
■ h. Adding in alphabetical order entries for ''Pea, dry, seed'' and ''Pea, edible podded'';
■ i. Revising the entry of ''Pea, succulent''; and
■ j. Adding in alphabetical order an entry for ''Pea, succulent shelled''.

The additions and revisions read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
*	*
Bean	*Cicer arietinum* (chickpea, garbanzo bean); *Lupinus* spp. (including, but not limited to, Andean lupin, blue lupin, grain lupin, sweet lupin, white sweet lupin, white lupin, and yellow lupin). *Phaseolus* spp. (including, but not limited to, black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, snap bean, tepary bean, yellow bean, and wax bean); Broad bean (fava bean, faba bean); Goa bean (asparagus pea and winged bean); *Vigna* spp. (including adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); Guar bean; Horse gram; Jackbean; Lablab bean (hyacinth bean); Morama bean; African yam bean; American potato bean; Vegetable soybean (edamame); Sword bean; Velvetbean; Winged pea; cultivars, varieties and/or hybrids of these commodities.
Bean, dry, seed	All beans in the entry ''Bean'' in dry seed form.
Bean, edible podded	All beans in the entry ''Bean'' in edible podded form.
Bean, succulent	All beans in the entry ''Bean'' in edible podded or succulent shelled form.

A	B
Bean, succulent shelled	All beans in the entry ''Bean'' in succulent shelled form.
* * * * * * *	
Pea	*Cajanus cajan* (pigeon pea); *Cicer arietinum* (chickpea, garbanzo bean); *Lens culinaris* (lentil); Grass pea; *Pisum* spp. (including, but not limited to dry pea, dwarf pea, English pea, field pea, garden pea, green pea, snap pea, snow pea, and sugar snap pea). [Note: A variety of pesticide tolerances have been previously established for pea and/or bean. Chickpea/garbanzo bean is now classified in both the bean and the pea categories. For garbanzo bean/chickpea only, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity]; cultivars, varieties and/or hybrids of these commodities.
Pea, dry, seed	All peas in the entry ''Pea'' in dry seed form.
Pea, edible podded	All peas in the entry ''Pea'' in edible podded form.
Pea, succulent	All peas in the entry ''Pea'' in edible podded or succulent shelled form.
Pea, succulent shelled	All peas in the entry ''Pea'' in succulent shelled form.
* * * * * * *	

* * * * *

■ 3. Amend § 180.41 by:

■ a. Redesignating paragraphs (c)(30) through (35) as paragraphs (c)(34) through (39) respectively;

■ b. In newly redesignated paragraph (c)(39)(ii), removing ''Table 3'' and adding ''table'' in its place;

■ c. Redesignating paragraph (c)(29) as paragraph (c)(33) and adding a new paragraph (c)(29);

■ d. Redesignating paragraph (c)(28) as paragraph (c)(32);

■ e. Redesignating paragraph (c)(27) as paragraph (c)(31) and adding a new paragraph (c)(27);

■ f. Redesignating paragraph (c)(26) as paragraph (c)(30);

■ g. Redesignating paragraph (c)(25) as paragraph (c)(28);

■ h. Redesignating paragraphs (c)(14) through (24) as paragraphs (c)(16) through (26) respectively;

■ i. Redesignating paragraph (c)(13) as paragraph (c)(15);

■ j. Redesignating paragraph (c)(12) as paragraph (c)(14) and adding a new paragraph (c)(12);

■ k. Redesignating paragraph (c)(11) as paragraph (c)(13); and

■ l. Redesignating paragraph (c)(10) as paragraph (c)(11) and adding a new paragraph (c)(10).

The additions read as follows.

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(10) *Crop Group 6*–xx. Legume Vegetable Group.

(i) *Representative commodities.* Bean (Phaseolus spp. or Vigna spp.; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); Pea (Pisum spp; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); and Soybean, seed.

(ii) *Commodities.* The following table is a list of all commodities included in Crop Group 6–XX and includes cultivars, varieties and/or hybrids of these commodities.

TABLE 1 TO PARAGRAPH (c)(10)—CROP GROUP 6–XX: LEGUME AND VEGETABLE GROUP

Commodities	Related crop subgroups
African yam bean, dry seed, *Sphenostylis stenocarpa* (Hochst. ex A. Rich.) Harms	6–XXE
American potato bean, dry seed, *Apios americana* Medik	6–XXE
Bean (*Lupinus* spp.), succulent shelled (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin)	6–XXC
Bean (*Lupinus* spp.), dry seed (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin)	6–XXE
Bean (*Phaseolus* spp.), edible podded (including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean)	6–XXA
Bean (*Phaseolus* spp.), succulent shelled (including, but not limited to lima bean, scarlet runner bean, and wax bean)	6–XXC
Bean (*Phaseolus* spp.), dry seed (including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean)	6–XXE
Bean (*Vigna* spp.), edible podded (including, but not limited to asparagus bean, catjang bean, Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean)	6–XXA
Bean (*Vigna* spp.), succulent shelled (including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean, and southern pea)	6–XXC
Bean (*Vigna* spp.), dry seed (including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean)	6–XXE
Broad bean (fava bean), succulent shelled, *Vicia faba* L. subsp. *faba* var. *faba*	6–XXC
Broad bean (fava bean), dry seed, *Vicia faba* L. subsp. *faba* var. *faba*	6–XXE
Chickpea (garbanzo), edible podded, *Cicer arietinum* L	6–XXB
Chickpea (garbanzo), succulent shelled, *Cicer arietinum* L	6–XXD
Chickpea (garbanzo), dry seed, *Cicer arietinum* L	6–XXF
Goa bean, edible podded (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–XXA
Goa bean, succulent shelled (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–XXC
Goa bean, dry seed (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–XXE
Grass pea, edible podded, *Lathyrus sativus L*	6–XXB
Grass pea, dry seed, *Lathyrus sativus L*	6–XXF
Guar bean, edible podded, *Cyamopsis tetragonoloba* (L.) Taub	6–XXA
Guar bean, dry seed, *Cyamopsis tetragonoloba* (L.) Taub	6–XXE
Horse gram, dry seed, *Macrotyloma uniflorum* (Lam.) Verdc	6–XXE
Jackbean, edible podded, *Canavalia ensiformis* (L.) DC	6–XXA
Jackbean, succulent shelled, *Canavalia ensiformis* (L.) DC	6–XXC
Jackbean, dry seed, *Canavalia ensiformis* (L.) DC	6–XXE

TABLE 1 TO PARAGRAPH (c)(10)—CROP GROUP 6–XX: LEGUME AND VEGETABLE GROUP—Continued

Commodities	Related crop subgroups
Lablab bean (hyacinth bean), edible podded, Lablab *purpureus* (L.) Sweet subsp. *purpureus*	6–XXA
Lablab bean (hyacinth bean), succulent shelled, Lablab *purpureus* (L.) Sweet subsp. *purpureus*	6–XXC
Lablab bean (hyacinth bean), dry seed, Lablab *purpureus* (L.) Sweet subsp. *purpureus*	6–XXE
Lentil, edible podded, *Lens culinaris* Medik. subsp. *culinaris*	6–XXB
Lentil, succulent shelled, *Lens culinaris* Medik. subsp. *culinaris*	6–XXD
Lentil, dry seed, *Lens culinaris* Medik. subsp. *culinaris*	6–XXF
Morama bean, dry seed, *Tylosema esculentum* (Burch.) A. Schreib	6–XXE
Pea (*Pisum* spp.), edible podded (including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea)	6–XXB
Pea (*Pisum* spp.), succulent shelled (including, but not limited to, English pea, garden pea, and green pea)	6–XXD
Pea (*Pisum* spp.), dry seed (including, but not limited to dry pea, field pea, garden pea, and green pea)	6–XXF
Pigeon pea, edible podded, *Cajanus cajan* (L.) Huth	6–XXB
Pigeon pea, succulent shelled, *Cajanus cajan* (L.) Huth	6–XXD
Pigeon pea, dry seed, *Cajanus cajan* (L.) Huth	6–XXF
Soybean, seed, *Glycine max* (L.) Merr	N/A
Sword bean, edible podded, *Canavalia gladiata* (Jacq.) DC	6–XXA
Sword bean, dry seed, *Canavalia gladiata* (Jacq.) DC	6–XXE
Vegetable soybean, edible podded (edamame), *Glycine max* (L.) Merr	6–XXA
Vegetable soybean, succulent shelled (edamame), *Glycine max* (L.) Merr	6–XXC
Vegetable soybean, dry seed (edamame), *Glycine max* (L.) Merr	6–XXE
Velvetbean, edible podded, *Mucuna pruriens* (L.) DC	6–XXA
Velvetbean, succulent shelled, *Mucuna pruriens* (L.) DC	6–XXC
Velvetbean, dry seed, *Mucuna pruriens* (L.) DC	6–XXE
Winged pea, edible podded, *Lotus tetragonolobus* L	6–XXA
Winged pea, dry seed, *Lotus tetragonolobus* L	6–XXE
Cultivars, varieties, and/or hybrids of these commodities	

(iii) *Crop subgroups.* The following table identifies the crop subgroups for Crop Group 6–XX, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2 TO PARAGRAPH (c)(10)—CROP GROUP 6–XX: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 6–XXA: Edible podded bean subgroup	
Any cultivar of edible podded bean *Phaseolus* spp. or *Vigna* spp.	Bean (*Phaseolus* spp.; including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean); Bean (*Vigna* spp.; including, but not limited to asparagus bean, catjang bean; Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean); goa bean; guar bean; jackbean; lablab bean; vegetable soybean (edamame); sword bean; winged pea; velvetbean; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–XXB: Edible podded pea subgroup	
Any cultivar of edible podded pea, *Pisum* spp.	Pea (*Pisum* spp.; including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea); grass pea; lentil; pigeon pea; chickpea; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–XXC: Succulent shelled bean subgroup	
Any succulent shelled cultivar of bean, *Phaseolus* spp., or *Vigna* spp.	Bean (*Phaseolus* spp.; including, but not limited to lima bean, scarlet runner bean, and wax bean); Bean (*Vigna* spp.; including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean, and southern pea); Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); broad bean; jackbean; goa bean; lablab bean; vegetable soybean (edamame); velvetbean; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–XXD: Succulent shelled pea subgroup	
Any succulent shelled cultivar of garden pea, *Pisum* spp.	Chickpea; lentil; Pea (*Pisum* spp.; including, but not limited to English pea, garden pea, and green pea); pigeon pea; cultivars, varieties, and/or hybrids of these commodities.

TABLE 2 TO PARAGRAPH (c)(10)—CROP GROUP 6–XX: SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 6–XXE: Dried shelled bean, except soybean, subgroup	
Any one dried seed of bean, *Phaseolus* spp., or *Vigna* spp.	African yam bean; American potato bean; Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); Bean (*Phaseolus* spp.; including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean); Bean (*Vigna* spp.; including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); broad bean; guar bean; goa bean; horse gram; jackbean; lablab bean; morama bean; sword bean; winged pea; velvetbean, seed; vegetable soybean (edamame); cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–XXF: Dried shelled pea subgroup	
Any one dried seed of pea, *Pisum* spp.	Pea (*Pisum* spp.; including, but not limited to dry pea, field pea, green pea, and garden pea); chickpea; grass pea; lentil; pigeon pea; cultivars, varieties, and/or hybrids of these commodities.

* * * * *

(12) *Crop Group 7–XX.* Forage and Hay Legume Vegetable Group.

(i) *Representative commodities.* Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).

(ii) *Commodities.* The following table lists the commodities included in Crop Group 7–XX.

TABLE 1 TO PARAGRAPH (c)(12)—CROP GROUP 7–XX: FORAGE AND HAY FOR LEGUME VEGETABLE GROUP

Representative commodities	Commodities
Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).	Plant parts of any legume vegetable listed in crop group 6–XX that will be used as animal feed.

(iii) *Crop subgroup.* The following table identifies the crop subgroup for Crop Group 7–XX and specifies the representative commodities for the subgroup, and lists all the commodities included in the subgroup.

TABLE 2 TO PARAGRAPH (c)(12)—CROP GROUP 7–XX SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 7–XXA. Forage and hay of legume vegetables (except soybeans) subgroup	
Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.).	Plant parts of any legume vegetable listed in crop group 6–XX (except soybeans) that will be used as animal feed.

* * * * *

(27) *Crop Group 15–XX.* Cereal Grain Group.

(i) *Representative commodities.* Wheat, barley, field corn, sweet corn, rice and either grain sorghum or proso millet.

(ii) *Commodities.* The following table is a list of all commodities included in Crop Group 15–XX and includes cultivars, varieties and/or hybrids of these commodities.

TABLE 1 TO PARAGRAPH (c)(27)—CROP GROUP 15–XX: CEREAL GRAIN GROUP

Commodities	Related crop subgroups
Amaranth, grain, *Amaranthus* spp	15–XXA
Amaranth, purple, *Amaranthus cruentus* L	15–XXA
Baby corn, *Zea mays* L. subsp. *mays*	15–XXD
Barley, *Hordeum vulgare* L. subsp. *vulgare*	15–XXB
Buckwheat, *Fagopyrum esculentum* Moench	15–XXB
Buckwheat, tartary, *Fagopyrum tataricum* (L.) Gaertn	15–XXB
Canarygrass, annual, *Phalaris canariensis* L	15–XXB

TABLE 1 TO PARAGRAPH (c)(27)—CROP GROUP 15–XX: CEREAL GRAIN GROUP—Continued

Commodities	Related crop subgroups
Cañihua, *Chenopodium pallidicaule* Aellen	15–XXA
Chia, *Salvia hispanica* L	15–XXA
Corn, field, *Zea mays* L. subsp. *mays*	15–XXC
Corn, sweet, *Zea mays* L. subsp. *mays*	15–XXD
Cram cram, *Cenchrus biflorus* Roxb	15–XXA
Fonio, black, *Digitaria iburua* Stapf	15–XXE
Fonio, white, *Digitaria exilis* (Kippist) Stapf	15–XXE
Grain sorghum, *Sorghum bicolor* (L.) Moench	15–XXE
Huauzontle grain, *Chenopodium berlandieri* Moq. subsp. *nuttalliae* (Saff.) H. D. Wilson & Heiser and *Chenopodium berlandieri* Moq	15–XXA
Inca wheat, *Amaranthus caudatus* L	15–XXA
Job's tears, *Coix lacryma-jobi* L., *Coix lacryma-jobi* L. var. ma-yun (Rom. Caill.) Stapf	15–XXE
Millet, barnyard, *Echinochloa frumentacea* Link	15–XXE
Millet, finger, *Eleusine coracana* (L.) Gaertn. subsp. *coracana*	15–XXE
Millet, foxtail, *Setaria italica* (L.) P. Beauv. subsp. *italic*	15–XXE
Millet, little, *Panicum sumatrense* Roth	15–XXE
Millet, pearl, *Pennisetum glaucum* (L.) R. B. r	15–XXE
Millet, proso, *Panicum miliaceum* L. subsp. *miliaceum*	15–XXE
Oat, *Avena spp*	15–XXB
Oat, Abyssinian, *Avena abyssinica* Hochst. ex A. Rich	15–XXB
Oat, common, *Avena sativa* L	15–XXB
Oat, naked, *Avena nuda* L	15–XXB
Oat, sand, *Avena strigosa* Schreb	15–XXB
Popcorn, *Zea mays* L. subsp. *mays*	15–XXC
Princess feather, *Amaranthus hypochondriacus* L	15–XXA
Psyllium, *Plantago arenaria* Waldst. & Kit	15–XXA
Psyllium, blond, *Plantago ovata* Forssk	15–XXA
Quinoa, *Chenopodium quinoa* Willd. subsp. *quinoa*	15–XXA
Rice, *Oryza sativa* L	15–XXF
Rice, African, *Oryza glaberrima* Steud	15–XXF
Rye, *Secale cereale* L. subsp. *cereale*	15–XXA
Teff, *Eragrostis tef* (Zuccagni) Trotter	15–XXE
Teosinte, *Zea mays* L. subsp. *mexicana* (Schrad.) H. H. Iltis	15–XXC
Triticale, X *Triticosecale* spp	15–XXA
Wheat, *Triticum* spp	15–XXA
Wheat, club, *Triticum aestivum* L. subsp. *compactum* (Host) Mackey	15–XXA
Wheat, common, *Triticum aestivum* L. subsp. *aestivum*	15–XXA
Wheat, durum, *Triticum turgidum* L. subsp. *durum* (Desf.) van Slageren	15–XXA
Wheat, einkorn, *Triticum monococcum* L. subsp. *monococcum*	15–XXA
Wheat, emmer, *Triticum turgidum* L. subsp. *dicoccon* (Schrank) Thell	15–XXA
Wheat, macha, *Triticum aestivum* L. subsp. *macha* (Dekapr. & Menabde) Mackey	15–XXA
Wheat, oriental, *Triticum turgidum* L. subsp. *turanicum* (Jakubz.) Á. Löve & D. Löve	15–XXA
Wheat, Persian, *Triticum turgidum* L. subsp. *carthlicum* (Nevski) Á. Löve & D. Löve	15–XXA
Wheat, Polish, *Triticum turgidum* L. subsp. *polonicum* (L.) Thell	15–XXA
Wheat, poulard, *Triticum turgidum* L. subsp. *turgidum*	15–XXA
Wheat, shot, *Triticum aestivum* L. subsp. *sphaerococcum* (Percival) Mackey	15–XXA
Wheat, spelt, *Triticum aestivum* L. subsp. *spelta* (L.) Thell	15–XXA
Wheat, timopheevi, *Triticum timopheevii* (Zhuk.) Zhuk. subsp. *timopheevii*	15–XXA
Wheat, vavilovi, *Triticum vavilovii* Jakubz	15–XXA
Wheat, wild einkorn, *Triticum monococcum* L. subsp. *aegilopoides* (Link) Thell	15–XXA
Wheat, wild emmer, *Triticum turgidum* L. subsp. *dicoccoides* (Körn. ex Asch. & Graebn.) Thell	15–XXA
Wheatgrass, intermediate, *Iseilema prostratum* (L.) Andersson	15–XXA
Wild rice, *Zizania palustris* L	15–XXF
Wild rice, eastern, *Zizania aquatica* L	15–XXF
Cultivars, varieties, and hybrids of these commodities	.....

(iii) *Crop subgroups.* The following table identifies the crop subgroups for Crop Group 15–XX, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2 TO PARAGRAPH (c)(27)—CROP GROUP 15–XX: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 15–XXA: Wheat subgroup	
Wheat	Amaranth, grain; Amaranth, purple; Cañihua; Chia; Cram cram; Huauzontle grain; Inca wheat; Princess feather; Psyllium; Psyllium, blond; Quinoa; Rye; Triticale; Wheat; Wheat, club; Wheat, common; Wheat, durum; Wheat, einkorn; Wheat, emmer; Wheat, macha; Wheat, oriental; Wheat, Persian; Wheat, Polish; Wheat, poulard; Wheat, shot; Wheat, spelt; Wheat, timopheevi; Wheat, vavilovi; Wheat, wild einkorn; Wheat, wild emmer; Wheatgrass, intermediate; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–XXB: Barley subgroup	
Barley	Barley; Buckwheat; Buckwheat, tartary; Canarygrass, annual; Oat; Oat, Abyssinian; Oat, common; Oat, naked; Oat, sand; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–XXC: Field corn subgroup	
Field corn	Corn, field; Popcorn; Teosinte; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–XXD: Sweet corn subgroup	
Sweet corn	Baby corn; Corn, sweet; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–XXE: Grain sorghum and millet subgroup	
Grain sorghum or Proso millet.	Fonio, black; Fonio, white; Grain sorghum; Job's tears; Millet, barnyard; Millet, finger; Millet, foxtail; Millet, little; Millet, pearl; Millet, proso; Teff; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–XXF: Rice subgroup	
Rice	Rice; Rice, African; Wild rice; Wild rice, eastern; cultivars, varieties, and hybrids of these commodities.

* * * * *

(29) *Crop Group 16–XX.* Forage, Hay, Stover, and Straw of Cereal Grain Group.

(i) *Representative commodities.* Corn, wheat, and any other cereal grain crop.

(ii) *Commodities.* Crop Group 16–XX includes the forage, hay, stover and straw of the commodities in Crop Group 15–XX, including cultivars, varieties and/or hybrids of these commodities.

* * * * *

[FR Doc. 2021–27057 Filed 1–7–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 6
Monday, January 10, 2022

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 5, 2022.

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 February 9, 2022 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 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: WIC Infant and Toddler Feeding Practices Study-2 (WIC ITFPS–2): Year 9 Extension.

OMB Control Number: 0584–0580.

Summary of Collection: The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, Sec. 305) mandates programs under its authorization, including WIC, to cooperate with USDA program research and evaluation activities. The USDA Food and Nutrition Service's (FNS) WIC ITFPS–2 provides information on the feeding practices of children who received WIC benefits, from birth up to 6 years of age. The proposed data collection will extend the longitudinal data collection of the current cohort of study participants for one more interview at nine years of age, four years after the end of their eligibility for WIC services. This proposed extension is needed to understand the nutrition, health outcomes, and family feeding practices of school-aged children in the period after WIC program eligibility ends.

Need and use of the Information: The results will assist in the development of appropriate and effective prevention strategies to improve the health of young children. With nearly 45 percent of U.S. infants participating in WIC, it is hoped that prevention strategies implemented in WIC will have a substantial impact on the growth and health of U.S. infants and children.

The data will be used to estimate the type and prevalence of various feeding practices among children who received WIC program benefits, after their program eligibility ends.

This study will also examine the circumstances and influences that shape caregivers' feeding decisions for their children, and will describe the impact of childhood WIC participation on subsequent dietary and health outcomes. In addition, the study will examine if those who left the longitudinal study are fundamentally different from those who remain in the study.

Description of Respondents: Individuals/Households, State, Local, or Tribal government, and Profit/Non-profit Business.

Number of Respondents: 3,555.

Frequency of Responses: Reporting: Once, On occasion.

Total Burden Hours: 5,627.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–00175 Filed 1–7–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID: FSA–2021–0017]

Information Collection Request; Request for Special Priorities Assistance

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension of a currently approved information collection request associated with the Request for Special Priorities Assistance. The information collection established by the Agriculture Priorities and Allocations System (APAS) regulation is necessary for the program applicant (person) to request prioritizing of a contract above all other contracts. The purpose of the priority rating is to obtain item(s) in support of national defense programs that they are not able to obtain in time through normal market channels.

DATES: We will consider comments that we receive by March 11, 2022.

ADDRESSES: We invite you to submit comments on the notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *www.regulations.gov* and search for Docket ID FSA–2021–0017. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Scott Linsky, USDA/FPAC/FSA, 1400 Independence Ave. SW, Room 3086–S, Washington, DC 20250.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Scott Linsky.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Scott Linsky, telephone: (202) 720–7795; or by email: *Scott.Linsky@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:

Title: Request for Special Priorities Assistance.

OMB Control Number: 0560–0280.

Expiration Date of Approval: April 30, 2022.

Type of Request: Extension of a currently approved information collection.

Abstract: APAS would efficiently place priority ratings on contracts or orders of agriculture commodities up through the wholesale levels, agriculture production equipment, allocate resources, and handle food claims within its authority as specified in the Defense Production Act (DPA) of 1950, as amended, when necessary to promote national defense. It was determined that food is a scarce and critical commodity essential to the national defense (including civil emergency preparedness and response). Unless its production, processing, storage, and wholesale distribution are regulated during times of emergencies, the national defense requirement for food and food production may not be met without creating hardship in the civilian marketplace. Applicants (Government agencies or private individuals with a role in emergency preparedness, response, and recovery functions) request authorization from USDA to place a rating on a contract for items to support national defense activities. USDA Form AD–2102 can be found by the public at *https://forms.sc.egov.usda.gov/eForms.* Applicants must supply, at time of request, their name, location, contact information, items for which the applicant is requesting assistance on, quantity, and delivery date. Applicants can submit the request by mail or fax. There are no changes to the burden hours since the last OMB approval.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for the information collection is estimated to average 30 minutes (0.50) per response.

Respondents: Individuals, businesses, and agencies with responsibilities for emergency preparedness and response.

Estimated Annual Number of Respondents: 50.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 50.

Estimated Average Time per Response: 0.5 hours.

Estimated Total Annual Burden on Respondents: 25 hours.

We are requesting comments 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 the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA'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;

(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.

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.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2022–00155 Filed 1–7–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program; 2022 Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments address changes in the Consumer Price Index, as required under the Richard B. Russell National School Lunch Act. The 2022 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. The 2022 rates are also presented individually, as separate operating and administrative rates of reimbursement, to show the effect of the Consumer Price Index adjustment on each rate.

DATES: The rates take effect January 1, 2022.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314, 703–305–2537.

SUPPLEMENTARY INFORMATION: The Summer Food Service Program (SFSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR, 415 and final rule-related document published at 48 FR 29114, June 24, 1983.)

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from formal review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this notice have the meaning ascribed to them under 7 CFR part 225 of the SFSP regulations.

Background

This notice informs the public of the annual adjustments to the reimbursement rates for meals served in SFSP. In accordance with sections 12(f) and 13, 42 U.S.C. 1760(f) and 1761, of the Richard B. Russell National School Lunch Act (NSLA) and SFSP regulations under 7 CFR part 225, the United States Department of Agriculture announces the adjustments in SFSP payments for meals served to participating children during calendar year 2022.

The 2022 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. Reimbursement is based solely on a ''meals times rates'' calculation, without comparison to actual or budgeted costs.

Sponsors receive reimbursement that is determined by the number of reimbursable meals served, multiplied by the combined rates for food service operations and administration. However, the combined rate is based on separate operating and administrative rates of reimbursement, each of which is adjusted differently for inflation.

Calculation of Rates

The combined rates are constructed from individually authorized operating and administrative reimbursements. Simplified procedures provide flexibility, enabling sponsors to manage their reimbursements to pay for any allowable cost, regardless of the cost category. Sponsors remain responsible, however, for ensuring proper administration of the Program, while providing the best possible nutrition benefit to children.

The operating and administrative rates are calculated separately. However, the calculations of adjustments for both cost categories are based on the same set of changes in the *Food Away from Home* series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. They represent a 5.8 percent increase in this series for the 12-month period, from November 2020 through November 2021 (from 298.253 in November 2020 to 315.481 in November 2021).

Table of 2022 Reimbursement Rates

Presentation of the 2022 maximum per meal rates for meals served to children in SFSP combines the results from the calculations of operational and administrative payments, which are further explained in this notice. The total amount of payments to State agencies for disbursement to SFSP sponsors will be based upon these adjusted combined rates and the number of meals of each type served. These adjusted rates will be in effect from January 1, 2022 through December 31, 2022.

These changes are reflected below.

All States except Alaska and Hawaii—Rural or Self-prep Sites—Breakfast—2 dollars and 60.50 cents (14.25 cent increase from the 2021 reimbursement rate), Lunch or Supper—4 dollars and 56.25 cents (24.5 cent increase), Snack—1 dollar and 7.75 cents (5.75 cent increase); All Other Types of Sites—Breakfast—2 dollars and 55.5 cents (14 cent increase), Lunch or Supper—4 dollars and 48.75 cents (23.75 cent increase), Snack—1 dollar and 5.25 cents (5.50 cent increase).

Alaska—Rural or Self-prep Sites—Breakfast—4 dollars and 22 cents (23 cent increase), Lunch or Supper—7 dollars and 40 cents (40.75 cent increase), Snack—1 dollar and 75 cents (10 cent increase); All Other Types of Sites—Breakfast—4 dollars and 14 cents (22.5 cent increase), Lunch or Supper—7 dollars and 28 cents (40 cent increase), Snack—1 dollar and 71 cents (9.75 cent increase).

Hawaii—Rural or Self-prep Sites—Breakfast—3 dollars and 4.5 cents (16.5 cent increase), Lunch or Supper—5 dollars and 34.50 cents (29.75 cent increase), Snack—1 dollar and 26.75 cents (7.75 cent increase); All Other Types of Sites—Breakfast—2 dollars and 98.75 cents (16.25 cent increase), Lunch or Supper—5 dollars and 26 cents (29.25 cent increase), Snack—1 dollar and 23.75 cents (7.5 cent increase).

2022 Reimbursement Rates

[Combined]

Per meal rates in whole or fractions of U.S. dollars	All States except Alaska and Hawaii	All States except Alaska and Hawaii	Alaska	Alaska	Hawaii	Hawaii
Site types	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	2.6050	2.5550	4.2200	4.1400	3.0450	2.9875
Lunch or Supper	4.5625	4.4875	7.4000	7.2800	5.3450	5.2600
Snack	1.0775	1.0525	1.7500	1.7100	1.2675	1.2375

Operating Rates

The portion of the SFSP rates for operating costs is based on payment amounts set in section 13(b)(1) of the NSLA, 42 U.S.C. 1761(b)(1). They are rounded down to the nearest whole cent, as required by section 11(a)(3)(B)(iii) of the NSLA, 42 U.S.C. 1759a(a)(3)(B)(iii).

These changes are reflected below.

All States except Alaska and Hawaii—Breakfast—2 dollars and 37 cents (13 cents increase from the 2021 reimbursement rate), Lunch or Supper—4 dollars and 13 cents (22 cents increase), Snack—96 cents (5 cents increase).

Alaska—Breakfast—3 dollars and 84 cents (21 cents increase), Lunch or Supper—6 dollars and 70 cents (37 cents increase), Snack—1 dollar and 56 cents (9 cents increase).

Hawaii—Breakfast—2 dollars and 77 cents (15 cents increase), Lunch or Supper—4 dollars and 84 cents (27 cents increase), Snack—1 dollar and 13 cents (7 cents increase).

Operating Component of 2022 Reimbursement Rates

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All States except Alaska and Hawaii	Alaska	Hawaii
Breakfast	2.37	3.84	2.77
Lunch or Supper	4.13	6.70	4.84
Snack	0.96	1.56	1.13

Administrative Rates

The administrative cost component of the reimbursement is authorized under section 13(b)(3) of the NSLA, 42 U.S.C. 1761(b)(3). Rates are higher for sponsors of sites located in rural areas and for ''self-prep'' sponsors that prepare their own meals at the SFSP site or at a central facility instead of purchasing them from vendors. The administrative portion of SFSP rates are adjusted, either up or down, to the nearest quarter-cent.

These changes are reflected below.

All States except Alaska and Hawaii—Rural or Self-prep Sites—Breakfast—23.50 cents (1.25 cent increase from the 2021 reimbursement rate), Lunch or Supper—43.25 cents (2.5 cent increase), Snack—11.75 cents (0.75 cent increase); All Other Types of Sites—Breakfast—18.50 cents (1 cent increase), Lunch or Supper—35.75 cents (1.75 cent increase), Snack 9.25 cents (0.5 cent increase).

Alaska—Rural or Self-prep Sites—Breakfast—38 cents (2 cent increase), Lunch or Supper—70 cents (3.75 cent increase), Snack—19 cents (1 cent increase); All Other Types of Sites—Breakfast—30 cents (1.5 cent increase), Lunch or Supper—58 cents (3 cent increase), Snack—15 cents (0.75 cent increase).

Hawaii—Rural or Self-prep Sites—Breakfast—27.5 cents (1.5 cent increase), Lunch or Supper—50.50 cents (2.75 cent increase), Snack—13.75 cents (0.75 cent increase); All Other Types of Sites—Breakfast—21.75 cents (1.25 cent increase), Lunch or Supper—42 cents (2.25 cent increase), Snack—10.75 cents (0.5 cent increase).

ADMINISTRATIVE COMPONENT OF 2022 REIMBURSEMENT RATES

Administrative rates in U.S. dollars, adjusted, up or down, to the nearest quarter-cent	All States except Alaska and Hawaii	All States except Alaska and Hawaii	Alaska	Alaska	Hawaii	Hawaii
Site types	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	0.2350	0.1850	0.3800	0.3000	0.2750	0.2175
Lunch or Supper	0.4325	0.3575	0.7000	0.5800	0.5050	0.4200
Snack	0.1175	0.0925	0.1900	0.1500	0.1375	0.1075

Cynthia Long,

Administrator, USDA Food and Nutrition Service.

[FR Doc. 2022–00120 Filed 1–7–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Powell Ranger District; Utah; Powell Travel Management Project; Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; withdrawal.

SUMMARY: The Dixie National Forest is withdrawing its notice of intent (NOI) to prepare an environmental impact statement (EIS) for the Powell Travel Management Project on the Powell Ranger District. The original NOI was published in the **Federal Register** on January 8, 2015. The Dixie National Forest's decision to withdraw the NOI is based on several factors, including regional and national budget allocations and prioritization of agency resources.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Powell District Ranger Christopher Wehrli at *christopher.wehrli@usda.gov* or 435–676–9300. Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

Dated: January 3, 2022.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–00145 Filed 1–7–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting via WebEx on Thursday, February 10, 2022, at 12 p.m. Eastern time for the purpose of discussing the Committee's project on Civil Asset Forfeiture and its Impact on Communities of Color in Georgia.

DATES: The meeting will take place on Thursday, February 10, 2022, from 12 p.m.–1 p.m. Eastern time.

Online Regisration (Audio/Visual): https://bit.ly/3qkpBFZ.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2763 816 4387.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments;

the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes: December 8, 2021
III. Discussion of Civil Asset Forfeiture in Georgia
IV. Discussion of Next Steps
V. Public Comment
VI. Adjournment

Dated: January 4, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–00163 Filed 1–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–138]

Pentafluoroethane (R-125) From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and/or exporters of pentafluoroethane (R-125) from the People's Republic of China (China). The period of investigation is January 1, 2020, through December 31, 2020.

DATES: Applicable January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 2021, Commerce published the *Preliminary Determination.*[1] The petitioner in this investigation is Honeywell International, Inc. In addition to the Government of China, the mandatory respondents in this investigation are Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. (Juxin) and Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei).

A summary of the events that occurred since Commerce published the *Preliminary Determination* and a full discussion of the issues raised by parties for this final determination are provided in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is R-125 from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* We addressed these comments in the *AD Preliminary Determination* and preliminarily modified the scope of this and the companion antidumping duty investigation.[5] We established a period of time for parties to address scope issues in scope case and rebuttal briefs,[6] and we received such comments, which we addressed in the Final Scope Decision Memorandum.[7] After analyzing interested parties' comments, we made certain changes to the scope of this and the concurrent CVD investigation that published in the *Preliminary Determination. See* Appendix I to this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part on facts otherwise available, and because it found that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference, where appropriate, in selecting from among the facts available.[9] As described in the *Preliminary Determination,* we applied an adverse inference in the selection of facts available for determining a subsidy

[1] *See Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 33648 (June 25, 2021), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Pentafluoroethane (R-125) from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Pentafluoroethane (R-125) from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 86 FR 8589 (February 8, 2021) (*Initiation Notice*).

[5] *See Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 45959 (August 17, 2021) (*AD Preliminary Determination*) at 45960; *see also* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated August 10, 2021 (Preliminary Scope Decision Memorandum).

[6] *See* Preliminary Scope Decision Memorandum at 2–3.

[7] *See* Memorandum, ''Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[8] *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.

[9] *See* sections 776(a) and 776(b) of the Act.

rate for the four companies that did not respond to Commerce's quantity and value (Q&V) questionnaire: Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd.; Daikin Fluorochemicals (China) Co., Ltd.; Hongkong Richmax Ltd.; and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.[10] For a full discussion of our application of adverse facts available (AFA), *see* the *Preliminary Determination.*[11]

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[12]

Changes Since the Preliminary Determination

Based on our review and the analysis of the comments received from parties and our verification findings, we made changes to our subsidy rate calculations for Juxin and Sanmei. As a result of these changes, Commerce also revised the all-others rate. Commerce also revised the AFA rate applied to the companies which did not respond to the Q&V questionnaire to include the subsidy programs included in the Post-Preliminary Analysis Memo.[13] For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated individual estimated subsidy rates for Juxin and Sanmei. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Therefore, Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly ranged sales data.[14]

Commerce determines that the following total estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd	306.57
Daikin Fluorochemicals (China) Co., Ltd	306.57
Hongkong Richmax Ltd	306.57
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd	306.57
Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd[15]	14.66
Zhejiang Sanmei Chemical Ind. Co., Ltd[16]	12.75
All Others	14.43

Disclosure

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section, that were entered, or withdrawn from warehouse, for consumption on or after June 25, 2021, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for subject merchandise entered, or withdrawn from warehouse, on or after October 23, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty (CVD) order, reinstate the suspension of liquidation under section 706(a) of the Act, and require cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited, or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of R-125 from China no later than 45 days after our final determination.

[10] *See* Preliminary Decision Memorandum at 6–18.

[11] *Id.* at ''Use of Facts Otherwise Available and Adverse Inferences.''

[12] *See* Juxin's Letter, ''Submission of In-Lieu-of-Verification (ILOV) Questionnaire Response,'' dated September 23, 2021; and Sanmei's Letter, ''Submission of In-Lieu-of-Verification (ILOV) Questionnaire Response,'' dated October 8, 2021.

[13] *See* Memorandum, ''Post-Preliminary Analysis in the Countervailing Duty Investigation of Pentafluoroethane (R-125) from the People's Republic of China,'' dated September 9, 2021 (Post-Preliminary Analysis Memo); *see also* Issues and Decision Memorandum at Appendix II for the revised AFA rate calculation.

[14] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale quantities for the merchandise under consideration; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[15] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross owned with Juxin: Juhua Group Corporation; Zhejiang Juhua Co., Ltd.; Ningbo Juhua Chemical & Science Co., Ltd.; Zhejiang Quzhou Fluoxin Chemicals Co., Ltd.; and Zhejiang Juhua Chemical Mining Co., Ltd.

[16] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross owned with Sanmei: Fujian Qingliu Dongying Chemical Ind. Co. Ltd.

Commerce intends to disclose its calculations and analysis performed in this final determination to interested parties within five days of the date of public announcement to parties in this proceeding or, if there is no public announcement, within five days of publication of this notice in accordance with 19 CFR 351.224(b).

If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 705(d) and 777(i) of the Act.

Dated: December 30, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is pentafluoroethane (R-125), or its chemical equivalent, regardless of form, type or purity level. R-125 has the Chemical Abstracts Service (CAS) registry number of 354–33–6 and the chemical formula C_2HF_5. R-125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125.

R-125 contained in blends that do not conform to ANSI/ASHRAE Standard 34 is included in the scope of this investigation when R-125 constitutes the largest relative component by volume, on an actual percentage basis, of the blend.[17] However, R-125 incorporated into a blend that conforms to ANSI/ASHRAE Standard 34 is excluded from the scope of this investigation. When R-125 is blended with other products and otherwise falls under the scope of this investigation, only the R-125 component of the mixture is covered by the scope of this investigation.

Subject merchandise also includes purified and unpurified R-125 that is processed in a third country or otherwise outside the customs territory of the United States, including, but not limited to, purifying, blending, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope R-125. The scope also includes R-125 that is commingled with R-125 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope is merchandise covered by the scope of the antidumping order on *Hydrofluorocarbon Blends from the People's Republic of China,* including merchandise subject to the affirmative anti-circumvention determination in *Hydrofluorocarbon Blends from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Unfinished R–32/R-125 Blends,* 85 FR 15428 (March 18, 2020). *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (the Blends Order).

R-125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035 and 2903.39.2038. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.39.2045, 3824.78.0020, and 3824.78.0050. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memo

I. Summary
II. Background
III. Scope Comments
IV. Final Affirmative Determination of Critical Circumstances
V. Subsidies Valuation Information
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Analysis of Programs
VIII. Discussion of the Issues
Comment 1: Application of Adverse Facts Available (AFA) to the Export Buyer's Credit Program (EBCP)
Comment 2: Application of AFA to the Provision of Electricity for Less-Than-Adequate-Renumeration (LTAR) Program
Comment 3: Application of AFA to Other Subsidy Programs
Comment 4: Ministerial Error in the Subsidy Rate Calculation for the Electricity for LTAR Program for Sanmei
Comment 5: Selection of Fluorspar for LTAR Benchmark Prices
Comment 6: Creditworthiness of Juhua Group Corporation (Juhua Group)
Comment 7: Undervaluation of the Renminbi (RMB)
Comment 8: Seasonality in the Critical Circumstances Analysis
IX. Recommendation

[FR Doc. 2022–00180 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[17] ''Largest relative component by volume, on an actual percentage basis'' means that the percentage of R-125 contained in a blend is larger than the individual percentages of all the other components. For example, R-125 contained in a blend that does not conform to ANSI/ASHRAE Standard 34 and which contains 35% R-125 by volume is covered by the scope of the investigations if no other component part of the blend equals or exceeds 35% of the volume of the blend.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

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

SUMMARY: On January 3, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Husteel Co., Ltd.* v. *United States,* Consol. Court No. 19–00112, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea) covering the period December 1, 2016, through November 30, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to NEXTEEL Co., Ltd. (NEXTEEL), SeAH Steel Corporation (SeAH), and non-selected respondents.

DATES: Applicable January 13, 2022.

FOR FURTHER INFORMATION CONTACT: David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2019, Commerce published its final results in the 2016–2017 AD administrative review of WLP from Korea.[1] Commerce calculated

[1] *See Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of*

weighted-average dumping margins of 38.87 percent for NEXTEEL, 27.38 percent for SeAH, and 32.49 percent for the non-selected respondents.[2] After correcting ministerial errors contained in the *Final Results,* on July 23, 2019, Commerce published the *Amended Final Results* and revised the calculated weighted-average dumping margins for SeAH and the non-selected respondents to 22.70 percent and 29.89 percent, respectively.[3]

Husteel Co., Ltd., Hyundai Steel Co. (Hyundai Steel), NEXTEEL, and SeAH appealed Commerce's *Amended Final Results.* On August 26, 2020, the CIT remanded the *Amended Final Results* to Commerce regarding its: (1) Rejection of SeAH's third country sales to calculate normal value (NV); (2) particular market situation (PMS) determination and resulting adjustment to the reported cost of production (COP) for WLP; (3) reliance on the constructed value (CV) profit ratio and selling expenses calculated for Hyundai Steel in the first administrative review; (4) reclassification of NEXTEEL's reported losses relating to the suspended production of certain product lines; (5) adjustment to NEXTEEL's CV to account for sales of non-prime products; (6) refusal to employ its quarterly cost methodology to calculate SeAH's costs; (7) allocation of the general and administrative expenses of SeAH's U.S. affiliate Pusan Pipe America (PPA) across all of SeAH's U.S. sales of WLP sold through PPA; and (8) calculation of the rate assigned to the non-examined companies in light of any adjustments made to the calculations for either respondent stemming from the remand.[4] Therefore, the CIT remanded the *Amended Final Results* to Commerce to provide further explanation or reconsider its treatment of these items.

In its first remand redetermination, issued in January 2021, Commerce recalculated SeAH's weighted-average dumping margin using the company's Canadian sales as the basis for NV and without making the PMS adjustment to the COP. As a result, SeAH's weighted-average dumping margin was 7.24 percent.[5]

On June 7, 2021, the CIT remanded the *Amended Final Results* to Commerce for a second time, ordering Commerce to provide further explanation or reconsideration of the adjustment to NEXTEEL'S CV to account for sales of non-prime products, consistent with the Court's opinion and the U.S. Court of Appeals for the Federal Circuit (CAFC)'s ruling in *Dillinger.*[6]

In its second remand redetermination, issued in September 2021, Commerce recalculated NEXTEEL's weighted average-dumping margin based on the actual costs of prime and non-prime merchandise reported by NEXTEEL. The revised weighted-average dumping margin for NEXTEEL was 11.41 percent and the resulting review-specific average rate for the non-selected respondents was 9.09 percent.[7] The CIT sustained Commerce's second redetermination.[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the CAFC held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's January 3, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results* and *Amended Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* with respect to NEXTEEL, SeAH, and the non-selected respondents as follows:

Producer or exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	11.41
SeAH Steel Corporation	7.24
Companies Not Selected for Individual Review	9.09

The exporters or producers not selected for individual review are listed in the appendix.

Cash Deposit Requirements

Because NEXTEEL, SeAH, and the non-selected companies have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates for those exporters/producers.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: Were produced and/or exported by NEXTEEL, SeAH, and the non-selected companies, and were entered, or withdrawn from warehouse, for consumption during the period December 1, 2016, through November 30, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by NEXTEEL, SeAH, and the non-selected companies in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

No Shipments; 2016–2017, 84 FR 27762 (June 14, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *Id.*

[3] *See Welded Line Pipe from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 35371 (July 23, 2019) (*Amended Final Results*).

[4] *See Husteel Co., Ltd.* v. *United States,* 471 F. Supp. 3d 1349 (CIT 2020).

[5] *See* Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 19–00112, dated January 7, 2021 at 42; *see also* Corrected Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 19–00112, dated January 21, 2021, where Commerce revised: (1) NEXTEEL's margin calculation to use SeAH's final revised calculations as the basis for CV profit and selling expenses, resulting in a rate of 11.67 percent; and (2) the review-specific average rate applicable to the non-selected respondents to be 9.21 percent.

[6] *See Husteel Co., Ltd.* v. *United States,* 520 F. Supp. 3d 1296, 1309 (CIT 2021) (citing *Dillinger France S.A.* v. *United States,* 981 F.3d 1318, 1321–41 (Fed. Cir. 2020 (*Dillinger*)).

[7] *See* Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 19–00112, Slip Op. 21–70 dated September 2, 2021, at 5–6.

[8] *See Husteel Co., Ltd.* v. *United States,* Consol. Court No. 19–00012, Slip Op. 22–1 (CIT January 3, 2022).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[11] *See* 19 CFR 351.106(c)(2).

Dated: January 4, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. AJU Besteel Co., Ltd.
2. BDP International, Inc.
3. Daewoo International Cooperation
4. Dongbu Incheon Steel Co.
5. Dongbu Steel Co., Ltd.
6. Dongkuk Steel Mill
7. Dong Yang Steel Pipe
8. EEW Korea Co., Ltd.
9. Husteel Co., Ltd.
10. Hyundai RB Co. Ltd.
11. Hyundai Steel Company/Hyundai HYSCO
12. Kelly Pipe Co., LLC.
13. Keonwoo Metals Co., Ltd.
14. Kolon Global Corp.
15. Korea Cast Iron Pipe Ind. Co., Ltd.
16. Kurvers Piping Italy S.R.L.
17. MSTEEL Co., Ltd.
18. Miju Steel MFG Co., Ltd.
19. Poongsan Valinox (Valtimet Division)
20. POSCO
21. POSCO Daewoo
22. R&R Trading Co. Ltd.
23. Sam Kang M&T Co., Ltd.
24. Sin Sung Metal Co., Ltd.
25. SK Networks
26. Soon-Hong Trading Company
27. Steel Flower Co., Ltd.
28. TGS Pipe
29. Tokyo Engineering Korea Ltd.

[FR Doc. 2022–00181 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Notice of Amended Final Results of the Countervailing Duty Administrative Review, 2019

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

SUMMARY: The Department of Commerce (Commerce) is amending its notice of final results of the 2019 administrative review of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada.

DATES: Applicable January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman (Canfor), John Hoffner (JDIL), Kristen Johnson/Samuel Brummitt (Resolute), and Laura Griffith (West Fraser), 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) 482–1468, (202) 482–3315, (202) 482–4793/(202) 482–7851, and (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2021, Commerce published its final results in the 2019 administrative review of the CVD order on certain softwood lumber from Canada.[1] On December 7, 2021, Resolute FP Canada Inc. (Resolute) alleged that Commerce committed a ministerial error in the *Final Results* regarding the net subsidy rate calculation under the Provision of Stumpage for Less Than Adequate Remuneration (LTAR) programs of the Government of Quebec (GOQ) and Government of Ontario (GOO).[2] On December 13, 2021, the petitioner [3] submitted ministerial error comments, as well as rebuttal comments arguing that Resolute's ministerial error comments were untimely as they were not submitted during the time period specified under Commerce's regulations and therefore Commerce should not change Resolute's stumpage calculations.[4]

In the Petitioner Ministerial Error Allegation Submission, the petitioner alleged with respect to J.D. Irving, Limited (JDIL) that Commerce committed ministerial errors regarding the subsidy calculations for New Brunswick License Management Fees, Capital Cost Allowance for Class 1 Assets, New Brunswick Gasoline & Fuel Tax Exemptions and Refund, and Large Industrial Renewable Energy Purchase (LIREPP) programs.[5] The petitioner also alleged that Commerce committed ministerial errors with respect to West Fraser Mills Ltd. (West Fraser) regarding the calculated benefit for lower tax rates for Coloured Fuel/British Columbia Coloured Fuel Certification program and for payments made to West Fraser for cruising and block layout activities.[6] In addition, the petitioner alleged that Commerce miscalculated the net subsidy rate under the Provision of Stumpage for LTAR for the Government of Alberta (GOA), the Government of British Columbia (GBC), and the British Columbia Log Export Restrictions Restraint (LER) programs for West Fraser.[7] On December 17, 2021, JDIL and West Fraser submitted rebuttal comments to the Petitioner Ministerial Error Allegation Submission.[8]

Scope of the Order [9]

The product covered by the *Order* is certain softwood lumber products from Canada. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum in the *Final Results.*

Ministerial Errors

Section 351.224(e) of Commerce's regulations provides that Commerce will analyze any comments received and, if appropriate, correct any ministerial error by amending the final results of the review. Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

We analyzed the ministerial error comments and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e) and (f), that

[1] *See Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019,* 86 FR 68467 (December 2, 2021) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Resolute's Letter, ''Softwood Lumber from Canada: CVD Second Administrative Review Ministerial Error Comments On Behalf Of Resolute FP Canada And Affiliates,'' dated December 7, 2021.

[3] The petitioner is the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, an *ad hoc* association whose members are: U.S. Lumber Coalition, Inc.; Collum's Lumber Products, L.L.C.; Fox Lumber Sales, Inc.; Hankins, Inc.; Pleasant River Lumber Company; PotlatchDeltic; Rex Lumber Company; S.I. Storey Lumber Co., Inc.; Stimson Lumber Company; Swanson Group; Weyerhaeuser Company; Carpenters Industrial Council; Giustina Land and Timber Company; and Sullivan Forestry Consultants, Inc.

[4] *See* Petitioner's Letter, ''Certain Softwood Lumber Products from Canada: Ministerial Error Allegations,'' dated December 13, 2021 (Petitioner Ministerial Error Allegation Submission); *see also* Petitioner's Letter, ''Certain Softwood Lumber Products from Canada: Response to Resolute Ministerial Error Allegation,'' dated December 13, 2021.

[5] *See* Petitioner Ministerial Error Allegation Submission.

[6] *Id.*

[7] *Id.*

[8] *See* JDIL's Letter, ''Softwood Lumber Products from Canada: Reply to Petitioner's Ministerial Error Allegations,'' dated December 17, 2021; *see also* West Fraser's Letter, ''Certain Softwood Lumber Products from Canada, Case No. C–122–858: West Fraser Mills Ltd.'s Response to Ministerial Error Comments,'' dated December 17, 2021.

[9] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*Order*).

we made the following ministerial errors: [10]

(1) We incorrectly calculated JDIL's benefit under the New Brunswick License Management Fees. Therefore, we have corrected JDIL's License Management Fees benefit calculation in these amended final results, and we will incorporate JDIL's corrected total subsidy rate in the amended cash deposit instructions and liquidation instructions.

(2) We incorrectly calculated JDIL's benefit under the Capital Cost Allowance for Class 1 Assets program. Although the resulting change in JDIL's benefit amount for this program will not change JDIL's subsidy rate when rounded to the nearest one-hundredth place, as we are already making other modifications to our calculations, we have determined to correct JDIL's license management fees benefit calculation in these amended final results.

(3) We incorrectly calculated JDIL's benefit under the New Brunswick Gasoline & Fuel Tax Exemptions and Refund program. Therefore, we have corrected JDIL's license management fees benefit calculation in these amended final results, and we will incorporate JDIL's corrected total subsidy rate in the amended cash deposit instructions and liquidation instructions.

(4) Finally, we incorrectly calculated West Fraser's benefit under the Coloured Fuel/British Columbia Coloured Fuel Certification program. Therefore, we have corrected West Fraser's benefit calculation in these amended final results, and we will incorporate West Fraser's corrected total subsidy rate in the amended cash deposit instructions and liquidation instructions.

With regard to the petitioner's allegation that we incorrectly calculated the net subsidy rate for JDIL's LIREPP program, we find no ministerial error because we made a methodological decision in calculating the benefit for certain LIREPP credits. Regarding the petitioner's allegation that we incorrectly calculated the payments made to West Fraser for cruising and block layout activities, we agree with the petitioner that Commerce conducted an incorrect calculation of the potential benefit under this program, and further acknowledge that this type of error is one Commerce would typically correct as a ministerial error. However, such a correction would likely result in calculations upon which interested parties would be unable to brief or provide commentary, given the timing and nature of the change in this review. Accordingly, we are deferring a determination as to whether this program is countervailable until the next administrative review and, thus, not amending our calculation for this program in the *Final Results.*

We find that the petitioner's allegation that Commerce used an incorrect sales denominator to calculate West Fraser's benefit under certain programs is untimely, because it was discoverable in the *Preliminary Results,* but not raised in the petitioner's case brief. Likewise, we find that Resolute's allegation that Commerce used an incorrect sales denominator to calculate Resolute's benefit under certain programs is untimely, because it was discoverable in the *Preliminary Results,* but not raised in the Resolute's case brief. As such, we are rejecting both of these allegations as untimely filed allegations.

Company Name Corrections

In the *Final Results,* we listed Chaleur Sawmills LP and Fornebu Lumber Company Inc., as non-selected exporters/producers.[11] We, however, previously found that the successors-in-interest to Chaleur Sawmills LP and Fornebu Lumber Co. Inc. are Chaleur Forest Products LP and Chaleur Forest Products Inc.[12] Consequently, we are correcting the companies that are subject to this administrative review to Chaleur Forest Products LP and Chaleur Forest Products Inc. *See* Appendix to this notice for a list of the non-selected exporters/producers subject to this review.

Amended Final Results of Review

As a result of correcting the alleged ministerial errors noted above, we determine that the following countervailable subsidy rates exist for 2019:

Companies	Subsidy rate 2019 percent *ad valorem*
Canfor Corporation and its cross-owned affiliates [13]	2.42
J.D. Irving, Limited and its cross-owned affiliates [14]	3.46
Resolute FP Canada Inc. and its cross-owned affiliates [15]	18.07
West Fraser Mills Ltd. and its cross-owned affiliates [16]	5.08
Non-Selected Companies	6.32

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. We intend to issue assessment instructions to CBP no earlier than 41 days after the date of publication of these amended final results of review in the **Federal Register**.[17]

Cash Deposit Rate

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies subject to this review. For all non-reviewed companies, 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 deposits, effective upon publication of these amended final results, shall remain in effect until further notice.

Administrative Protective Order (APO)

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

[10] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Ministerial Error Allegations in the Final Results,'' dated concurrently with this notice.

[11] *See Final Results,* 86 FR at 68470–71.

[12] *See Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Changed Circumstances Review,* 86 FR 43189 (August 6, 2021).

[13] Commerce finds the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products., Ltd. and Canfor Wood Products Marketing, Ltd.

[14] Commerce finds the following companies to be cross-owned with J.D. Irving, Limited: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., and St. George Pulp & Paper Limited.

[15] Commerce finds the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Produits Forestiers Maurice SEC., and Resolute Forest Products Inc.

[16] Commerce finds the following companies to be cross-owned with West Fraser: West Fraser Timber Co., Ltd., Blue Ridge Lumber Inc., Sunpine Inc., Sundre Forest Products Inc., Manning Forest Products, and West Fraser Alberta Holdings.

[17] *See* 19 CFR 356.8(a).

Notification to Interested Parties

Commerce is issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 4, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Non-Selected Exporters/Producers

1. 1074712 BC Ltd.
2. 258258 B.C. Ltd., dba Pacific Coast Cedar Products
3. 5214875 Manitoba Ltd.
4. 752615 B.C Ltd., Fraserview Remanufacturing Inc., dba Fraserview Cedar Products.
5. 9224–5737 Quebec Inc. (aka A.G. Bois)
6. A.B. Cedar Shingle Inc.
7. Absolute Lumber Products, Ltd.
8. AJ Forest Products Ltd.
9. Alberta Spruce Industries Ltd.
10. Aler Forest Products, Ltd.
11. Alpa Lumber Mills Inc.
12. AM Lumber Brokerage
13. American Pacific Wood Products
14. Anbrook Industries Ltd.
15. Andersen Pacific Forest Products Ltd.
16. Anglo-American Cedar Products, Ltd.
17. Antrim Cedar Corporation
18. Aquila Cedar Products, Ltd.
19. Arbec Lumber Inc.
20. Aspen Planers Ltd.
21. B&L Forest Products Ltd.
22. B.B. Pallets Inc.
23. Babine Forest Products Limited
24. Bakerview Forest Products Inc.
25. Bardobec Inc.
26. BarretteWood Inc.
27. Barrette-Chapais Ltee
28. Benoit & Dionne Produits Forestiers Ltee
29. Best Quality Cedar Products Ltd.
30. Blanchet Multi Concept Inc.
31. Blanchette & Blanchette Inc.
32. Bois Aise de Montreal Inc.
33. Bois Bonsai Inc.
34. Bois Daaquam Inc.
35. Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)
36. Bois et Solutions Marketing SPEC, Inc.
37. Boisaco Inc.
38. Boscus Canada Inc.
39. BPWood Ltd.
40. Bramwood Forest Inc.
41. Brink Forest Products Ltd.
42. Brunswick Valley Lumber Inc.
43. Busque & Laflamme Inc.
44. C&C Wood Products Ltd.
45. Caledonia Forest Products Inc.
46. Campbell River Shake & Shingle Co., Ltd.
47. Canadian American Forest Products Ltd.
48. Canadian Wood Products Inc.
49. Canasia Forest Industries Ltd
50. Canusa cedar inc.
51. Canyon Lumber Company, Ltd.
52. Careau Bois Inc.
53. Carrier & Begin Inc.
54. Carrier Forest Products Ltd.
55. Carrier Lumber Ltd.
56. Cedar Valley Holdings Ltd.
57. Cedarline Industries, Ltd.
58. Central Alberta Pallet Supply
59. Central Cedar Ltd.
60. Central Forest Products Inc.
61. Centurion Lumber, Ltd.
62. Chaleur Forest Products LP
63. Chaleur Forest Products Inc.
64. Channel-ex Trading Corporation
65. Clair Industrial Development Corp. Ltd.
66. Clermond Hamel Ltee
67. CNH Products Inc.
68. Coast Clear Wood Ltd.
69. Coast Mountain Cedar Products Ltd.
70. Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., dba The Teal Jones Group
71. Commonwealth Plywood Co. Ltd.
72. Comox Valley Shakes Ltd./Comox Valley Shakes (2019) Ltd.
73. Conifex Fibre Marketing Inc.
74. Cowichan Lumber Ltd.
75. CS Manufacturing Inc., dba Cedarshed
76. CWP—Industriel Inc.
77. CWP—Montreal Inc.
78. D & D Pallets, Ltd.
79. Dakeryn Industries Ltd.
80. Decker Lake Forest Products Ltd.
81. Delco Forest Products Ltd.
82. Delta Cedar Specialties Ltd.
83. Devon Lumber Co. Ltd.
84. DH Manufacturing Inc.
85. Direct Cedar Supplies Ltd.
86. Doubletree Forest Products Ltd.
87. Downie Timber Ltd.
88. Dunkley Lumber Ltd.
89. EACOM Timber Corporation
90. East Fraser Fiber Co. Ltd.
91. Edgewood Forest Products Inc.
92. ER Probyn Export Ltd.
93. Eric Goguen & Sons Ltd.
94. Falcon Lumber Ltd.
95. Fontaine Inc.
96. Foothills Forest Products Inc.
97. Fraser Specialty Products Ltd.
98. FraserWood Inc.
99. FraserWood Industries Ltd.
100. Furtado Forest Products Ltd.
101. G & R Cedar Ltd.
102. Galloway Lumber Company Ltd.
103. Gilbert Smith Forest Products Ltd.
104. Glandell Enterprises Inc.
105. Goat Lake Forest Products Ltd.
106. Goldband Shake & Shingle Ltd.
107. Golden Ears Shingle Ltd.
108. Goldwood Industries Ltd.
109. Goodfellow Inc.
110. Gorman Bros. Lumber Ltd.
111. Groupe Crete Chertsey Inc.
112. Groupe Crete Division St-Faustin Inc.
113. Groupe Lebel Inc.
114. Groupe Lignarex Inc.
115. H.J. Crabbe & Sons Ltd.
116. Haida Forest Products Ltd.
117. Harry Freeman & Son Ltd.
118. Hornepayne Lumber LP
119. Imperial Cedar Products, Ltd.
120. Imperial Shake Co. Ltd.
121. Independent Building Materials Dist.
122. Interfor Corporation
123. Island Cedar Products Ltd
124. Ivor Forest Products Ltd.
125. J&G Log Works Ltd.
126. J.H. Huscroft Ltd.
127. Jan Woodlands (2001) Inc.
128. Jasco Forest Products Ltd.
129. Jazz Forest Products Ltd.
130. Jhajj Lumber Corporation
131. Kalesnikoff Lumber Co. Ltd.
132. Kan Wood, Ltd.
133. Kebois Ltee/Ltd.
134. Keystone Timber Ltd.
135. Kootenay Innovative Wood Ltd.
136. L'Atelier de Readaptation au Travail de Beauce Inc.
137. Lafontaine Lumber Inc.
138. Langevin Forest Products Inc.
139. Lecours Lumber Co. Limited
140. Ledwidge Lumber Co. Ltd.
141. Leisure Lumber Ltd.
142. Les Bois d'oeuvre Beaudoin Gauthier inc.
143. Les Bois Martek Lumber
144. Les Bois Traites M.G. Inc.
145. Les Chantiers de Chibougamau Ltd.
146. Leslie Forest Products Ltd.
147. Lignum Forest Products LLP
148. Linwood Homes Ltd.
149. Longlac Lumber Inc.
150. Lulumco Inc.
151. Magnum Forest Products, Ltd.
152. Maibec inc.
153. Manitou Forest Products Ltd.
154. Marwood Ltd.
155. Materiaux Blanchet Inc.
156. Matsqui Management and Consulting Services Ltd., dba Canadian Cedar Roofing Depot
157. Metrie Canada Ltd.
158. Mid Valley Lumber Specialties, Ltd.
159. Midway Lumber Mills Ltd.
160. Mill & Timber Products Ltd.
161. Millar Western Forest Products Ltd.
162. Mobilier Rustique (Beauce) Inc.
163. MP Atlantic Wood Ltd.
164. Multicedre ltee
165. Murray Brothers Lumber Company Ltd
166. Nakina Lumber Inc.
167. National Forest Products Ltd.
168. New Future Lumber Ltd.
169. Nicholson and Cates Ltd
170. Norsask Forest Products Limited Partnership
171. North American Forest Products Ltd. (located in Abbotsford, British Columbia)
172. North Enderby Timber Ltd.
173. Oikawa Enterprises Ltd.
174. Olympic Industries, Inc./Olympic Industries Inc-Reman Code/Olympic Industries ULC/Olympic Industries ULC-Reman/Olympic Industries ULC-Reman Code
175. Oregon Canadian Forest Products
176. Pacific Coast Cedar Products, Ltd.
177. Pacific Pallet, Ltd.
178. Pacific Western Wood Works Ltd.
179. Parallel Wood Products Ltd.
180. Pat Power Forest Products Corporation
181. Phoenix Forest Products Inc.
182. Pine Ideas Ltd.
183. Pioneer Pallet & Lumber Ltd.
184. Porcupine Wood Products Ltd.
185. Power Wood Corp.
186. Precision Cedar Products Corp.
187. Prendiville Industries Ltd. (aka, Kenora Forest Products)
188. Produits Forestiers Petit Paris Inc.
189. Produits forestiers Temrex, s.e.c.
190. Produits Matra Inc. and Sechoirs de Beauce Inc.
191. Promobois G.D.S. inc.

192. Quadra Cedar
193. Rayonier A.M. Canada GP
194. Rembos Inc.
195. Rene Bernard Inc.
196. Richard Lutes Cedar Inc.
197. Rielly Industrial Lumber Inc.
198. S & K Cedar Products Ltd.
199. S&R Sawmills Ltd
200. S&W Forest Products Ltd.
201. San Industries Ltd.
202. Sawarne Lumber Co. Ltd.
203. Scierie P.S.E. lnc.
204. Scierie St-Michel inc.
205. Scierie West Brome Inc.
206. Scotsburn Lumber Co. Ltd.
207. Scott Lumber Sales
208. Serpentine Cedar Ltd.
209. Sexton Lumber Co. Ltd.
210. Sigurdson Forest Products Ltd.
211. Silvaris Corporation
212. Silver Creek Premium Products Ltd.
213. Sinclar Group Forest Products Ltd.
214. Skana Forest Products Ltd.
215. Skeena Sawmills Ltd
216. Sound Spars Enterprise Ltd.
217. South Beach Trading Inc.
218. Specialiste de Bardeau de Cedre Inc.
219. Spruceland Millworks Inc.
220. Star Lumber Canada Ltd.
221. Sundher Timber Products Ltd.
222. Surrey Cedar Ltd.
223. T.G. Wood Products, Ltd.
224. Taan Forest LP/Taan Forest Products
225. Taiga Building Products Ltd.
226. Tall Tree Lumber Company
227. Tembec Inc.
228. Temrex Produits Forestiers s.e.c.
229. Terminal Forest Products Ltd.
230. The Wood Source Inc.
231. Tolko Industries Ltd. and Tolko Marketing and Sales Ltd.
232. Trans-Pacific Trading Ltd.
233. Triad Forest Products Ltd.
234. Twin Rivers Paper Co. Inc.
235. Tyee Timber Products Ltd.
236. Universal Lumber Sales Ltd.
237. Usine Sartigan Inc.
238. Vaagen Fibre Canada, ULC
239. Valley Cedar 2 Inc./Valley Cedar 2 ULC
240. Vancouver Island Shingle, Ltd.
241. Vancouver Specialty Cedar Products Ltd.
242. Vanderhoof Specialty Wood Products Ltd.
243. Visscher Lumber Inc
244. W.I. Woodtone Industries Inc.
245. Waldun Forest Product Sales Ltd.
246. Watkins Sawmills Ltd.
247. West Bay Forest Products Ltd.
248. West Wind Hardwood Inc.
249. Western Forest Products Inc.
250. Western Lumber Sales Limited
251. Western Wood Preservers Ltd.
252. Weston Forest Products Inc.
253. Westrend Exteriors Inc.
254. Weyerhaeuser Co.
255. White River Forest Products L.P.
256. Winton Homes Ltd.
257. Woodline Forest Products Ltd.
258. Woodstock Forest Products/Woodstock Forest Products Inc.
259. Woodtone Specialties Inc.
260. Yarrow Wood Ltd.

[FR Doc. 2022–00212 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–137]

Pentafluoroethane (R-125) From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

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

SUMMARY: The Department of Commerce (Commerce) determines that pentafluoroethane (R-125) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2020, through December 31, 2020. The final dumping margins of sales at LTFV is listed below in the ''Final Determination'' section of this notice.

DATES: Applicable January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Benjamin A. Luberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2021, Commerce published the *Preliminary Determination* of sales at LTFV of R-125 from China.[1] The petitioner in this investigation is Honeywell International Inc. The mandatory respondents in this investigation are Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei) and Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. (Juxin).

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by the parties for this final determination, are discussed in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is R-125 from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* We addressed these comments in the *Preliminary Determination* and preliminarily modified the scope of this and the companion countervailing duty (CVD) investigation.[5] We established a period of time for parties to address scope issues in scope case and rebuttal briefs,[6] and we received such comments, which we addressed in the Final Scope Decision Memorandum.[7] After analyzing interested parties' comments, we made certain changes to the scope of this and the concurrent CVD investigation that published in the *Preliminary Determination. See* Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix II.

---

[1] *See Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 45959 (August 17, 2021) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Pentafluoroethane (R-125) from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Pentafluoroethane (R-125) from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 86 FR 8583 (February 8, 2021) (*Initiation Notice*).

[5] *See Preliminary Determination,* 86 FR at 45960; *see also* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated August 10, 2021 (Preliminary Scope Decision Memorandum).

[6] *See* Preliminary Scope Decision Memorandum at 2–3.

[7] *See* Memorandum, ''Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[8]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the AD margin calculation for Sanmei.[9]

Final Affirmative Determination of Critical Circumstances

We continue to find that critical circumstances exist for imports of R-125 from China for the non-selected companies receiving a separate rate and the China-wide entity pursuant to sections 735(a)(3)(A) and (B) of the Act and 19 CFR 351.206.[10]

China-Wide Entity and the Use of Adverse Facts Available

For the reasons explained in the *Preliminary Determination,* we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity.[11] In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[12] As AFA, we assigned the China-wide entity a dumping margin of 278.05 percent, which is the highest transaction-specific rate calculated for Sanmei for the final determination.[13] Because this constitutes primary information calculated in the normal course of the investigation, the statutory corroboration requirement in section 776(c) of the Act does not apply.

Separate Rates

For the final determination, we continue to find that Sanmei and certain non-individually examined respondents are eligible for separate rates. Generally, Commerce looks to section 735(c)(5)(A) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents that we did not individually examine. Because the only individually calculated dumping margin for Sanmei is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Sanmei is the margin assigned to all other non-individually-examined separate rate recipients, pursuant to section 735(c)(5)(A) of the Act

Combination Rates

In the *Initiation Notice,*[14] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. For a list of the respondents that established eligibility for their own separate rates and the exporter/producer combination rates applicable to these respondents, *see* Appendix III.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Zhejiang Sanmei Chemical Ind. Co., Ltd	Zhejiang Sanmei Chemical Ind. Co., Ltd	277.95	267.41
Fujian Qingliu Dongying Chemical Ind. Co., Ltd	Zhejiang Sanmei Chemical Ind. Co., Ltd	277.95	267.41
Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	277.95	267.41
China-Wide Entity[15]		278.05	267.51

Disclosure

Commerce intends to disclose the calculations performed in connection with this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b)

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of R-125 from Sanmei, the separate rates companies, and the China-wide entity.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we made a negative determination for domestic subsidy pass-through for all respondents,[16] but we found export

[8] *See* Commerce's Letter, ''Zhejiang Sanmei Chemical Ind. Co., Ltd. Verification Questionnaire,'' dated September 9, 2021; *see also* Sanmei's Letter, ''Submission of Zhejiang Sanmei's Verification Response,'' dated September 20, 2021.

[9] *See* Issues and Decision Memorandum.

[10] *See* Issues and Decision Memorandum at ''VIII. Affirmative Determination of Critical Circumstances, in Part'' and Comment 1.

[11] The China-wide entity includes those companies who did not submit a separate rate application and Juxin, which withdrew from participation as a mandatory respondent in this investigation.

[12] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[13] *See* Issues and Decision Memorandum at ''IV. Use of Adverse Facts Available.''

[14] *See Initiation Notice,* 86 FR at 8587.

[15] The China-Wide Entity also includes Juxin.

[16] *See* Issues and Decision Memorandum at ''VI. Adjustment Under Section 777A(f) of the Act.''

subsidies for all respondents.[17] However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies at this time.

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above or in Appendix III will be the rate identified for that combination in that table or Appendix III; (2) for all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of the merchandise under consideration that have not received their own separate rate, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of R-125 from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: December 30, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is pentafluoroethane (R-125), or its chemical equivalent, regardless of form, type or purity level. R-125 has the Chemical Abstracts Service (CAS) registry number of 354–33–6 and the chemical formula C_2HF_5. R-125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125.

R-125 contained in blends that do not conform to ANSI/ASHRAE Standard 34 is included in the scope of this investigation when R-125 constitutes the largest relative component by volume, on an actual percentage basis, of the blend.[18] However, R-125 incorporated into a blend that conforms to ANSI/ASHRAE Standard 34 is excluded from the scope of this investigation. When R-125 is blended with other products and otherwise falls under the scope of this investigation, only the R-125 component of the mixture is covered by the scope of this investigation.

Subject merchandise also includes purified and unpurified R-125 that is processed in a third country or otherwise outside the customs territory of the United States, including, but not limited to, purifying, blending, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope R-125. The scope also includes R-125 that is commingled with R-125 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope is merchandise covered by the scope of the antidumping order on *Hydrofluorocarbon Blends from the People's Republic of China,* including merchandise subject to the affirmative anti-circumvention determination in *Hydrofluorocarbon Blends from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Unfinished R–32/R-125 Blends,* 85 FR 15428 (March 18, 2020). *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (the Blends Order).

R-125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035 and 2903.39.2038. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.39.2045, 3824.78.0020, and 3824.78.0050. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Adverse Facts Available
V. Changes Since the Preliminary Determination
VI. Adjustment Under Section 777A(f) of the Act
VII. Adjustments to Cash Deposit Rates for Export Subsidies
VIII. Affirmative Determination of Critical Circumstances, in Part
IX. Discussion of the Issues
General Issues
Comment 1: Critical Circumstances
Sanmei-Specific Issues
Comment 2: Whether To Exclude Sanmei's Sales to T.T. International Co., Ltd.
Comment 3: Commerce's Preliminary Application of Facts Available
Comment 3A: Application of Adverse Facts Available
Comment 3B: Valuation of the Intermediate Input Anhydrous Fluoride
Comment 3C: Valuation of Sanmei's Steam Input
Comment 3D: By-Product Offsets
Comment 3E: Whether Sanmei Properly Reported Factors of Production
Comment 3F: Added Inland Movement Expense for Imported Perchloroethylene
Comment 4: Sanmei's Market Economy Purchases
Surrogate Values

[17] *Id.* at ''VII. Adjustments to Cash Deposit Rates for Export Subsidies.''

[18] ''Largest relative component by volume, on an actual percentage basis'' means that the percentage of R-125 contained in a blend is larger than the individual percentages of all the other components. For example, R-125 contained in a blend that does not conform to ANSI/ASHRAE Standard 34 and which contains 35% R-125 by volume is covered by the scope of the investigation if no other component part of the blend equals or exceeds 35% of the volume of the blend.

Comment 5: Calculation of the Truck Freight Surrogate Value

Comment 6: Financial Statements

X. Recommendation

Appendix III

Separate Rate Companies

Exporter	Producer
Non-individually-examined exporters receiving separate rates	Producers supplying the non-individually-examined exporters receiving separate rates
Huantai Dongyue International Trade Co. Ltd	Jinhua Binglong Chemical Technology Co., Ltd.
Shandong Dongyue Chemical Co., Ltd	Shandong Dongyue Chemical Co., Ltd.
Shandong Huaan New Material Co., Ltd	Shandong Huaan New Material Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited[19]	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited	Zhejiang Quhua Fluor-Chemistry Co., Ltd.
T.T. International Co., Ltd./T.T. International Co., Limited	Zhejiang Sanmei Chemical Industry. Co., Ltd.
Zhejiang Yonghe Refrigerant Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd.
Zibo Feiyuan Chemical Co., Ltd	Zibo Feiyuan Chemical Co., Ltd.

[FR Doc. 2022–00178 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results and Partial Rescission of Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) determines that Shanghai Tainai Bearing Co., Ltd. (Tainai) sold tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from the People's Republic of China (China) at less than normal value (NV) during the period of review (POR), June 1, 2019, through May 31, 2020. Additionally, Commerce determines that it is appropriate to rescind this administrative review of the antidumping duty (AD) order on TRBs from China with respect to BRTEC Wheel Hub Bearing Co., Ltd. (BRTEC) and Zhejiang Jingli Bearing Technology Co. Ltd. (Jingli) because they had no *bona fide* sales to the United States during the POR.

DATES: Applicable January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: at (202) 482–1959.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of the administrative review of the AD order[1] on July 8, 2021.[2] Subsequent to the *Preliminary Results,* we received additional information from Tainai, as well as briefs from the Timken Company, Koyo Bearings North America LLC; Tainai, and Precision Components, Inc. On October 14, 2021, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until January 4, 2022.[3] For a complete description of the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[4]

Scope of the Order

Merchandise covered by the order are tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Partial Rescission of the Review

We received no comments regarding our preliminary findings for BRTEC or Jingli. Thus, consistent with the *Preliminary results,* we find that BRTEC and Jingli did not have *bona fide* sales during the POR, and, therefore, we are rescinding this administrative review with respect to these companies.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested

[19] Commerce preliminarily determined that T.T. International Co., Ltd. and T.T. International Co., Limited are a single entity (collectively, TTI). *See* Memorandum, ''Affiliation and Single Entity Status—T.T. International Co., Ltd.,'' dated August 10, 2021. No party has challenged that finding for the final determination. Accordingly, we are treating TTI as a single entity for the purposes of the final determination.

[1] *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, finished or Unfinished, from the People's Republic of China,* 52 FR 22667 (June 15, 1987), as amended, *Tapered Roller Bearings from the People's Republic of China; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision Upon Remand,* 55 FR 6669 (February 26, 1990).

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Intent to Rescind the Review, in Part; 2019–2020,* 86 FR 36099 (July 8, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See* Memorandum, ''Extension of Deadline for the Final Results of Antidumping Duty Administrative,'' dated October 14, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

parties regarding our *Preliminary Results,* we made certain revisions to the margin calculations for Tainai and to the rate assigned to the non-examined, separate-rate respondents.[5]

Non-Examined Separate Rate Respondents

In the *Preliminary Results,* we determined that Hebei Xintai Bearing Forging Co., Ltd. (Hebei Xintai) and Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd. (XTL) demonstrated their eligibility for a separate rate. We received no comments or argument since the issuance of the *Preliminary Results* that provide a basis for reconsideration of these determinations. Therefore, for these final results, we continue to find that Hebei Xintai and XTL are eligible for a separate rate.

Final Results of the Administrative Review

For the companies subject to this review that established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period June 1, 2019, through May 31, 2020:

Exporter	Weighted-average dumping margin (percent)
Shanghai Tainai Bearing Co., Ltd	538.79
Hebei Xintai Bearing Forging Co., Ltd	538.79
Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd	538.79

Disclosure

Commerce will disclose calculations performed for these final results to interested parties under Administrative Protective Order within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

China-Wide Entity

In the *Preliminary Results,* we found that C&U Group Shanghai Bearing Co., Ltd. (C&U Group) did not submit a separate rate application; therefore, it failed to rebut *de facto* and *de jure* control by the Government of China. We received no comments on this decision for our final results; thus, we continue to find that C&U Group is not eligible for a separate rate and is a part of the China-wide entity.

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[6] Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 92.84 percent).[7]

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] 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**.[9] 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).[10]

For Tainai, Commerce will calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1). Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.[11] Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[12] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

For Hebei Xintai and XTL, we will direct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin determined in the final results of this review.

Commerce determined that C&U Group did not qualify for a separate rate. Therefore, we will instruct CBP to assess antidumping duties on C&U Group's entries of subject merchandise at 92.84 percent, the established weighted-average dumping margin for the China-wide entity.

For BRTEC and Jingli, because Commerce is rescinding this administrative review for these two companies, we will instruct CBP to assess antidumping duties on their entries at the cash deposit rate at the time of entry.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed China and non-China exporters not listed above that currently have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding where the exporter received that separate rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, 92.84 percent; and (4) for all non-China exporters of subject merchandise which

[5] *Id.* at Comment 3.

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[7] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987, 3989 (January 22, 2009).

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

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

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

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

[12] *Id.*

have not received their own separate rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Orders

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

Notification to Interested Parties

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

Dated: January 4, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues
Comment 1: Tainai's Eligibility for a Separate Rate
Comment 2: Application of Adverse Facts Available to Tainai
Comment 3: Surrogate Values for Certain Factors of Production
Comment 4: Surrogate Value for Bearing Steel
Comment 5: Romanian Surrogate Financial Ratios
Comment 6: Applicability of Surrogate Financial Ratios
Comment 7: Deduction of Section 301 Duties
Comment 8: Capping Section 301 Duty Payments
Comment 9: By-Product Offset
Comment 10: Tainai's Weighted-Average Dumping Margin
Comment 11: Exclusion of Precision Components Inc.'s Imports from the Order
VI. Recommendation

[FR Doc. 2022–00217 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB705]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, January 26, 2022, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/5215827395962115339.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will receive an update on the implementation timeline for Framework Adjustment 34 and Amendment 21. They plan to review 2022 scallop workload based on priorities approved by the Council at its December meeting and discuss potential timelines for completing each task. The panel will review a draft scoping document that will be used to assess: (1) The need for a leasing program, and (2) what should the leasing program consider. Other business will be discussed, if necessary. Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: January 5, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–00176 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 220105–0002]

RIN 0660–ZA33

Infrastructure Investment and Jobs Act Implementation

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice, Request for Comment.

SUMMARY: On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 into law, also known (and referred to subsequently herein) as the Bipartisan Infrastructure Law (BIL), which includes a historic investment of $65 billion to help close the digital divide and ensure that all Americans have access to reliable, affordable, high-speed broadband. The National Telecommunications and Information Administration (NTIA), is responsible for distributing more than $48 billion in

BIL broadband funding through several different programs. NTIA has established multiple avenues for the public to offer input to inform program design and implementation. This includes a series of public virtual listening sessions (see **ADDRESSES** below) as well as the opportunity for stakeholders across the nation to make their views known in response to this Notice and Request for Comment (Notice). NTIA welcomes input from all interested parties.

DATES: Submit written comments on or before 5 p.m. Eastern Standard Time on February 4, 2022.

ADDRESSES: All electronic public comments on this action, identified by *Regs.gov* docket number NTIA–2021–0002, may be submitted through the Federal e-Rulemaking Portal at *http://www.regulations.gov*. The docket established for this rulemaking can be found at *www.Regulations.gov,* NTIA–2021–0002. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Responders should include a page number on each page of their submissions. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the federal government for program planning on a non-attribution basis.

In addition to inviting written submissions through this Notice, NTIA is hosting a series of public virtual listening sessions. More information about the listening sessions can be found at *https://www.ntia.doc.gov/federal-register-notice/2021/broadband-grant-programs-public-virtual-listening-sessions*.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to *BroadbandForAll@ntia.gov,* indicating ''Notice and Request for Comment'' in the subject line, or if by mail, addressed to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2048. Please direct media inquiries to NTIA's Office of Public Affairs, *press@ntia.gov* or (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

With the passage of the Bipartisan Infrastructure Law, Congress has taken a significant step forward in achieving the Biden-Harris Administration's goal of ensuring all Americans have access to affordable, reliable, high-speed broadband. The Bipartisan Infrastructure Law sets forth a $65 billion investment into broadband, more than $48 billion of which will be administered by NTIA's Office of internet Connectivity and Growth.

This investment will leverage NTIA's experience in promoting broadband infrastructure development and digital inclusion efforts through its BroadbandUSA initiative as well as other NTIA grant programs, including the Broadband Infrastructure Program, the Tribal Broadband Connectivity Program (TBCP), and the Connecting Minority Communities (CMC) Pilot Program. Additionally, this investment will enhance other established Federal broadband initiatives offered through the U.S. Department of the Treasury, U.S. Department of Agriculture, and the Federal Communications Commission (FCC).

This Notice is part of NTIA's strategy to engage with partners and other stakeholders to help meet the President's goal to close the digital divide. This is a historic investment, and it requires not only a whole-of-government effort, but a whole-of-country effort. This Notice seeks public comment to bolster NTIA's work and to improve the number and quality of ideas under consideration as the agency develops Notices of Funding Opportunity (NOFOs) for each of the broadband grant programs to be implemented by NTIA pursuant to the Bipartisan Infrastructure Law.

II. Objectives of This Notice

This Notice offers an opportunity for all interested parties to provide vital input and recommendations for consideration in the development of broadband programs established by the Bipartisan Infrastructure Law for implementation by NTIA.

This Notice seeks comment on several Bipartisan Infrastructure Law grant programs to be administered by NTIA: The Broadband Equity, Access and Deployment (BEAD) program, the Middle-Mile Broadband Infrastructure Program, and the Digital Equity Planning Grant Program. NTIA intends to release a future request for comment on the State Digital Equity Capacity Grant Program and Digital Equity Competitive Grant Program. In addition, given the unique nature of the nation-to-nation relationship, NTIA will conduct a Tribal consultation to gather input on questions related to the additional funding appropriated for the Tribal Broadband Connectivity Program, an NTIA program previously implemented under the Consolidated Appropriations Act, 2021.

III. Request for Comments

NTIA welcomes input on any matter that commenters believe is important to NTIA's Bipartisan Infrastructure Law implementation efforts. Commenters are invited to comment on the full range of issues presented by this Notice, and are encouraged to address any or all of the following questions, or to provide additional information relevant to implementation of the Bipartisan Infrastructure Law's broadband programs. In particular, we invite commenters who have applied to or had experience with other federal or state broadband funding programs to offer suggestions for how to effectively implement these new funding programs, based on their experiences. When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. As part of their response, commenters are welcome to provide specific actionable proposals, rationales and relevant factual information.

NTIA seeks public comment on the following questions:

General Questions

Bringing Reliable, Affordable, High-Speed Broadband to All Americans

1. What are the most important steps NTIA can take to ensure that the Bipartisan Infrastructure Law's broadband programs meet their goals with respect to access, adoption, affordability, digital equity, and digital inclusion?

2. Obtaining stakeholder input is critical to the success of this effort. How best can NTIA ensure that all voices and perspectives are heard and brought to bear on questions relating to the Bipartisan Infrastructure Law's broadband programs? Are there steps NTIA can and should take beyond those described above?

3. Transparency and public accountability are critical to the success of the Bipartisan Infrastructure Law's broadband programs. What types of data should NTIA require funding recipients to collect and maintain to facilitate assessment of the Bipartisan Infrastructure Law programs' impact, evaluate targets, promote accountability, and/or coordinate with other federal

and state programs? Are there existing data collection processes or templates that could be used as a model? How should this information be reported and analyzed, and what standards, if any, should NTIA, grant recipients, and/or sub-grantees apply in determining whether funds are being used lawfully and effectively?

4. NTIA has an interest in ensuring that the Bipartisan Infrastructure Law is implemented in a way that promotes the efficient use of federal funds. How should NTIA and grant recipients verify that funding is used in a way that complements other federal and state broadband programs?

Supporting States, Territories, and Sub-Grantees To Achieve the Goal

5. In implementing the Bipartisan Infrastructure Law's programs, NTIA will offer technical assistance to states, localities, prospective sub-grantees, and other interested parties. What kinds of technical assistance would be most valuable? How might technical assistance evolve over the duration of the grant program implementation?

6. The Bipartisan Infrastructure Law requires states and territories to competitively select subgrantees to deploy broadband, carry out digital equity programs, and accomplish other tasks. How should NTIA assess a particular state or territory's subgrant award process? What criteria, if any, should NTIA apply to evaluate such processes? What process steps, if any, should NTIA require (*e.g.,* Request for Proposal)? Are there specific types of competitive subgrant processes that should be presumed eligible (*e.g.,* publicly released requests for proposals and reverse auctions)?

7. NTIA views the participation of a variety of provider types as important to achieving the overall goals of the Bipartisan Infrastructure Law broadband programs. How can NTIA ensure that all potential subrecipients, including small and medium providers, cooperatives, non-profits, municipalities, electric utilities, and larger for-profit companies alike have meaningful and robust opportunities to partner and compete for funding under the programs?

8. States and regions across the country face a variety of barriers to achieving the goal of universal, affordable, reliable, high-speed broadband and broadband needs, which vary from place to place. These challenges range from economic and financial circumstances to unique geographic conditions, topologies, or other challenges that will impact the likelihood of success of this program. In implementing the Bipartisan Infrastructure Law's broadband programs, how can NTIA best address such circumstances?

9. Several Bipartisan Infrastructure Law broadband programs provide that, absent a waiver, a grant or subgrant recipient must contribute its own funding, or funding obtained from a non-federal source, to ''match'' funding provided by the BIL program. Under what circumstances, if any, should NTIA agree to waive these matching fund requirements, and what criteria should it assess (in accordance with any criteria established by the statute) when considering waiver requests?

Ensuring the Future of America Is Made in America by All of America's Workers

10. The COVID–19 pandemic has disrupted global supply chains and impacted employment patterns. What is the likely impact of current workforce and supply chain constraints on the speed with which states, service providers, and others achieve the Bipartisan Infrastructure Law's network-deployment objectives? Are the areas unserved or underserved by broadband networks, which will see substantial new deployments under the Bipartisan Infrastructure Law's broadband provisions, likely to face particularly significant workforce or supply-chain constraints? What steps, if any, should NTIA take to mitigate the impact of workforce or supply-chain limitations?

11. One objective of the Bipartisan Infrastructure Law is to ensure American workers have access to high quality jobs, especially those who were impacted the most by the pandemic, including women and people of color. What federal policy tools can NTIA apply to help ensure that broadband funding is deployed in a way that maximizes the creation of good paying jobs and that women and people of color have full opportunity to secure those jobs.

12. What steps, if any, should NTIA take to ensure maximum use of American-made network components and that supply shortages are addressed in ways that create high quality jobs for all Americans? What impact, if any, will application of the ''Buy American'' requirements in the Bipartisan Infrastructure Law have on supply-chain and workforce challenges and on the speed with which the nation can reach the goal of 100% broadband connectivity?

Broadband Equity, Access and Deployment (BEAD) Program

The BEAD Program is a $42.45 billion program for states, territories, the District of Columbia (DC), and Puerto Rico (P.R.) (''states and territories'') to utilize for broadband deployment, mapping, equity and adoption projects. Each state, DC, and P.R. will receive an initial allocation of $100 million—and $100 million will be divided equally among the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. NTIA will distribute the remaining funding based on a formula that considers the number of unserved and high-cost locations in the state, based on the updated broadband availability maps to be published by the FCC. The Bipartisan Infrastructure Law also provides NTIA with discretion to establish additional eligible uses for the funding.

BEAD program funding will be dispersed in three phases. The first phase allows states and territories to access up to $5 million each to support planning efforts, including building capacity in state broadband offices and to fund outreach and coordination activities with local communities and stakeholders. The second phase requires states and territories to submit an initial broadband plan to NTIA. These plans must be informed by collaboration with local and regional entities and will lay out how each respective state and territory will use the BEAD funding and other funds to bring reliable, affordable, high-speed broadband to all residents. Once NTIA approves the initial plan, states and territories will be able to access additional funds from their BEAD allocation. States and territories will be able to access the remaining funds upon review and approval of a final plan by NTIA.

Ensuring Publicly Funded Broadband Networks That Sustain and Scale

13. NTIA is committed to ensuring that networks built using taxpayer funds are capable of meeting Americans' evolving digital needs, including broadband speeds and other essential network features. What guidance or requirements, if any, should NTIA consider with respect to network reliability and availability, cybersecurity, resiliency, latency, or other service quality features and metrics? What criteria should NTIA establish to assess grant recipients' plans to ensure that service providers maintain and/or exceed thresholds for reliability, quality of service, sustainability, upgradability and other required service characteristics?

14. NTIA is committed to ensuring that networks constructed using taxpayer funds are designed to provide robust and sustainable service at affordable prices over the long term.

What criteria should NTIA require states to consider to ensure that projects will provide sustainable service, will best serve unserved and underserved communities, will provide accessible and affordable broadband in historically disconnected communities, and will benefit from ongoing investment from the network provider over time?

15. In its effort to ensure that BEAD-funded networks can scale to meet Americans' evolving needs, and to ensure the public achieves the greatest benefit from the federal investment, NTIA seeks to understand reasonably foreseeable use cases for America's broadband infrastructure over the next five, ten, and twenty years. What sort of speeds, throughput, latencies, or other metrics will be required to fully connect all Americans to meaningful use over the next five, ten, and twenty years? How can the BEAD program meet our nation's broadband network connectivity needs in the future and what other benefits can Americans expect from this program and the networks it will help fund in other industries and across the economy? How can existing infrastructure be leveraged to facilitate and amplify these benefits? What are the best sources of evidence for these questions and for predicted future uses of broadband?

Allocation and Use of BEAD Funds To Achieve Universal, Reliable, Affordable, High-Speed Broadband

16. Broadband deployment projects can take months or years to complete. As a result, there are numerous areas where an entity has made commitments to deploy service—using its own funding, government funding, or a combination of the two—but in which service has not yet been deployed. How should NTIA treat prior buildout commitments that are not reflected in the updated FCC maps because the projects themselves are not yet complete? What risks should be mitigated in considering these areas as ''served'' in the goal to connect all Americans to reliable, affordable, high-speed broadband?

17. Ten percent of total BEAD funding is reserved for distribution based on how many unserved locations within a state or territory are also locations in which the cost to deploy service is higher than the nationwide average. The Bipartisan Infrastructure Law provides that, in calculating the cost of deployment, NTIA should consider factors such as the area's remoteness, population density, topography, poverty rate, or ''any other factor identified by the Assistant Secretary, in consultation with the [FCC], that contributes to the higher cost of deploying broadband service in the area.'' BIL § 60102(a)(2)(G). What additional factors, if any, should NTIA consider in determining what constitutes a ''high-cost area''?

18. The Bipartisan Infrastructure Law provides that BEAD funding can be used in a variety of specific ways, including the provision of service to unserved and underserved areas, connection of community anchor institutions, data collection, installation of service within multi-family residential buildings, and broadband adoption programs. The law also permits the Assistant Secretary to designate other eligible uses that facilitate the program's goals. What additional uses, if any, should NTIA deem eligible for BEAD funding?

Establishing Strong Partnerships Between State, Local, and Tribal Governments

19. Community engagement is critical to eliminating barriers to broadband access and adoption. NTIA views strong involvement between states and local communities as key to ensuring that the broadband needs of all unserved and underserved locations are accounted for in state plans submitted for funding. What requirements should NTIA establish for states/territories to ensure that local perspectives are critical factors in the design of state plans?

20. When formulating state broadband plans, what state agencies or stakeholder groups should be considered in the development of those plans?

21. How can NTIA ensure that states/territories consult with Tribal governments about how best to meet Tribal members' needs when providing funding for broadband service to unserved and underserved locations on Tribal lands within state boundaries?

Low-Cost Broadband Service Option and Other Ways To Address Affordability

22. The Bipartisan Infrastructure Law requires that BEAD funding recipients offer at least one low-cost broadband option and directs NTIA to determine which subscribers are eligible for that low-cost option. BIL § 60102(h)(5)(A). How should NTIA define the term ''eligible subscriber?'' In other words, what factors should qualify an individual or household for a low-cost broadband option?

23. Under the Bipartisan Infrastructure Law, states and territories are charged with developing low-cost broadband service options in consultation with NTIA and broadband providers interested in receiving funding within the state. BIL § 60102(h)(5)(B). What factors should NTIA consider in guiding the states in design of these programs to achieve this goal? Should NTIA define a baseline standard for the ''low-cost broadband service option'' to encourage states/territories to adopt similar or identical definitions and to reduce the administrative costs associated with requiring providers to offer disparate plans in each state and territory? What are the benefits and risks, if any, of such an approach?

24. Affordability is a key objective of the Bipartisan Infrastructure Law's broadband programs. What factors should be considered in the deployment of BEAD funds to help drive affordability beyond the low-cost option?

Implementation of the Digital Equity Act of 2021

The Digital Equity Act dedicated $2.75 billion to establish three grant programs that promote digital inclusion and equity to ensure that all individuals and communities have the skills, technology, and capacity needed to reap the full benefits of our digital economy. The goal of these programs is to promote the meaningful adoption and use of broadband services across targeted populations, including low-income households, aging populations, incarcerated individuals, veterans, individuals with disabilities, individuals with a language barrier, racial and ethnic minorities, and rural inhabitants.

As noted above, given the sequence of programs that NTIA is implementing, NTIA intends to release another request for comment (RFC) in the future to address the State Digital Equity Capacity Grant Program and Digital Equity Competitive Grant Programs. The questions below are specific to the Digital Equity Planning Grant Program.

State Digital Equity Plans

25. The Bipartisan Infrastructure Law includes historic investments in digital inclusion and digital equity, promising to bring all Americans the benefits of connectivity irrespective of age, income, race or ethnicity, sex, gender, disability status, veteran status, or any other characteristic. NTIA seeks to ensure that states use Digital Equity Planning Grants to their best effect. What are the best practices NTIA should require of states in building Digital Equity Plans? What are the most effective digital equity and adoption interventions states should include in their digital equity plans and what evidence of outcomes exists for those solutions?

26. Some states and territories will benefit from technical assistance in preparing Digital Equity Plans. What types of technical assistance, support, data, or programmatic requirements should NTIA provide to states and territories to produce State Digital Equity Plans that fully address gaps in broadband adoption, promote digital skills, advance equitable access to education, healthcare and government services, and build information technology capacity to enable full participation in the economy for covered populations? What steps, if any, should NTIA take to monitor and assess these practices?

27. Equity is also a named goal of the BEAD program described above. How should NTIA ensure that State Digital Equity Plans and the plans created by states and territories for the BEAD program are complementary, sequenced and integrated appropriately to address the goal of universal broadband access and adoption?

28. How should NTIA ensure that State Digital Equity Plans impact and interact with the State's goals, plans and outcomes related to: (i) Economic and workforce development; (ii) education; (iii) health; (iv) civic and social engagement; (v) climate and critical infrastructure resiliency; and (vi) delivery of other essential services, especially with respect to covered populations mentioned in Bipartisan Infrastructure Law § 60303(2)(C)?

29. The Bipartisan Infrastructure Law directs states and territories to include in their digital equity plans ''measurable objectives for documenting and promoting: (i) The availability of, and affordability of access to, fixed and wireless broadband technology; (ii) the online accessibility and inclusivity of public resources and services; (iii) digital literacy; (iv) awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and (v) the availability and affordability of consumer devices and technical support for those devices.'' What best practices, if any, should states follow in developing such objectives? What steps, if any, should NTIA take to promote or require adoption of these best practices? What additional guidance and oversight about the content of the State Digital Equity Plans should NTIA provide?

Digital Equity Coordination Requirements

30. The Bipartisan Infrastructure Law requires state and territories to consult with historically marginalized and disadvantaged groups, including individuals who live in low-income households, aging individuals, incarcerated individuals (other than individuals who are incarcerated in a Federal correctional facility), veterans, individuals with disabilities, individuals with a language barrier (including individuals who are English learners and have low levels of literacy), individuals who are members of a racial or ethnic minority group, and individuals who primarily reside in a rural area. What steps should NTIA take to ensure that states consult with these groups as well as any other potential beneficiaries of digital inclusion and digital equity programs, when planning, developing, and implementing their State Digital Equity Plans? What steps, if any, should NTIA take to monitor and assess these practices?

31. The Bipartisan Infrastructure Law also requires states and territories to coordinate with local governments and other political subdivisions in developing State Digital Equity Plans. What steps should states take to fulfill this mandate? How should NTIA assess whether a state has engaged in adequate coordination with its political subdivisions?

Implementation of Middle Mile Broadband Infrastructure (MMBI) Grant Program

This MMBI is a $1 billion program for the construction, improvement, or acquisition of middle-mile infrastructure. The purpose of the grant program is to expand and extend middle-mile infrastructure to reduce the cost of connecting unserved and underserved areas to the internet backbone. Eligible applicants include states, political subdivisions of a State, tribal governments, technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies, telecommunications cooperatives, nonprofit foundations, nonprofit corporations, nonprofit institutions, nonprofit associations, regional planning councils, Native entities, or economic development authorities.

32. Middle-mile infrastructure is essential to American connectivity. Lack of affordable middle-mile access can have a substantial impact on the retail prices charged for broadband services. How should the Assistant Secretary ensure that middle-mile investments are appropriately targeted to areas where middle-mile service is non-existent or relatively expensive? To what extent should middle-mile grants be targeted to areas in which middle-mile facilities exist but cannot economically be utilized by providers that do not own them? Should NTIA target middle-mile funds to areas where interconnection and backhaul costs are impacted by a lack of competition or other high-cost factors?

33. The Bipartisan Infrastructure Law's provisions regarding the Middle Mile Broadband Infrastructure Grant Program set out a range of considerations governing NTIA's assessment of proposals seeking middle-mile funding, including improving affordability, redundancy and resiliency in existing markets, leveraging existing rights-of-way, assets, and infrastructure, and facilitating the development of carrier-neutral interconnection points. *See* BIL § 60401(e), (b)(2), (d)(2). How should NTIA implement these requirements, and the others listed in the legislation, in prioritizing middle-mile grant applications?

34. What requirements, if any, should NTIA impose on federally funded middle-mile projects with respect to the placement of splice points and access to those splice points? Should NTIA impose other requirements regarding the location or locations at which a middle-mile grantee must allow interconnection by other providers?

35. How can the Middle Mile Broadband Infrastructure program leverage existing middle-mile facilities, access to rights of way, poles, conduit, and other infrastructure and capabilities that are owned, operated, or maintained by traditional and non-traditional providers (public and investor-owned utilities, grid operators, co-ops, academic institutions, cloud service providers, and others) to accelerate the deployment of affordable, accessible, high-speed broadband service to all Americans? What technical assistance or guidance should NTIA provide to encourage applications for this program? Are there examples of successful deployments and/or benefits provided by non-traditional providers to highlight?

36. As network demand grows, capacity needs in the middle mile and network core grow as well. What scalability requirements, if any, should NTIA place on middle-mile grant recipients?

Dated: January 5, 2022.

Evelyn Remaley Hasch,

Acting Assistant Secretary for Communications and Information.

[FR Doc. 2022–00221 Filed 1–7–22; 8:45 am]

BILLING CODE 3510–60–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Day of Service Project Collection Tool

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Day of Service Project Collection Tool for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 9, 2022.

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.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Rhonda Taylor, at 202–355–2202 or by email to *rtaylor@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on Monday, September 27, 2021 at Vol. 86, No. 184. This comment period ended November 26, 2021. No public comments were received from this Notice.

Title of Collection: Day of Service Project Collection Tool.

OMB Control Number: 3045–0122.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations.

Total Estimated Number of Annual Responses: 100,000.

Total Estimated Number of Annual Burden Hours: 17,000.

Abstract: AmeriCorps is soliciting comments concerning the proposed renewal of its Day of Service Project Tool. Organizers of volunteer events will be able to register their projects. This group includes national service grantees, corporations, volunteer ornganizations, government entities, and individuals. AmeriCorps wants to help promote activities across the country and also to assess the impact of the agency's initiatives. Information provided is purely voluntary and will not be used for any grant or funding support. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 12–31–2021.

Dated: January 3, 2022.

Rhonda Taylor,

Director of Partnerships and Program Engagement.

[FR Doc. 2022–00219 Filed 1–7–22; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Schools of National Service Collection Formerly the Segal Education Award Matching Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Schools of National Service for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 9, 2022.

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.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Rhonda Taylor, at 202–355–2202 or by email to *rtaylor@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on Thursday, September 2, 2021 at Vol. 86, No. 168. This comment period ended November 1, 2021. No public comments were received from this Notice.

Title of Collection: Day of Service Project Collection Tool.

OMB Control Number: 3045–0122.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 100.

Abstract: AmeriCorps seeks to secure educational benefits from colleges,

universities and other qualified educational institutions for AmeriCorps alumni seeking to attend their institution. This collection allows AmeriCorps and the institution to enhance the educational opportunities available to AmeriCorps alumni because of their service. The program now has a new name, Schools of National Service. The updated form design should make it easier to complete the form and easier for alumni to learn about benefits available to them. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 10/31/2021.

Dated: January 3, 2022.

Rhonda Taylor,

Director of Partnerships and Program Engagement.

[FR Doc. 2022–00222 Filed 1–7–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0151]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Annual Fire Safety Report

AGENCY: Federal Student Aid, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before February 9, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Annual Fire Safety Report.

OMB Control Number: 1845–0097.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,310.

Total Estimated Number of Annual Burden Hours: 4,313.

Abstract: The Department of Education regulations at 34 CFR 668.49 require institutions to collect statistics on fires occurring in on-campus student housing facilities, including the number and cause of each fire, the number of injuries related to each fire that required treatment at a medical facility, the number of deaths related to each fire, and the value of property damage caused by each fire. Institutions must also publish an annual fire safety report containing the institution's policies regarding fire safety and the fire statistics information. Further institutions are required to maintain a fire log that records the date, time, nature, and general location of each fire in on-campus student housing facilities. Due to the effects of the COVID–9 pandemic, the Department lacks sufficient data to allow for more accurate updates to the usage of these regulations. This request is for an extension without change to the reporting requirements contained in the regulations. The collection requirements in the regulations are necessary to meet institutional information reporting to students and staff as well as for reporting to Congress through the Secretary.

Dated: January 5, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–00202 Filed 1–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0002]

Agency Information Collection Activities; Comment Request; Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a revision of a currently approved collection.

DATES: The Department is requesting emergency processing and OMB approval for this information collection by January 26, 2022; and therefore, the Department is requesting public comments no later than January 25, 2022. A regular clearance process is also hereby being initiated to provide the public with the opportunity to comment under the full comment period. Interested persons are invited to submit comments on or before March 11, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0002. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery.

If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gloria Tanner, (202) 453–5596.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form.

OMB Control Number: 1810–0749.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 14,652.

Total Estimated Number of Annual Burden Hours: 2,051,943.

Abstract: Under the current unprecedented national health emergency, the legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act. The ESSER Fund awards grants to SEAs and for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, as well as Outlying Areas, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID–19) has had, and continues to have, on elementary and secondary schools across the Nation. This information collection requests emergency approval for a revision to a previously approved collection that includes annual reporting requirements to comply with the requirements of the ESSER program and obtain information on how the funds were used by State and Local Education Agencies. Emergency processing is necessary to provide states with sufficient time to collect the required data regarding the use of SEA reserve funds. Retrospectively creating this data after the activities have concluded is much more burdensome than prospectively collecting the data as the activities occur. The form currently collects information regarding the use of SEA reserve funds at the LEA level. However, questions addressing SEA use of Reserve Funds were not included in the forms submitted for 60- and 30-day public comment.

The Department addressed all public comments from the recently approved information collection. The only change to the approved collection is the additional three questions to address the use of SEA reserve funds. When considering your comments, please refer to Attachment A, which outlines the additional 3 questions.

Dated: January 4, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–00149 Filed 1–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0155]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Borrower Defenses Against Loan Repayment

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before February 9, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in

public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Borrower Defenses Against Loan Repayment.

OMB Control Number: 1845–0132.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 150,000.

Total Estimated Number of Annual Burden Hours: 150,000.

Abstract: This is a request for an extension of the current information collection for Form 1845–0132. The U.S. Department of Education (ED) continues to require the collection of this information from borrowers who believe they have cause to request the borrower defense to loan repayment forgiveness of a student loan as noted in regulation in 1998 Reauthorization of the Higher Education Act (HEA) (Sec. 455(h)). This burden continues to be necessary to ensure Heald, Everest and/or WyoTech College borrowers who wish to invoke the borrower defense against repayment of federal student loans can do so in a uniform and informed manner.

Dated: January 5, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance. Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–00203 Filed 1–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0150]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Non-Title IV Revenue Requirements (90/10)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before February 9, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Non-Title IV Revenue Requirements (90/10).

OMB Control Number: 1845–0096.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 5.

Abstract: The regulations in 34 CFR 668.28 provide that a proprietary institution must derive at least 10% of its annual revenue from sources other than Title IV, HEA funds, identifies sanctions for failing to meet this requirement, and otherwise implement the statute. An institution discloses in a footnote to its audited financial statements the amounts of Federal and non-Federal revenues, by category, that it used in calculating its 90/10 ratio (see section 487(d) of the HEA).

The publication of final regulations on September 2, 2020, removed section 668.285(b) regarding Net Present Value in the calculation of the 90/10 ratio and reserved this subparagraph as of the effective date of the regulation, July 1, 2021. With the cancellation of the requirement to calculate the Net Present Value, we are revising the current information collection to estimate the burden for the reporting of the sanction to the Department only.

This request is to revise the currently approved a information collection package, OMB Control Number 1845–0096, to include burden hours based on section 668.28(c) Sanctions. The information collection requirements in the regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: January 5, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–00201 Filed 1–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meeting on January 25, 2022, of the Secretary of Energy Advisory Board (SEAB). Due to the COVID–19 pandemic, this meeting will be held virtually for members of the public and in-person at DOE Headquarters, James V. Forrestal Building, 1000

Independence Ave. SW, Washington, DC 20585 for SEAB members only.

DATES: Tuesday, January 25, 2022; 9 a.m.–2 p.m.

ADDRESSES: Virtual meeting for members of the general public. To track attendees, registration is required using the following link: *https://doe.webex.com/doe/j.php?RGID=r4a98339039631f483dd01656743fa12b.*

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov.* telephone: (202) 586–5260.

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This is the second meeting of Secretary Jennifer M. Granholm's SEAB.

Tentative Agenda: The meeting will start at 9:00 a.m. on January 25th. The tentative meeting agenda includes: Roll call, remarks from the Secretary, remarks from the SEAB chair, remarks on DOE recruitment, SEAB working group report-outs, and public comments. The meeting will conclude at 2:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Christopher Lawrence no later than 5:00 p.m. on Monday, January 24, 2022, by email at: *seab@hq.doe.gov.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5:00 p.m. on Wednesday, January 24, 2022.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christopher Lawrence, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Lawrence. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on January 4, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–00172 Filed 1–7–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. 13–69–LNG, 14–88–LNG, 15–25–LNG (Consolidated)]

Venture Global Calcasieu Pass, LLC; Application for Limited Amendment to Existing Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on December 3, 2021 (as corrected on December 10, 2021), by Venture Global Calcasieu Pass, LLC (Calcasieu Pass). In relevant part, Calcasieu Pass requests a limited amendment of its existing authorization to export domestically produced liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, issued in Order No. 4346. The amendment would increase Calcasieu Pass's approved non-FTA export volume from 620 billion cubic feet per year (Bcf/yr) to 640.666 Bcf/yr of natural gas—an increase of 20.666 Bcf/yr. Calcasieu Pass filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, March 11, 2022.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE 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 Office of Resource Sustainability staff at (202) 586–2627 or (202) 586–4749 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.

FOR FURTHER INFORMATION CONTACT:

Amy Sweeney or Jennifer Wade, U.S. Department of Energy (FE–34), Office of Fossil Energy and Carbon Management,[1] Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627; (202) 586–4749, *amy.sweeney@hq.doe.gov* or *jennifer.wade@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In Order No. 4346, issued on March 5, 2019, in Docket Nos. 13–69–LNG, 14–88–LNG, 15–25–LNG (consolidated), DOE authorized Calcasieu Pass to export domestically produced LNG in a volume equivalent to 620 Bcf/yr of natural gas.[2] Calcasieu Pass is authorized to export this LNG by vessel from the Calcasieu Pass LNG Project (the Project), which is currently under construction in Cameron Parish, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[3] This non-FTA authorization, as amended, extends through December 31, 2050.[4]

[1] The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

[2] *Venture Global Calcasieu Pass, LLC,* DOE/FE Order No. 4346, Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG (Consolidated), Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 5, 2019), *amended by* DOE/FE Order No. 4346–A (Oct. 21, 2020) (extending export term).

[3] *See id.*

[4] *See id.*

In the Application, as relevant here,[5] Calcasieu Pass requests a limited amendment to its approved LNG export volume in Order No. 4346. Specifically, Calcasieu Pass requests that DOE amend Order No. 4346 to increase its non-FTA export volume from 620 Bcf/yr to 640.666 Bcf/yr of natural gas, an increase of 20.666 Bcf/yr. According to Calcasieu Pass, this increase reflects a refinement in the final design of the Project, in which the ''actual peak liquefaction capacity of the Project facilities under optimal conditions'' will increase from 12 million metric tons per annum (mtpa) of LNG to 12.4 mtpa of LNG (equivalent to 640.666 Bcf/yr of natural gas).

Calcasieu Pass further states that it has filed an application with the Federal Energy Regulatory Commission (FERC) asking FERC to amend its NGA section 3 authorization to increase the Project's authorized peak liquefaction capacity under optimal conditions to 12.4 mtpa of LNG.

Calcasieu Pass states that the proposed increase in its non-FTA export volume will not require the construction of any new facilities or the modification of the previously authorized Project facilities, nor will it require any other changes to its non-FTA authorization.

Additional details can be found in Calcasieu Pass's Application and the email amendment to the Application, posted on the DOE website in Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG, and available here: *https://fossil.energy.gov/ng_regulation/applications-2013-ventureglobalIlc-13-69-lng1.*

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[6] and DOE's response to public comments received on that Study.[7]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[8]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[9] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[10]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a reference to ''Docket Nos. 13–69–LNG, *et al.,*'' or ''Venture Global Calcasieu Pass, LLC'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE Web address: *https://www.energy.gov/fecm/division-natural-gas-regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on January 4, 2022.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022–00173 Filed 1–7–22; 8:45 am]

BILLING CODE 6450–01–P

[5] This Notice applies only to the portion of the Application requesting an amendment to Calcasieu Pass's non-FTA order. DOE will review separately the portion of the Application requesting an amendment to its three existing authorizations to export LNG to FTA countries, pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

[6] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[7] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[8] The Addendum and related documents are available at: *https://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[9] The 2014 Life Cycle Greenhouse Gas Report is available at: *https://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[10] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

[Docket No. 21–131–LNG]

Venture Global CP2 LNG, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an Application (Application), filed on December 2, 2021, and supplemented on December 17, 2021, by Venture Global CP2 LNG, LLC (CP2 LNG). CP2 LNG requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 1,446 billion cubic feet per year (Bcf/yr) of natural gas from the proposed CP2 LNG Project (Project), to be located in Cameron Parish, Louisiana. CP2 LNG filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, March 11, 2022.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE 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 Office of Resource Sustainability staff at (202) 586–2627 or (202) 586–4749 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.

FOR FURTHER INFORMATION CONTACT:

Amy Sweeney or Jennifer Wade, U.S. Department of Energy (FE–34), Office of Fossil Energy and Carbon Management,[1] Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627; (202) 586–4749, *amy.sweeney@hq.doe.gov* or *jennifer.wade@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In the Application, CP2 LNG requests authorization to export domestically produced LNG from its proposed Project to be located on the east side of the Calcasieu Ship Channel, and the nearby Monkey Island, in Cameron Parish, Louisiana.[2] CP2 LNG seeks to export this LNG in a volume equivalent to 1,446 Bcf/yr of natural gas on a non-additive basis to: (i) Any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of CP2 LNG's Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE will review CP2 LNG's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

CP2 LNG requests the authorization on its own behalf and as agent for other entities that will hold title to the LNG at the point of export. CP2 LNG is seeking the long-term non-FTA authorization for a term to commence on the earlier of the date of first export or seven years from the date the requested authorization is granted, and to extend through December 31, 2050. Additionally, CP2 LNG requests that its long-term authorization allow for the export of a portion of the proposed volume on a short-term or spot basis, consistent with DOE policy.

Additional details can be found in CP2 LNG's Application, posted on the DOE website at: *https://www.energy.gov/fecm/articles/venture-global-cp2-lng-llc-fe-dkt-no-21-131-lng.*

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[3] and DOE's response to public comments received on that Study.[4]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[5]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[6] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[7]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No

[1] The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

[2] In the Supplement to the Application, CP2 LNG provides additional detail regarding its lease and lease option agreements for the Project site.

[3] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[4] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[5] The Addendum and related documents are available at: *https://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[6] The 2014 Life Cycle Greenhouse Gas Report is available at: *https://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[7] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a reference to ''Docket No. 21–131–LNG'' or ''Venture Global CP2 LNG, LLC'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE web address: *https://www.energy.gov/fecm/division-natural-gas-regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on January 5, 2022.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022–00192 Filed 1–7–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–7–000]

City of Pasadena, California; Notice of Filing

Take notice that on December 27, 2021, City of Pasadena, California submitted its tariff filing: 2022 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts update, to be effective January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on January 18, 2022.

Dated: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00195 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–5–000]

City of Riverside, California; Notice of Filing

Take notice that on December 23, 2021, City of Riverside, California submitted its tariff filing: 2022 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts update, to be effective January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on January 18, 2022.

Dated: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00189 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–8–000]

City of Colton, California; Notice of Filing

Take notice that on December 29, 2021, City of Colton, California submitted its tariff filing: 2022 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts update, to be effective January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 (*https://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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://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.

Comment Date: 5:00 p.m. Eastern Time on January 18, 2022.

Dated: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00190 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF21–4–000]

WBI Energy Transmission, Inc.; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Wahpeton Expansion Project and Notice of Virtual Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Wahpeton Expansion Project involving construction and operation of facilities by WBI Energy Transmission, Inc. (WBI Energy) in Cass and Richland Counties, North Dakota. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Standard Time on February 3, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts.

Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on September 27, 2021, you will need to file those comments in Docket No. PF21–4–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF21–4–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend one of the virtual public scoping sessions its staff will conduct by telephone, scheduled as follows:

Date and Time:
Tuesday, January 25, 2022
4:30–6:30 pm Central Standard Time
Call in number: 1–888–604–9359
Participant passcode: 8998724
Thursday, January 27, 2022
4:30–6:30 pm Central Standard Time
Call in number: 1–888–604–9359
Participant passcode: 8998724

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic.

For each scoping session, you may call at any time after 4:30 p.m. Central Standard Time at which time you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter, with FERC staff, or FERC staff representative present on the line. A time limit of three minutes will be implemented for each commentor.

Transcripts of all comments received during the scoping session(s) will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

WBI Energy plans to construct and operate about 58.7 miles of 12-inch-diameter natural gas pipeline from WBI Energy's existing Mapleton Compressor Station near Mapleton, North Dakota to a new meter station near Wahpeton, North Dakota. The Wahpeton Expansion Project would provide about 20.6 million standard cubic feet of natural gas per day to southeastern North Dakota. According to WBI Energy, the project would provide additional natural gas supply to Wahpeton, North Dakota and new natural gas service to Kindred, North Dakota, as requested by Montana-Dakota Utilities Company (MDU).

In addition to the pipeline facilities, the Wahpeton Expansion Project would also include the following facilities:

- Modifications (installation of additional equipment and facilities, but no additional compression) to WBI Energy's existing Mapleton Compressor Station in Cass County, North Dakota;
- two delivery stations (MDU-Kindred Border Station and MDU-Wahpeton Border Station) in Cass and Richland Counties (respectively), North Dakota;
- seven block valve settings;

- four pig launcher/receiver settings at block valve settings 1, 2, 5, and 7; [1] and
- farm taps.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the planned facilities would disturb at least 533.7 acres of land for the aboveground facilities and the pipeline. Following construction, WBI Energy would maintain at least 358.8 acres for permanent operation of the project's facilities; the remaining acreage would be restored and reverted to former uses. The preliminary estimate of acreages affected would likely increase as the planned project's design advances. About 61 percent of the planned pipeline route parallels existing electric transmission line and road rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- climate change; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by WBI Energy. This preliminary list of issues may change based on your comments and our analysis:

- potential effects on drain tiles;
- impacts on waterbodies; and
- impacts on soils and restoration of impacted farmland.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the North Dakota State Historic Preservation Officer, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF21–4–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once WBI Energy files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: January 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00184 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2400–015.

Applicants: Blue Canyon Windpower LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Blue Canyon Windpower LLC.

Filed Date: 1/3/22.

Accession Number: 20220103–5485.

Comment Date: 5 p.m. ET 3/4/22.

Docket Numbers: ER10–2739–033; ER10–1892–020; ER16–1652–020; ER17–1494–004; ER19–170–004; ER20–660–007; ER21–1505–002; ER22–425–001.

Applicants: Enerwise Global Technologies, LLC, Diablo Energy Storage, LLC, Bolt Energy Marketing, LLC, Gateway Energy Storage, LLC, Vista Energy Storage, LLC, LifeEnergy LLC, Columbia Energy LLC, LS Power Marketing, LLC.

Description: Triennial Market Power Analysis for Southwest Region of LS Power Marketing, LLC, et al.

Filed Date: 1/3/22.

Accession Number: 20220103–5486.

Comment Date: 5 p.m. ET 3/4/22.

Docket Numbers: ER11–4498–013; ER11–4499–013; ER11–4501–015; ER12–979–014; ER12–2448–014; ER13–2409–009; ER14–2858–008; ER15–2615–004; ER15–2620–004; ER16–2293–005; ER16–2577–004; ER16–2653–005; ER16–2687–003; ER17–790–002; ER17–2457–004; ER17–2470–004; ER18–27–003; ER18–2312–003; ER18–2330–002; ER20–1790–001; ER20–2134–001; ER21–2597–001.

Applicants: Rockhaven Wind Project, LLC, Cimarron Bend Wind Project III, LLC, Aurora Wind Project, LLC, Enel Green Power Rattlesnake Creek Wind Project, LLC, Enel Green Power Diamond Vista Wind Project, LLC, Thunder Ranch Wind Project, LLC, Red Dirt Wind Project, LLC, Rock Creek Wind Project, LLC, Cimarron Bend Wind Project II, LLC, Chisholm View Wind Project II, LLC, Cimarron Bend Wind Project I, LLC, Lindahl Wind Project, LLC, Drift Sand Wind Project, LLC, Little Elk Wind Project, LLC, Goodwell Wind Project, LLC, Origin Wind Energy, LLC, Buffalo Dunes Wind Project, LLC, Chisholm View Wind Project, LLC, Rocky Ridge Wind Project, LLC, Caney River Wind Project, LLC, Smoky Hills Wind Project II, LLC, Smoky Hills Wind Farm, LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Smoky Hills Wind Farm, LLC, et al.

Filed Date: 12/30/21.

Accession Number: 20211230–5330.

Comment Date: 5 p.m. ET 2/28/22.

Docket Numbers: ER15–632–012; ER14–2465–013; ER14–2466–013; ER14–2939–010; ER15–634–012; ER15–2728–012; ER16–711–009; ER19–2287–003; ER19–2294–003; ER19–2305–003.

Applicants: Valencia Power, LLC, Mesquite Power, LLC, Goal Line L.P., Pio Pico Energy Center, LLC, Maricopa West Solar PV, LLC, Cottonwood Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, RE Camelot LLC, RE Columbia Two LLC, CID Solar, LLC.

Description: Triennial Market Power Analysis for Southwest Region of CID Solar, LLC, et al.

Filed Date: 1/3/22.

Accession Number: 20220103–5488.

Comment Date: 5 p.m. ET 3/4/22.

Docket Numbers: ER22–758–000.

Applicants: Diamond Spring, LLC.

Description: § 205(d) Rate Filing: Triennial Market Power Update and Seller Category Tariff Revision to be effective 3/5/2022.

Filed Date: 1/3/22.

Accession Number: 20220103–5385.

Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER22–759–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule No. 339 to be effective 12/2/2021.

Filed Date: 1/3/22.

Accession Number: 20220103–5390.

Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER22–760–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–01–04_SA 3763 Ameren-City of Newton Switching Agreement to be effective 3/6/2022.

Filed Date: 1/4/22.

Accession Number: 20220104–5115.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: ER22–761–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Interim ISA, SA No. 6271; Queue No. AF1–141 to be effective 12/7/2021.

Filed Date: 1/4/22.

Accession Number: 20220104–5124.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: ER22–762–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–01–04_SA 3764 ATC–WPL E&P (J1304) to be effective 1/5/2022.

Filed Date: 1/4/22.

Accession Number: 20220104–5130.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: ER22–763–000.

Applicants: Wildwood Lessee, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filings to be effective 1/5/2022.

Filed Date: 1/4/22.

Accession Number: 20220104–5137.

Comment Date: 5 p.m. ET 1/25/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF22–282–000.

Applicants: Bloom Energy Corporation.

Description: Form 556 of Bloom Energy Corporation [1621 North Olden Ave].

Filed Date: 1/4/22.

Accession Number: 20220104–5135.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: QF22–283–000.

Applicants: Bloom Energy Corporation.

Description: Form 556 of Bloom Energy Corporation [7605 Tonnelle Ave].

Filed Date: 1/4/22.

Accession Number: 20220104–5141.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: QF22–284–000.

Applicants: Bloom Energy Corporation.

Description: Form 556 of Bloom Energy Corporation [180 12th St].

Filed Date: 1/4/22.

Accession Number: 20220104–5146.

Comment Date: 5 p.m. ET 1/25/22.

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: *https://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: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00193 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–133]

Exelon Generation Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Recreation Management Plan.

b. *Project No:* 405–133.

c. *Date Filed:* September 17, 2021.

d. *Applicant:* Exelon Generation Company, LLC.

e. *Name of Project:* Conowingo Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River in Lancaster and York counties Pennsylvania and Cecil and Hartford counties, Maryland. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Andrea Danucalov, Exelon Generation, LLC, 2569 Shures Landing Road, Darlington, MD 21034; telephone (267) 533–1125; or email *andrea.danucalov@exeloncorp.com.*

i. *FERC Contact:* Mark Ivy, (202) 502–6156, or *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 3, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *https://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–405–133. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee filed a Recreation Management Plan, as required by Article 426, which includes a description of the recreation facilities at each project recreation site, recreation use data at each site for the time period March 15, 2008 through March 14, 2009, and a description of and implementation schedule for proposed enhancements at each site. The plan also includes a provision to monitor recreation use every ten years over the license term as well as an interim recreation use assessment, to be completed by August 31, 2024, to evaluate conditions at the Conowingo Creek, Line Bridge, and Peach Bottom Marina recreation sites.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00187 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–4–000]

City of Banning, California: Notice of Filing

Take notice that on December 21, 2021, City of Banning, California submitted its tariff filing: 2022 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts update, to be effective January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 (*https://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.

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.

Comment Date: 5:00 p.m. Eastern Time on January 18, 2022.

Dated: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00196 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–037]

FirstLight CT Hydro LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity amendment of license for project boundary.

b. *Project No:* 2662–037.

c. *Date Filed:* March 4, 2021, as supplemented on September 8 and December 3, 2021.

d. *Applicant:* FirstLight CT Hydro LLC.

e. *Name of Project:* Scotland Hydroelectric Project.

f. *Location:* The Scotland Project is located on the Shetucket River, in Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alan Douglass, Regulatory Compliance Manager, (413) 659–4416, *alan.douglass@firstlightpower.com.*

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 3, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659

(TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2662–037. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* On November 21, 2013, the Commission issued a new license for the Scotland Project with the boundary around the project reservoir at a contour elevation of 127 feet USGS datum. The approved boundary line is shown on the project's current Exhibit G (project boundary) drawings. The licensee seeks Commission approval of revised Exhibit G drawings that show a modified project boundary, based on improvements to the project's survey and property rights information. The modified boundary would remain at the 127-foot contour around the reservoir; however, the more accurate boundary line would enclose either more or less lands in certain areas to better follow the contour. The licensee also proposes boundary revisions near the dam and powerhouse to ensure all project facilities (*e.g.,* fish passage, access road, switchyard, etc.) are fully enclosed within the boundary. The revised exhibit drawings do not modify the licensee's property rights under the project license.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* P–2662–037) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the filing can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00186 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2842–044]

City of Idaho Falls; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Non-Project Use of Project Lands and Waters.

b. *Project No:* 2842–044.

c. *Date Filed:* September 23, 2021 and supplemented on October 18, 2021 and December 27, 2021.

d. *Applicant:* City of Idaho Falls, Idaho (licensee).

e. *Name of Project:* Idaho Falls Hydroelectric Project.

f. *Location:* The project is located on the Snake River in Bonneville County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jason Cooper, Physical Engineer; Idaho Falls Power; P.O. Box 50220; 140 South Capital; Idaho Falls, Idaho 83405–0220; Phone: (208) 612–8573.

i. *FERC Contact:* Alicia Burtner, (202) 502–8038, *Alicia.Burtner@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 4, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *https://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first

page of any filing should include the docket number P–2842–044. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests approval of a non-project use of project lands and waters in support of a public park to be located adjacent to and partially on project lands. The licensee proposes a water withdrawal of 2.27 cubic feet per second (cfs) to be taken from the right bank of the Snake River, upstream of the Lower Development weir. The request includes provisions to construction an intake structure and a series of pipes leading to a constructed, educational stream and pond in the public park. Approximately 0.27 cfs of the diverted water would be used for irrigation in the park, and the remaining 2 cfs would be returned to the Snake River downstream of the Lower Development weir. This would be the first water withdrawal at the project, and it would not require any alterations of current project operations.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00185 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–6–000]

City of Azusa, California; Notice of Filing

Take notice that on December 23, 2021, City of Azusa, California submitted its tariff filing: 2022 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts update, to be effective January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 (*https://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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://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.

Comment Date: 5:00 p.m. Eastern Time on January 18, 2022.

Dated: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00191 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–441–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Cash Out Surcharge True-Up Filing to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5055.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–442–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing: Annual Accounting Report on 12–30–21 to be effective N/A.
Filed Date: 12/30/21.
Accession Number: 20211230–5067.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–443–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Add New Services at Market Based Rates to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5074.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–444–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing (Hartree and ETC Marketing) to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5077.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–445–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Jan–Mar 2022) to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5078.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–446–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various eff 1–1–2022) to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5089.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–447–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon releases eff 1–1–2022) to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5090.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–448–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation re-release to Exelon eff 1–1–2022) to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5096.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–449–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2021 to be effective N/A.
Filed Date: 12/30/21.
Accession Number: 20211230–5138.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–450–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2021 to be effective N/A.
Filed Date: 12/30/21.
Accession Number: 20211230–5140.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–451–000.
Applicants: Crossroads Pipeline Company.
Description: Compliance filing: Penalty Revenue Crediting Report 2021 to be effective N/A.
Filed Date: 12/30/21.
Accession Number: 20211230–5141.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–452–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2021 to be effective N/A.
Filed Date: 12/30/21.
Accession Number: 20211230–5144.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–453–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR—Concord 136933 & Freepoint 136932 Negotiated Rate Agreement to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5146.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–454–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2021–12–30 Negotiated Rate Agreement Amendment to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5156.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–455–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2021–12–30 Definition and Service Request Revisions to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5160.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–456–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC 2021–12–30 Definition and Service Request Revisions to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5161.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–457–000.
Applicants: Roaring Fork Interstate Gas Transmission, LLC.
Description: Compliance filing: Baseline Tariff in Compliance with Docket Nos. CP21–462 to be effective 3/31/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5167.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–458–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2021 Add Line Section 32 for NBE to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5174.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–459–000.
Applicants: WBI Energy Transmission, Inc.
Description: Compliance filing: 2021 Compliance Filing for North Bakken Expansion to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5178.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–460–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2021 North Bakken Service Agreements to be effective 2/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5182.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–461–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jan 2022 to be effective 1/1/2022.
Filed Date: 12/30/21.
Accession Number: 20211230–5220.
Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–462–000.
Applicants: Double E Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate & Non-Conforming Agreement—Marathon Permian to be effective 1/1/2022.

Filed Date: 12/30/21.

Accession Number: 20211230–5225.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–463–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20211230 Negotiated Rate to be effective 1/1/2022.

Filed Date: 12/30/21.

Accession Number: 20211230–5250.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–464–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2—Negotiated Rate Agreements—Scout Energy Group and Concord Energy to be effective 1/1/2022.

Filed Date: 1/3/22.

Accession Number: 20220103–5004.

Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–465–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 1.1.22 to be effective 1/1/2022.

Filed Date: 1/3/22.

Accession Number: 20220103–5005.

Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–466–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP EPC FEB 2022 FILING to be effective 2/1/2022.

Filed Date: 1/3/22.

Accession Number: 20220103–5006.

Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–472–000.

Applicants: Interstate Gas Supply, Inc., Dominion Energy Solutions, Inc.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Interstate Gas Supply, Inc., et al.

Filed Date: 1/3/22.

Accession Number: 20220103–5212.

Comment Date: 5 p.m. ET 1/18/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP20–1241–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: Refund Report: Cove Point LNG, LP submits tariff filing per 154.501: Cove Point—PVIC Report of Refunds to be effective N/A.

Filed Date: 12/30/21.

Accession Number: 20211230–5061.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: RP22–454–001.

Applicants: Rockies Express Pipeline LLC.

Description: Tariff Amendment: REX 2020–01–03 RP22–454 Amendment to be effective 1/1/2022.

Filed Date: 1/3/22.

Accession Number: 20220103–5075.

Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–457–001.

Applicants: Roaring Fork Interstate Gas Transmission, LLC.

Description: Compliance filing: Amendment to Statement of Negotiated Rates to be effective 3/31/2022.

Filed Date: 12/30/21.

Accession Number: 20211230–5187.

Comment Date: 5 p.m. ET 1/11/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00194 Filed 1–7–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1084; FR ID 66116]

Information Collections Being Reviewed by the Federal Communications Commission

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 (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 11, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,989 respondents; 665,248 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping and annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these information requirements are found in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 54,900 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) The LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC-initiated PIC order. The 2005 Report and Order required IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, the Commission declined to adopt mandatory LEC-to-LEC data exchange requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2022–00142 Filed 1–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1042; FR ID 66156]

Information Collections Being Reviewed by the Federal Communications Commission

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 (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 11, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–1042.

Title: Request for Technical Support—Help Request Form.

Form No.: N/A—Electronic only.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or household; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents and Responses: 36,300 respondents and 36,300 responses.

Estimated Time per Response: 0.14 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. There is no statutory authority for this information collection. The Commission developed this information collection on its own motion to assist users of the Universal Licensing System (ULS) or other FCC electronic systems.

Total Annual Burden: 5,082 hours.

Total Annual Cost: $609,840.

Needs and Uses: The FCC maintains internet software used by the public to apply for licenses, participate in auctions for spectrum, and maintain license information. In this mission, FCC has a 'help desk' that answers questions related to these systems as well as resetting and/or issuing user passwords for access to these systems. The form currently is available on the website *https://esupport.fcc.gov/request.htm* under OMB Control Number 3060–1042. This form will continue to substantially decrease public and staff burden since all the information needed to facilitate a support request will be submitted in a standard format but be available to a wider audience. This eliminates or at least minimizes the need to follow-up with the customers to obtain all the information necessary to respond to their request. This form also helps presort requests into previously defined categories to all staff to respond more quickly.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2022–00143 Filed 1–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0773, OMB 3060–1044; FR ID 66174]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission 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 and recommendations for the proposed information collection should be submitted on or before February 9, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0773.

Title: Sections 2.803, 2.803(c)(2), and 2.1204(a)(11), Marketing and Importing of RF Devices Prior to Equipment Authorization.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 10,000 respondents and 10,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping, third-party disclosure requirement, on occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302a, 303(c), 303(f), and 303(r).

Total Annual Burden: 10,000 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

On September 20, 2021, the Commission published a final rule, ET Docket No. 20–382, FCC 21–72, ''Allowing Earlier Equipment Marketing and Importation Opportunities,'' 86 FR 52088. Among other adopted rules intended to target enhancements to our marketing and importation rules, the Commission amended the 47 CFR part 2 rules that allow equipment manufacturers to better gauge consumer interest and prepare for new product launches.

OMB Control Number: 3060–1044.

Title: Review of the *Section 251* Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01–338 and WC Docket No. 04–313, Order on Remand.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions and State, Local or Tribal government.

Number of Respondents and Reponses: 645 respondents; 645 responses.

Estimated Time per Response: 8 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in *47 U.S.C. Section 251* of the Communications Act of 1934, as amended.

Total Annual Burden: 5,160 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit or disclose confidential information. However, in certain circumstances, respondents may voluntarily choose to submit confidential information pursuant to applicable confidentiality rules.

Needs and Uses: In the Order on Remand, the Commission imposed

unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using UNEs (unbundled network elements) in conjunction with self-provisioned facilities. The Commission also eliminated the subdelegation of authority to state commissions adopted in the previous order. Prior to the issuance of the Order, the Commission sought comment on issues relating to combinations of UNEs, called ''enhanced extended links'' (EELs), in order to effectively tailor access to EELs to those carriers seeking to provide significant local usage to end users. In the Order, the Commission adopted three specific service eligibility criteria for access to EELs in accordance with Commission rules.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2022–00141 Filed 1–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE:

Thursday, January 13, 2022 at 10:00 a.m.

PLACE:

Virtual meeting. *Note:* because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS:

This meeting will be open to the public. To access the virtual meeting, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Welcoming Remarks
Motion to Instruct Staff to Prepare an Amended Form 1 Acknowledging Independent Expenditure-Only and Hybrid Committees
Draft Advisory Opinion 2021–13: Matthew P. Hoh
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2022–00350 Filed 1–6–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–1]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a ''community financial institution'' (CFI) to $1,323,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes took effect on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Janna Bruce, Division of Federal Home Loan Bank Regulation, (202) 649–3202, *Janna.Bruce@fhfa.gov;* or Lindsay Spadoni, Senior Counsel, (202) 649–3634, *Lindsay.Spadoni@fhfa.gov,* (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.[3] For 2021, FHFA set the CFI asset cap at $1,239,000,000, which reflected a 1.2 percent increase over 2020, based upon the increase in the CPI–U between 2019 and 2020.[4]

II. The CFI Asset Cap for 2022

As of January 1, 2022, FHFA increased the CFI asset cap to $1,323,000,000, which reflects a 6.8 percent increase in the unadjusted CPI–U from November 2020 to November 2021. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA's practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.,* the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Louis M. Scalza,

Acting Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2022–00197 Filed 1–7–22; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term ''CFI asset cap'').

[4] *See* 86 FR 6650 (Jan. 22, 2021).

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 January 25, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *John Ruan IV, Des Moines, Iowa; James H. Windsor IV, Chicago, Illinois; and Jonathan Hale Hoak, Dallas, Texas;* to join Thomas R. Schaefer, Stuart, Florida, as members of a Family Business Advisory Board for The Ruan Trust and The Ruan BTC Trust, both of Des Moines, Iowa, John Ruan IV, as trustee of both trusts, as a group acting in concert to retain voting shares of BTC Financial Corporation, and thereby indirectly retain voting shares of Bankers Trust Company, both of Des Moines, Iowa.

Board of Governors of the Federal Reserve System, January 5, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–00215 Filed 1–7–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 9, 2022.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org*:

1. *TBB Investments LLC and TBB Intermediate LLC;* to become bank holding companies by acquiring Berkshire Bancorp, Inc., and thereby indirectly acquiring Berkshire Bank, all of New York, New York. In addition, TBB Intermediate LLC, to merge with and into Berkshire Bancorp, Inc.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Clarkson Bancshares, LLC;* to become a bank holding company by acquiring Clarkson Bankboth of Clarkson, Nebraska.

C. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Animo Bancorp, Inc., Ganado, Texas;* to become a bank holding company, by acquiring Ganado Bancshares, Inc, and thereby indirectly acquiring The Citizens State Bank of Ganado, both of Ganado, Texas.

Board of Governors of the Federal Reserve System, January 5, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–00214 Filed 1–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059; Docket No. 2022–0053; Sequence No. 1]

Information Collection; North Carolina Sales Tax Certification

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning North Carolina sales tax certification. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through March 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by March 11, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification. Comments received generally will be posted without change to *https://www.regulations.gov,* including any

personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s) 9000–0059, North Carolina Sales Tax Certification.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the requirements of the Federal Acquisition Regulation clause at 52.229–2, North Carolina State and Local Sales and Use Tax. This clause requires contractors for construction or vessel repair to be performed in North Carolina to provide certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns, to obtain each year from the Commissioner of Revenue of the State of North Carolina, a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government.

The Government will use the information as evidence to establish exemption from State and local taxes.

C. Annual Burden

Respondents: 213.

Total Annual Responses: 213.

Total Burden Hours: 266.25.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–00150 Filed 1–7–22; 8:45 am]

BILLING CODE 6820–EP–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicare Payment Advisory Commission (MedPAC) Nominations

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. GAO is now accepting nominations for MedPAC appointments that will be effective in May 2022. Nominations should be sent to the email address listed below. Acknowledgement of receipt will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than February 11, 2022, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *MedPACappointments@gao.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory Giusto at (202) 512–8268 or *giustog@gao.gov* if you do not receive an acknowledgement or need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

(Authority: 42 U.S.C. 1395b–6.)

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2021–27495 Filed 1–7–22; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ACBCYW. The ACBCYW consists of 15 experts in fields associated with breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women.

DATES: Nominations for membership on the ACBCYW must be received no later than February 28, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Kimberly E. Smith, MBA, MHA, ACBCYW Secretariat, Centers for Disease Control and Prevention, 4770 Buford Highway, MS S107–4, Chamblee, Georgia 30341–3717, or emailed to *acbcyw@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly E. Smith, MBA, MHA, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE, Mailstop S107–4, Atlanta, Georgia 30341; Telephone: (404) 498–0073; Email: *acbcyw@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of breast health, breast cancer, disease prevention and risk reduction, survivorship (including metastatic breast cancer), hereditary breast and ovarian cancer (HBOC), or in related disciplines with a specific focus on young women. Persons with personal experience with early onset breast cancer are also eligible to apply. This includes but may not be limited to breast cancer survivors <45 years of age and caregivers of said persons. Selection of members is based on candidates' qualifications to contribute to the accomplishment of

ACBCYW objectives (*https://www.cdc.gov/faca/committees/acbcyw.html*). Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms.

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACBCYW membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in November 2022, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).
- A short biography (150 words or less).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–00211 Filed 1–7–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Head Start Grant Application (OMB #0970–0207)

AGENCY: Office of Head Start, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the Head Start Grant Application Instrument and Instructions (OMB #0970–0207, expiration 04/30/2022). There are no substantive changes requested to the instruments, but a few minor changes have been made to the reporting structure of applications related to facilities to reflect the information already being submitted by grant recipients.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: To receive Head Start funding, Head Start grant recipients must apply for such funds through this information collection. The information submitted by applicants assists program and grant officials in determining whether the applicant meets the requirements for funding under the Head Start Act including any requirements specified in annual appropriations by Congress.

Respondents: Head Start Grant Recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Head Start Grant Application	1,600	2.5	25	100,000

Estimated Total Annual Burden Hours: 100,000.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9801 *et seq.*

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–00223 Filed 1–7–22; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Data System for Organ Procurement and Transplantation Network, OMB No. 0915–0157—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 9, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the acting HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Data System for Organ Procurement and Transplantation Network, OMB No. 0915–0157—Revision.

Abstract: Section 372 of the Public Health Service Act requires that the Secretary, by contract, provide for the establishment and operation of a private, non-profit entity: The Organ Procurement and Transplantation Network (OPTN). The data collected pursuant to the OPTN's regulatory authority in 42 CFR 121.11 of the OPTN Final Rule will be collected through OMB-approved data collection forms. Therefore, data approved for collection by the OPTN Board of Directors are submitted by HRSA for OMB approval under the Paperwork Reduction Act of 1995.

A 60-day notice was published in the **Federal Register**, 86 FR 48743 (Aug. 31, 2021). One comment was received. The commenter supported the necessity and utility of the proposed information collection and the use of automated collection techniques. The commenter recommended that HRSA account for anticipated increased staff hours and recommended emphasizing collecting data pertaining to race, ethnicity, social determinants of health, and any other characteristics that will help achieve equity in organ donation and transplantation. HRSA appreciates all feedback, and we will continue to review and evaluate all data collection efforts going forward in consultation with the OPTN.

The 60-day notice proposed data collection changes to existing data collection forms related to Vascularized Composite Allograft (VCA) transplantation, to implement policies approved by the OPTN Board of Directors. The OPTN expects to make additional changes to these VCA data collection forms in the near future so implementation of data collection changes has been postponed. These data collection changes are not included in this 30-day notice and will be included for review in a future submission.

Need and Proposed Use of the Information: Data are used to develop transplant, donation, and allocation policies, to determine whether institutional members are complying with policy, to determine member-specific performance, to ensure patient safety, and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and members of the public for evaluation, research, patient information, and other important purposes.

This is a request to revise the current OPTN data collection associated with an individual's clinical characteristics at the time of registration, transplant, and follow-up after the transplant to include data collection forms in the OPTN Organ Labeling, Packaging, and Tracking System, the OPTN Kidney Paired Donation Pilot Program (KPDPP), and the OPTN Patient Safety Reporting Portal (PSRP). This revision also includes OPTN Board of Directors-approved changes to the existing OMB data collection forms. These specific data elements of the OPTN data system are collected from transplant hospitals, organ procurement organizations, and histocompatibility laboratories. The information is used to (1) facilitate organ placement and match donor organs with recipients; (2) monitor compliance of member organizations with Federal laws and regulations and with OPTN requirements; (3) review and report periodically to the public on the status of organ donation and transplantation in the United States; (4) provide data to researchers and government agencies to study the scientific and clinical status of organ transplantation; (5) perform transplantation-related public health surveillance including the possible transmission of donor disease.

HRSA is submitting the following changes to improve the OPTN organ matching and allocation process and improve OPTN member compliance with OPTN requirements. All of these proposed changes have been approved by the OPTN Board of Directors.

(1) Adding data collection forms for the OPTN Organ Labeling, Packaging, and Tracking System to the existing OMB-approved Data System for Organ Procurement and Transplantation Network. The system has two forms that are used through mobile and web-based applications to ensure the correct organ is transplanted into the correct patient, minimize labeling and transport errors, accelerate organ information transfer, and capture data regarding organ procurement. OPTN Organ Labeling, Packaging and Tracking System is comprised of two data collection forms: Organ labeling and packaging, and organ tracking and validating.

(2) Adding data collection forms for the OPTN KPDPP to the existing OMB-approved Data System for Organ Procurement and Transplantation Network. Kidney paired donation is a transplant option for those patients waiting for a kidney transplant who have a willing living donor who is medically able but cannot donate a kidney to their intended candidate because they are incompatible. OPTN KPDPP matches living donors, and their intended candidates with other living donors or intended candidate pairs when the living donors cannot donate to the person(s) they initially hoped would receive their kidney. OPTN KPDPP is comprised of three data collection forms: Candidate registration, donor registration, and match offer management.

(3) Adding data collection forms in the OPTN PSRP to the existing OMB-approved Data System for Organ Procurement and Transplantation Network. OPTN PSRP allows the OPTN to collect reports on any event or process variance that could cause concerns from transplantation, donation, safety, or quality perspective. OPTN PSRP is comprised of four data collection forms: Disease transmission event, living donor event, safety situation, and potential disease transmission.

(4) Adding a request to unlock form

(5) Additional revisions to existing data collection forms were made based on the OPTN Board of Directors-approved changes to improve organ matching, allocation, and OPTN policy compliance.

Likely Respondents: Transplant programs, Organ Procurement Organizations, and Histocompatibility Laboratories.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

The total burden hours in the OMB inventory increased by 4,337 hours from the previously OMB-approved data collection package from August 25, 2020. This increase is due to including new data collection forms and additional data to existing data collection forms. However, the total burden hours of this request is less than the total burden hours presented in the 60-day notice, because of the removal of the proposed data collection changes associated with implementing the ''Modify Data Collection on VCA Living Donors'' and ''Programming VCA Allocation in UNet'' policies.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent *	Total responses	Average burden per response (in hours)	Total burden hours
Deceased Donor Registration	57	188.26	10,731	1.10	11,804
Living Donor Registration	300	22.85	6,855	1.80	[a] 12,339
Living Donor Follow-up	300	62.23	18,669	1.30	[b] 24,270
Donor Histocompatibility	147	123.99	18,226	0.20	3,645
Recipient Histocompatibility	147	225.10	33,090	0.40	13,236
Heart Candidate Registration	140	33.69	4,717	0.90	4,245
Heart Recipient Registration	140	24.33	3,406	1.20	4,087
Heart Follow Up (6 Month)	140	22.01	3,081	0.40	1,232
Heart Follow Up (1–5 Year)	140	90.61	12,685	0.90	11,417
Heart Follow Up (Post 5 Year)	140	153.97	21,556	0.50	10,778
Heart Post-Transplant Malignancy Form	140	12.77	1,788	0.90	1,609
Lung Candidate Registration	71	45.21	3,210	0.90	2,889
Lung Recipient Registration	71	35.66	2,532	1.20	3,038
Lung Follow Up (6 Month)	71	32.35	2,297	0.50	1,148
Lung Follow Up (1–5 Year)	71	118.85	8,438	1.10	9,282
Lung Post-Transplant Malignancy Form	71	19.72	1,400	0.40	560
Heart/Lung Candidate Registration	69	0.97	67	1.10	74
Heart/Lung Recipient Registration	69	0.46	32	1.30	42
Heart/Lung Follow Up (6 Month)	69	0.45	31	0.80	25
Heart/Lung Follow Up (1–5 Year)	69	1.14	79	1.10	87
Heart/Lung Follow Up (Post 5 Year)	69	3.30	228	0.60	137
Heart/Lung Post-Transplant Malignancy Form	69	0.30	21	0.40	8
Liver Candidate Registration	146	90.29	13,182	0.80	10,546
Liver Recipient Registration	146	56.55	8,256	1.20	9,907
Liver Follow-up (6 Month–5 Year)	146	266.57	38,919	1.00	38,919
Liver Follow-up (Post 5 Year)	146	316.61	46,225	0.50	23,113
Liver Recipient Explant Pathology Form	146	10.58	1,545	0.60	927
Liver Post-Transplant Malignancy	146	16.35	2,387	0.80	1,910
Intestine Candidate Registration	20	6.95	139	1.30	181
Intestine Recipient Registration	20	5.20	104	1.80	187
Intestine Follow Up (6 Month–5 Year)	20	26.20	524	1.50	786
Intestine Follow Up (Post 5 Year)	20	37.20	744	0.40	298
Intestine Post-Transplant Malignancy Form	20	2.10	42	1.00	42
Kidney Candidate Registration	237	168.77	39,998	0.80	31,998
Kidney Recipient Registration	237	89.43	21,195	1.20	25,434
Kidney Follow-up (Post 5 Year)	237	449.40	106,508	0.50	53,254
Kidney Post-Transplant Malignancy Form	237	22.64	5,366	0.80	4,292
Pancreas Candidate Registration	133	2.77	368	0.60	221
Pancreas Recipient Registration	133	1.46	194	1.20	233
Pancreas Follow-up (6 Month–5 Year)	133	7.87	1,047	0.50	524
Pancreas Follow-up (Post 5 Year)	133	15.93	2,119	0.50	1,060
Pancreas Post-Transplant Malignancy Form	133	0.73	97	0.60	58
Kidney/Pancreas Candidate Registration	133	9.75	1,297	0.60	778
Kidney/Pancreas Recipient Registration	133	7.73	1,028	1.20	1,234
Kidney/Pancreas Follow-up (6 Month–5 Year)	133	32.80	4,362	0.50	2,181
Kidney/Pancreas Follow-up (Post 5 Year)	133	57.80	7,687	0.60	4,612

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent *	Total responses	Average burden per response (in hours)	Total burden hours
Kidney/Pancreas Post-Transplant Malignancy Form	133	2.20	293	0.40	117
VCA Candidate Registration	27	0.89	24	0.40	10
VCA Recipient Registration	27	1.59	43	1.30	[c]56
VCA Recipient Follow Up	27	0.67	18	1.00	[d]18
Organ Labeling and Packaging System	57	208.25	11,870	0.18	2,137
Organ Tracking and Validating System	34	169.06	5,748	0.08	460
Kidney Paired Donation Candidate Registration	160	1.38	221	0.29	64
Kidney Paired Donation Donor Registration	160	1.46	234	1.07	250
Kidney Paired Donation Match Offer Management	160	1.51	242	0.67	162
Living Donor Event	251	0.12	30	0.56	17
Safety Situation	450	0.48	216	0.56	121
Potential Disease Transmission Report	57	6.88	392	1.27	498
Request to Unlock Form	450	39.22	17,649	0.02	353
Total	8,290		604,519		430,267

* The Number of Reponses per Respondent was calculated by dividing the Total Responses by the Number of Respondents and rounding to the nearest tenth.

[a b c d] Total burden hours in these forms decreased from estimates provided in the 60-day Notice due to the removal of the proposed data collection changes associated with implementing the ''Modify Data Collection on VCA Living Donors'' and ''Programming VCA Allocation in UNet'' policies.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–00239 Filed 1–7–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Extension of the Deadline for Nomination of Delegates; Center for Indigenous Innovation and Health Equity Tribal Advisory Committee; Solicitation of Nominations for Delegates

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Deadline extension for notice of solicitation of nominations for delegates for the Center for Indigenous Innovation and Health Equity Tribal Advisory Committee.

SUMMARY: On October 1, 2021, the U.S. Department of Health and Human Services (HHS) Office of Minority Health (OMH) published a notice in the **Federal Register** inviting nominations of qualified candidates to serve as delegates for the Center for Indigenous Innovation and Health Equity Tribal Advisory Committee (Center TAC, previously referred to as CIIHE TAC), including a submission deadline of October 29, 2021. An extension for the submission deadline of nominations to January 7, 2022, was published on November 19, 2021. This notice extends the deadline date for submission of nominations to March 11, 2022, at 11:59 p.m. EST.

DATES: Nomination letters for the Center TAC must be sent to the address noted below no later than 11:59 p.m. EST on March 11, 2022.

ADDRESSES: All nominations should be emailed to: Violet Woo, Designated Federal Officer for the Center TAC, at *Violet.Woo@hhs.gov*. Please use the subject line ''OMH Center Tribal Advisory Committee.''

FOR FURTHER INFORMATION CONTACT: For information and guidance about the nomination process for Center TAC delegates, please contact Violet Woo, Designated Federal Officer at *Violet.Woo@hhs.gov*. Center TAC nomination guidance and sample nomination letters also are available on the OMH website's Tribal Leader Letters section: *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62#tribal-leader-letters*.

SUPPLEMENTARY INFORMATION: On October 1, 2021, the notice of solicitation of nominations for delegates for the Center TAC was published in the **Federal Register** (86 FR 54462: available at *https://www.federalregister.gov/documents/2021/10/01/2021-21253/center-for-indigenous-innovation-and-health-equity-tribal-advisory-committee-solicitation-of)*. The deadline for submission of nomination letters is being extended to March 11, 2022.

Note: All information in the notice of solicitation of nominations for delegates for the Center for Indigenous Innovation and Health Equity Tribal Advisory Committee remains the same, except for the deadline for the submission of nominations and the date the nominees will be notified of the status of delegate selection.

Authorized under Section 1707 of the Public Health Service Act, 42 U.S.C. 300u–6, as amended, the mission of OMH is to improve the health of racial and ethnic minority populations through the development of health policies and programs that help eliminate health disparities. OMH awards and other activities are intended to support the identification of effective policies, programs, and practices for improving health outcomes and to promote the sustainability and dissemination of these approaches.

Under the authority of Public Law 116–260 (2021 Consolidated Appropriations Act), Congress directed OMH to create a Center to support research, education, service, and policy development advancing Indigenous solutions that ultimately address health disparities in American Indian/Alaska Native (AI/AN) and Native Hawaiian and Pacific Islander (NHPI) populations. OMH is establishing the Center TAC to ensure that Tribal Leaders have meaningful and timely input in the

development of the priorities and activities established to address the focus areas of the Center. The Center TAC shall support, but not supplant, government-to-government consultation activities that OMH undertakes.

TAC Membership: The Center TAC will consist of 16 delegate positions: One from each of the 12 geographic areas served by the Indian Health Service and four National At-Large Member positions.

Alaska Area
Albuquerque Area
Bemidji Area
Billings Area
California Area
Great Plains Area
Nashville Area
Navajo Area
Oklahoma Area
Phoenix Area
Portland Area
Tucson Area
National At-Large Members (4)

OMH recommends a term of two (2) years term for each delegate, but delegates' term length will be established by the TAC's charter.

Eligibility: The Center TAC delegates must be: (1) Elected tribal officials from a federally recognized tribe acting in their official capacity as elected officials of their tribe, with authority to act on behalf of the tribe; or (2) individuals designated by an elected tribal official. Designees must have the authority to act on behalf of the tribal official and the tribe and be qualified to represent the views of the AI/AN tribes in the area from which they are nominated. No delegate of the Center TAC may be an employee of the federal government.

Nomination Procedures: Center TAC candidates must be nominated by an elected tribal leader. The nomination letter must be on tribal letterhead and signed by an elected tribal leader, and must include the following information:

- Name of the nominee
- Nominee's official title
- Name of the nominee's tribe
- Date of nominee's election to official tribal position and term length
- Nominee's contact information (mailing address, phone, and email)
- Nominee's expertise that is relevant to the Center TAC
- Name of tribal leader submitting the nomination
- Official title of tribal leader submitting the nomination
- Contact information for tribal leader submitting the nomination and/or administrative office for tribal government

Center TAC nomination guidance and sample nomination letters are available on the OMH website's Tribal Leader Letters section: *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62#tribal-leader-letters*.

Selection Process: OMH is responsible for selecting and finalizing Center TAC members. Eligible nominees will be considered in the following priority order:

1. Tribal President/Chairperson/Governor
2. Tribal Vice-President/Vice-Chairperson/Lt. Governor
3. Elected or Appointed Tribal Official
4. Designated Tribal Official with authority to act on behalf of Tribal leader

In the event that there is more than one nomination for a given IHS area, OMH will make a determination of representation based on submitted nomination materials.

Nominees will be notified of the status of delegate selection in April 2022.

Dated: January 5, 2022.

Violet Woo,

Designated Federal Officer, Center for Indigenous Innovation and Health Equity Tribal Advisory Committee.

[FR Doc. 2022–00218 Filed 1–7–22; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Urban Indian Education and Research Program

Announcement Type: New and Competing Continuation.

Funding Announcement Number: HHS–2022–IHS–UIHP3–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.193.

Key Dates

Application Deadline Date: April 11, 2022.

Earliest Anticipated Start Date: May 25, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for cooperative agreements for the Urban Indian Education and Research Organization Program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and Section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a). This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.193.

Background

The Office of Urban Indian Health Programs (OUIHP) oversees the implementation of the Indian Health Care Improvement Act (IHCIA) provisions for making health care services more accessible to Urban Indians. Pursuant to those authorities, the IHS enters into contracts and grants with Urban Indian Organizations (UIOs) for the provision of health care and referral services for Urban Indians residing in urban centers. This program provides services and education for UIOs that include the following Five Core Projects: (1) Public policy; (2) research and data; (3) training and technical assistance; (4) education, public relations, and marketing; and (5) payment system reform/monitoring regulations, including addressing the Unmet Needs of the 4-in-1 grantees under any or all of the Five Core Projects.

Purpose

The purpose of this IHS program is to fund a national Organization to act as an education and research partner for OUIHP and for 41 UIOs in 22 states funded by IHS under the IHCIA.

Applicant is to create and maintain a multi-platform, culturally appropriate and customized system that demonstrates improvements and expansion in education and research services and opportunities. Applicant is to:

1. Identify and assess current, emerging, and new needs and gaps in policy related to UIOs' operations, missions, and goals.

2. Initiate and solidify partnerships with UIOs, epidemiology centers, and other research partners to improve and increase data research on Urban Indian health needs.

3. Support UIO staff and leadership in all areas of training and technical assistance, particularly with the constant changes surrounding health care needs.

4. Market the UIOs through the development of national, regional, and local marketing strategies and campaigns.

5. Understand the critical need to document and analyze current and new Federal regulations impacting UIOs for reimbursement and related types of regulatory activities.

Pre-Conference Grant Requirements

The awardee is required to comply with the ''HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications,'' dated January 23, 2015 (Policy), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html?language=es.*

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Debi Nalwood at 240–701–0882 or email at *Debiallison.Nalwood@ihs.gov.*

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2022 is approximately $1,050,000. Award amount for the first budget year is anticipated to be $1,050,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement.

Period of Performance

The period of performance is for 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

In addition to the usual monitoring and technical assistance provided under the cooperative agreement, the IHS OUIHP responsibilities shall include:

(1) Assuring the availability of services from experienced OUIHP staff to participate in the planning and development of all phases of this cooperative agreement.

(2) Participating in, including the planning of, any meetings conducted as part of the Five Core Projects.

(3) Assisting in establishing Federal interagency contacts necessary for the successful completion of tasks and activities identified in the approved scope of work.

(4) Identifying organizations with whom the awardee will be asked to develop cooperative and collaborative relationships.

(5) Assisting the awardee to establish, review, and update priorities for the Five Core Projects conducted under this cooperative agreement.

(6) Assisting the awardee in determining issues identified post-award to be addressed during the project period, sequence in which they will be addressed, what approaches and strategies will be used to address them, and how relevant information will be transmitted to specified target audiences and used to enhance core project activities and advance the program.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity, applicant must be a national organization with extensive experience providing national awareness, visibility, advocacy, education, and outreach related to Urban Indian health care on a national scale.

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Letters of Support from the organization's Board of Directors, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
- Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 20 pages). See Section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

- Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B, Budget Narrative for instructions.
- Letter of Support from organization's Board of Directors.
- 501(c)(3) Certificate, if applicable.
- Biographical sketches for all Key Personnel (not to exceed one page each).
- Contractor/Consultant proposed scope of work and letter of commitment (not to exceed one page each, if applicable).
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).

• Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
• Organizational Chart.
• Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://harvester.census.gov/facdissem/Main.aspx.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate document that is no more than 20 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger (you may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 20-page limit for the narrative does not include the standard forms, line item budgets, budget justifications, narratives, and/or other items.

There are four parts to the narrative: Part 1—Statement of Need; Part 2—Program Information/Proposed Approach; Part 3—Organizational Capacity and Staffing/Administration; and Part 4—Performance Measurement Plan and Evaluation. See below for additional details about what must be included in the narrative.

Part 1: Statement of Need—Corresponds to Criteria, Section V.1.A

This section should help reviewers understand the UIOs that will be served by the proposed project. Summarize the overall need for assistance: (1) The target population and its unmet health needs; and (2) sociocultural determinants of health and health disparities impacting the Urban Indian population or communities served and unmet. Demographic data should be used and cited to support the information provided.

Part 2: Program Information/Proposed Approach—Corresponds to Criteria, Section V.1.B

Describe the purpose of the proposed project, including a clear statement of goals and objectives. Clearly state how proposed activities address the needs detailed in Part 1, Statement of Need. You are required to address all Five Core Projects in your project narrative, including addressing the Unmet Needs of the 4-in-1 grantees under any or all of the Five Core Projects. Address each project, including Unmet Needs with a corresponding time frame.

Part 3: Organizational Capacity and Staffing/Administration—Corresponds to Criteria, Section V.1.C

Describe your organizational capacity for all Five Core Projects and experience working with UIOs. Outline current staff and future positions for the five program components.

Part 4: Performance Measurement Plan and Evaluation—Corresponds to Criteria, Section V.1.D

Describe efforts to collect and report project data that will support and demonstrate grant activities for all Five Core Projects, including the Unmet Needs of the 4-in-1 grantees under any or all of the Five Core Projects. Awardee will be required to collect and report data pertaining to activities, processes, and outcomes. Also describe the plan to evaluate program activities. Describe in the evaluation plan the expected results and any identified metrics to support program effectiveness. Incorporate questions related to outcomes and processes, including documentation of lessons learned.

B. *Budget Narrative (limit—5 pages)*: Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The budget narrative can include a more detailed spreadsheet than is provided by the SF–424A. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from the first year or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Acting Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are not allowable.
• The available funds are inclusive of direct and indirect costs.
• Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov*. The waiver request must: (1) Be documented in writing (emails are acceptable) before

submitting an application by some other method; and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *https://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://sam.gov* (United States (U.S.) organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see SAM.gov for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Statement of Need (20 Points)

(1) Describe and document the target population and its unmet needs.

(2) Based on the information and/or data currently available, document the need to implement, sustain, and improve health care services offered to Urban Indians.

(3) Based on available data, describe the service gaps and other problems related to the unmet needs of Urban Indians. Clearly identify the source of the data. Documentation of need may come from a variety of qualitative and quantitative sources. Examples of data sources for the quantitative data that could be used are epidemiologic data such as Tribal Epidemiology Centers or IHS Area Offices, state data from state needs assessments, and/or national data from the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health or from the National Center for Health Statistics/Centers for Disease Control, and U.S. decennial and American Community Survey Census data. This list is not exhaustive. Applicants may submit other valid data, as appropriate for the applicant's programs.

B. Program Information/Proposed Approach (25 Points)

Describe the purpose of the proposed projects, including a clear statement of goals and objectives. Provide a work plan for the first year of the project period that details expected key activities, accomplishments, and includes responsible staff for each of the Five Core Projects, including addressing the Unmet Needs of the 4-in-1 grantees. The project narrative is required to address all Five Core Projects of the program and the Unmet Needs of the 4-in-1 grantees, as outlined below:

(1) *Public Policy:* Summarize the public policy opportunities and challenges of UIOs in the implementation of the various laws. Describe efforts to increase awareness and actively seek support for the health care needs of Urban Indians. Describe

efforts to engage UIO Leaders' participation in policy workgroups, national advisory committees, Urban Confers, budget formulation, and listening sessions.

(2) *Research and Data:* Describe the need to collect and analyze health disparities data, morbidity and mortality data, and urban IHS cost data in order to reduce Urban Indian health disparities and identify, improve, evaluate, and document UIOs' efforts through practice-based and evidence-based best practices. Describe efforts to solidify partnerships with UIOs, Tribal and urban epidemiology centers, and other data and research partners to improve and increase research and data on Urban Indian issues.

(3) *Training and Technical Assistance:* Describe the need for UIOs' training and technical assistance to support new and continuing executive directors and chief executive officers, board of directors, and program staff (clinical staff, administration, business office, health information technology, integrated behavioral health, etc.).

(a) Further describe the need for training and technical assistance to support UIO administration in orienting new UIO Leaders and Board of Directors, grant writing, and credentialing and privileging. Describe the need for technical assistance and training for UIOs to effectively engage in the IHS Urban Confer process. Describe the need for UIOs to attract and retain skilled, culturally competent health service providers.

(4) *Education, Public Relations, and Marketing:* Summarize the need to market the UIOs through development of national, regional, and local marketing strategies and campaigns.

Describe efforts to increase awareness of health care needs of Urban Indians. Describe efforts to engage UIOs to participate in national health campaigns. Describe the need for enhanced communication among local private and nonprofit health care entities. Summarize the need to enhance communication, interaction, and coordination on policy and health care reform activities by initiating and maintaining partnerships and collaborative relationships with other UIOs, national Indian organizations, key state and local health entities, and education and public safety networks. Describe efforts to strengthen the capacity of UIOs to work as a community to improve knowledge sharing.

(5) *Payment System Reform/ Monitoring Regulations:* Describe services to be provided, *e.g.,* billing, health information technology, regulations, etc. Describe efforts to support UIOs' efforts to diversify funding and increase third party reimbursement to ensure UIOs' sustainability. Describe technical assistance, training, and tools to be provided on billing and coding best practices, and negotiating with private health insurers and health plans. Describe efforts to establish and enhance third party billing for UIOs that have limited or no third party billing capabilities. Describe the need to understand, document and analyze current and new federal regulations impacting UIOs for reimbursement. Describe services to be provided to UIOs on regulations. Describe types of regulatory activities needed to support efforts to lessen the impact on UIOs financial and operational systems.

C. Organizational Capacity and Staffing/ Administration (30 Points)

(1) Describe the management capability of the national Urban Indian Organization and other participating organizations demonstrating extensive experience providing national awareness, visibility, advocacy, education, and outreach related to Urban Indian health care on a national scale in administering similar projects. Describe the national Urban Indian Organization's experience providing a national perspective on the needs of Urban Indian communities that will ensure the information developed and disseminated through the projects is appropriate and useful and addresses the most pressing needs of Urban Indian communities.

(2) Identify staff to maintain open and consistent communication with the IHS program official on any financial or programmatic barriers to meeting the requirements of the award.

(3) Identify the department(s) and/or division(s) that will administer all Five Core Projects and the Unmet Needs of the 4-in-1 grantees. Include a description of these department(s) and/ or division(s), their functions, and their placement within the national Urban Indian Organization and their direct link to management. Describe the department(s) and/or division(s) responsible for education and outreach efforts described in this announcement and how they will reach the widest audience possible in a timely fashion. Describe the mechanisms in place to conduct communication on a national level and experience with increasing visibility of the health care needs facing Urban Indians nationwide.

(4) Discuss the national Urban Indian Organization's experience and capacity to provide culturally appropriate and competent services to UIOs and specific populations of focus to ensure services provided are appropriately tailored to the needs of Urban Indian communities throughout the country. Describe formal or informal relationships that have been established with UIOs that will foster open and honest exchange of information, facilitate participation by Urban Indian communities, and demonstrate that the national Urban Indian Organization is a source that Urban Indians recognize and trust.

(5) Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems). Describe a national information sharing infrastructure which will facilitate the timely exchange of information between IHS and UIOs on a broad scale.

(6) Identify other organization(s) that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to all Five Core Projects.

(7) Describe how project continuity will be maintained if there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, etc.) to ensure project stability over the life of the grant.

(8) Provide a list of staff positions for the project and other key personnel, showing the role of each and their level of effort and qualifications for all Five Core Projects and the Unmet Needs of the 4-in-1 grantees. Key personnel include the Chief Executive Officer or Executive Director, Chief Financial Officer, Deputy Director, and Information Officer.

(9) Demonstrate successful project implementation for the level of effort budgeted for the project staff and other key staff.

(10) Include position descriptions as attachments to the application for all key personnel. Position descriptions should not exceed one page each.

(11) For individuals who are currently on staff, include a biographical sketch with their name for each individual that will be listed as the project staff and other key positions. Describe the experience of identified staff in all Five Core Projects and the Unmet Needs of the 4-in-1 grantees. Include each biographical sketch as attachments to the project proposal/application. Biographical sketches should not exceed one page per staff member. Do not include any of the following:

(a) Social security number and date and place of birth;

(b) Resumes; or

(c) Curriculum Vitae.

D. Performance Measurement Plan and Evaluation (15 Points)

Describe plans to monitor activities under all Five Core Projects and the Unmet Needs of the 4-in-1 grantees, demonstrate progress towards program outcomes, and inform future program decisions over the 5-year project period. Describe how issues will be addressed during the project period, the sequence in which they will be addressed, what approaches and strategies will be used to address them, and how relevant information will be transmitted to specified target audiences and used to enhance project activities and advance the program.

(1) Describe proposed data collection efforts (performance measures and associated data) and how you will use the data to answer evaluation questions. This should include (data collection method, data source, data measurement tool, identified staff for data management, and data collection timeline).

(2) Identify key program partners and describe how they will participate in the implementation of the evaluation plan (*e.g.,* Tribal Epidemiology Centers, universities, etc.).

(3) Describe how evaluation findings will be used at the applicant level. Discuss how data collected (*e.g.,* performance measurement data) will be used and shared by the key program partners.

(4) Discuss any barriers or challenges expected for implementing the plan, collecting data (*e.g.,* responding to performance measures), and reporting on evaluation results. Describe how these potential barriers would be overcome. In addition, applicants may also describe other measures to be developed or additional data sources and data collection methods that applicant will use.

E. Budget and Budget Narrative (10 Points)

(1) Include a line item budget for all Five Core Projects and the Unmet Needs of the 4-in-1 grantees, including expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for the first budget year only.

(2) Provide a categorized budget for all Five Core Projects and the Unmet Needs of the 4-in-1 grantees. If it is anticipated that there will be travel costs to cover the cost of staff and UIO Leaders' attendance at national advisory committees and workgroups, the applicant should ensure the associated travel costs are included in the categorized budget for public policy.

(3) Ensure that the budget and budget narrative are aligned with the project narrative. Questions to address include: What resources are needed to successfully carry out and manage the Five Core Projects and Unmet Needs of the 4-in-1 grantees? What other resources are available from the organization? Will new staff be recruited? Will outside contractors/consultants be required?

(4) Include the total cost for any outside contractors/consultants broken down by activity within each core project.

(5) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current negotiated IDC rate agreement in the Other Attachments.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov.*

- Work plan, logic model and/or timeline for proposed objectives.
- Position descriptions for key staff (not to exceed one page each).
- Biographical sketches for key staff (not to exceed one page each).
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Urban Indian Health Programs within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

• Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*

• Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. Grants Policy:

• HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

• Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75 subpart E.

E. Audit Requirements:

• Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required quarterly. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). For each of the Five Core projects and the Unmet Needs of the 4-in-1 grantees, provide thorough narratives of performance measures, outcomes, impacts, and achievements in the Progress Report, including measureable progress towards meeting goals and objectives for the cooperative agreement, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at *https://pms.psc.gov.* Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance. Grantees are responsible and accountable for reporting accurate information on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

C. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198, 435 (2013), and; *Office of Management and Budget Memorandum M–17–08, Amending OMB Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for ''Conference X,'' must be reported in final detailed actual costs within 15 calendar days of the completion of the conference. Cost categories to address should be: (1) Contract/Planner, (2)

Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards. The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/ocr/civilrights/understanding/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov,* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, 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 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov*

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/,* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line), or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Debi Nalwood, Health System Specialist, Indian Health Service, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65D, Rockville, MD 20857, Phone: (240) 701–0882, Fax: (301) 443–8446, Email: *Debiallison.Nalwood@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600

Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2298, Email: *Donald.Gooding@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2022–00171 Filed 1–7–22; 8:45 am]

BILLING CODE 4165–16–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; RFA–OD–19–027: Resource-Related Research Projects for Development of Animal Models and Related Materials.

Date: February 7, 2022.

Time: 1:00 p.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: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–272–4596, *smileyja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel, Secondary Analyses of Existing Datasets Related to Tobacco Use and Health.

Date: February 9, 2022.

Time: 11:30 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: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Systemic Injury by Environmental Exposure.

Date: February 10–11, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: February 10–11, 2022.

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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 4, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00132 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. The URL link to this meeting is *https://videocast.nih.gov/.* Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 25, 2022.

Open: 11:00 a.m. to 4:15 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Bethesda, MD 20892, *https://videocast.nih.gov/* (Virtual Meeting).

Closed: 4:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate to review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, One Democracy Plaza Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebekah S. Rasooly, Ph.D., Acting Director, Division of Extramural Science Programs, Branch Chief, Wellness, Technology & Training Branch, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Bethesda, MD 20817,(301) 827–2599, *rr185i@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.ninr.nih.gov/aboutninr/nacnr,* where an

agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 22, 2021.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00179 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NRSA Individual Fellowship (F30, F31, F32) Review Panel.

Date: February 23, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: January 4, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00136 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Contract Technical Evaluation.

Date: January 18, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, Bethesda, MD 20892, 301–827–9087, *mooremar@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 4, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00134 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 3–4, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: February 10–11, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 10–11, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: E. Bryan Crenshaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, 301–480–7129, *bryan.crenshaw@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: February 10–11, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sung-Wook Jang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812P, Bethesda, MD 20892, (301) 435–1042, *jangs2@csr.nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: February 10–11, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: February 10–11, 2022.

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: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 408–9072, *jollieda@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 4, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00133 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research (SBIR) Phase II Program Contract Solicitation (PHS 2020–1) Topic 084 Antiviral drugs to cure chronic hepatitis B virus infection (N01).

Date: February 3, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F26, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noton K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F26, Rockville, MD 20852, 240–669–2857, *noton.dutta@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00137 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From the National Cancer Institute's (NCI) Cancer Information Service (CIS)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Candace Maynard, Branch Chief, Cancer Information Service Branch, CISB/OCPL, 9609 Medical Center Drive, Rockville, MD 20850, or call non-toll-free number 240–276–6657 or Email your request, including your address to: *deatonc@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 20, 2021 (Vol. 86 FR 58082) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Collection of Customer Service, Demographic, and Smoking/Tobacco use Information from the National Cancer Institute's (NCI) Cancer Information Service (CIS), 0925–0208, Expiration Date 2.28/2022, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute (NCI) currently collects: (1) Customer service and demographic information from clients of the Cancer Information Service (CIS) in order to properly plan, implement, and evaluate cancer education efforts, including assessing the extent by which the CIS reaches and impacts underserved populations; (2) smoking/tobacco use behavior of individuals seeking NCI's smoking cessation assistance through the CIS in order to provide smoking cessation services tailored to the individual client's needs and track their smoking behavior at follow up. This is a request for OMB to approve a revised submission for an additional three years to provide ongoing customer service collection of demographic information, and collection of brief customer satisfaction questions from NCI Cancer Information Service Clients for the purpose of program planning and evaluation.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 5,818 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Category of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Demographic & Customer Satisfaction Questions (Appendix 1A or 1AB).	Individuals	24,133	1	3/60	1,207
Demographic & Customer Satisfaction Questions (Appendix 1B).	Individuals	58,501	1	2/60	1,950
Smoking Cessation ''Intake'' Questions (Appendix 1C).	Individuals	2,888	1	6/60	289
Smoking Call Backs (Appendix 1D)	Individuals	2,904	1	4/60	194
VA Call Backs (Appendix 1E)	Individuals	8,166	1	4/60	544
Cancer Info Call Backs (Appendix 1F)	Individuals	2,242	1	4/60	149
Email Intake Form (Appendix 2)	Individuals	8,796	1	10/60	1,466
Demographic & Customer Satisfaction Questions (Appendix 9).	Individuals	578	1	2/60	19
Totals			108,208		5,818

Dated: January 5, 2022.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2022–00230 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Promoting Research on Music and Health: Phased Innovation Award for Music Interventions (R61/R33 Clinical Trial Optional) Video Assisted.

Date: February 11, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: January 4, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00177 Filed 1–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2191]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or

regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 11, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2191, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Stevens County, Minnesota and Incorporated Areas Project: 18–05–0004S Preliminary Date: September 30, 2021	
Stevens County Unincorporated Areas	Stevens County Courthouse, 400 Colorado Avenue, Morris, MN 56267.
Pendleton County, West Virginia and Incorporated Areas Project: 21–03–0003S Preliminary Date: September 07, 2021	
Pendleton County Unincorporated Areas	Pendleton County Courthouse, 100 South Main Street, Franklin, WV 26807.
Town of Franklin	Town Office, 305 North High Street, Franklin, WV 26807.

[FR Doc. 2022–00205 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of April 20, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Harney County, Oregon and Incorporated Areas Docket No.: FEMA–B–2105	
Burns Paiute Reservation	Burns Paiute Tribal Office, 100 Pasigo Street, Burns, OR 97720.
City of Burns	City Hall, 242 South Broadway Avenue, Burns, OR 97720.
City of Hines	City Hall, 101 East Barnes Avenue, Hines, OR 97738.
Unincorporated Areas of Harney County	Harney County Planning Department, 360 North Alvord Avenue, Burns, OR 97720.
Charles City County, Virginia (All Jurisdictions) Docket No.: FEMA–B–2063	
Unincorporated Areas of Charles City County	Charles City County Courthouse, 10900 Courthouse Road, Charles City, VA 23030.

[FR Doc. 2022–00208 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2190]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 11, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2190, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Calhoun County, Florida and Incorporated AreasProject: 12–04–0465S and 12–04–7639S Preliminary Date: May 8, 2020	
City of Blountstown	City Hall, 20591 Central Avenue West, Blountstown, FL 32424.
Town of Altha	Town Hall, 25586 North Main Street, Altha, FL 32421.
Unincorporated Areas of Calhoun County	Calhoun County Courthouse, 20859 Central Avenue East, Room G40, Blountstown, FL 32424.
Gadsden County, Florida and Incorporated Areas Project: 12–04–0465S Preliminary Date: June 13, 2019	
City of Chattahoochee	Utilities and Public Works Building, 115 Lincoln Drive, Chattahoochee, FL 32324.
Unincorporated Areas of Gadsden County	Gadsden County, Edward J. Butler Governmental Complex, 9–B East Jefferson Street, Quincy, FL 32353.
Jackson County, Florida and Incorporated Areas Project: 12–04–0465S Preliminary Date: June 13, 2019	
Unincorporated Areas of Jackson County	Jackson County Planning Division, 4979 Healthy Way, Suite B, Marianna, FL 32446.
Jackson County, Florida and Incorporated Areas Project: 12–04–7639S Preliminary Date: May 8, 2020	
City of Marianna	City Hall, 2898 Green Street, Marianna, FL 32446.
Unincorporated Areas of Jackson County	Jackson County Planning Division, 4979 Healthy Way, Suite B, Marianna, FL 32446.

[FR Doc. 2022–00204 Filed 1–7–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2192]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 11, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2192, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Kalamazoo County, Michigan (All Jurisdictions) **Project: 18–05–0002S Preliminary Date: March 31, 2021 and September 30, 2021**	
Charter Township of Comstock	Township Offices, 6138 King Highway, Comstock, MI 49041.
Charter Township of Cooper	Cooper Township Offices, 1590 D Avenue West, Kalamazoo, MI 49009.
Charter Township of Kalamazoo	Township Hall, 1720 Riverview Drive, Kalamazoo, MI 49004.
Charter Township of Texas	Texas Township Hall, 7110 West Q Avenue, Kalamazoo, MI 49009.
City of Galesburg	City Hall, 200 East Michigan Avenue, Galesburg, MI 49053.
City of Kalamazoo	City Hall, 241 West South Street, Kalamazoo, MI 49007.
City of Parchment	City Hall, 650 South Riverview Drive, Parchment, MI 49004.
City of Portage	City Hall, 7900 South Westnedge Avenue, Portage, MI 49002.
Township of Brady	Brady Town Hall, 13123 South 24th Street, Vicksburg, MI 49097.

Community	Community map repository address
Township of Charleston	Charleston Township Hall, 1499 South 38th Street, Galesburg, MI 49053.
Township of Climax	Township Hall, 110 North Main Street, Climax, MI 49034.
Township of Prairie Ronde	Prairie Ronde Township Hall, 14050 South 6th Street, Schoolcraft, MI 49087.
Township of Richland	Township Offices, 7401 North 32nd Street, Richland, MI 49083.
Township of Ross	Ross Township Offices, 12086 East M–89, Richland, MI 49083.
Township of Schoolcraft	Schoolcraft Township Hall, 50 VW Avenue East, Vicksburg, MI 49097.
Village of Augusta	Village Hall, 109 West Clinton Street, Augusta, MI 49012.
Village of Vicksburg	Village Hall, 126 North Kalamazoo Avenue, Vicksburg, MI 49097.

[FR Doc. 2022–00206 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of April 6, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Gilpin County, Colorado and Incorporated Areas Docket No.: FEMA–B–2062	
City of Black Hawk	Community Planning and Development, 211 Church Street, Black Hawk, CO 80422.
City of Central City	City Hall, 141 Nevada Street, Central City, CO 80427.
Unincorporated Areas of Gilpin County	Gilpin County Courthouse, 203 Eureka Street, 2nd Floor, Central City, CO 80427.
Rice County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2075	
Unincorporated Areas of Rice County	Rice County Government Services Building, 320 Northwest 3rd Street, Faribault, MN 55021.
Surry County, Virginia and Incorporated Areas Docket No.: FEMA–B–2063	
Town of Dendron	Town Hall, 2855 Rolfe Highway, Dendron, VA 23839.

Community	Community map repository address
Unincorporated Areas of Surry County	Surry County Government Center, 45 School Street, Surry, VA 23883.
Walworth County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2033	
City of Elkhorn	City Hall, 9 South Broad Street, Elkhorn, WI 53121.
City of Lake Geneva	City Hall, 626 Geneva Street, Lake Geneva, WI 53147.
Unincorporated Areas of Walworth County	Walworth County Government Center, 100 West Walworth Street, Elkhorn, WI 53121.
Village of Bloomfield	Bloomfield Municipal Center, N1100 Town Hall Road, Pell Lake, WI 53157.
Village of East Troy	Village Hall, 2015 Energy Drive, East Troy, WI 53120.
Village of Genoa City	Village Hall, 755 Fellows Road, Genoa City, WI 53128.
Village of Mukwonago	Village Hall, 440 River Crest Court, Mukwonago, WI 53149.

[FR Doc. 2022–00207 Filed 1–7–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. FEMA–2021–0031]

Privacy Act of 1974; System of Records

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new Department of Homeland Security system of records titled, ''Department of Homeland Security/Federal Emergency Management Agency (FEMA)–016 Disaster Case Management Files System of Records.'' This system of records allows the Department of Homeland Security/Federal Emergency Management Agency to collect and maintain records on survivors of a Presidentially-declared major disaster with Individual Assistance (IA) authorized (as documented in the declaration published in the **Federal Register**) who participate in Federal Emergency Management Agency-administered Disaster Case Management (DCM) Programs. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before February 9, 2022. This new system will be effective upon publication. Routine uses will be effective February 9, 2022.

ADDRESSES: You may submit comments, identified by docket number FEMA–2021–0031 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number FEMA–2021–0031. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Tammi Hines, (202) 212–5100, *FEMA-Privacy@fema.dhs.gov,* Senior Director for Information Management, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20528. For privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Executive Order 12148, as amended by Executive Orders 12673 and 13286, the President of the United States has delegated to the Department of Homeland Security, including the Federal Emergency Management Agency, the authority to provide case management services, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189d. Under the Stafford Act, the Federal Emergency Management Agency (or another federal agency, non-profit organization, or qualified private organization when operating on behalf of the Federal Emergency Management Agency) may provide Disaster Case Management services directly to survivors or through financial assistance (funding through a federal award) to state (which includes the fifty states, the territories, and the District of Columbia) or local government agencies, Indian tribes, or qualified private organizations.

Disaster Case Management services include identifying and addressing disaster-caused unmet needs of survivors through identification of, and referral to, available resources. A disaster-caused unmet need is an unresourced item, support, or assistance that has been assessed and verified as necessary for a survivor to recover from a disaster. This may include food, clothing, shelter, first aid, emotional and spiritual care, household items, home repair, or rebuilding.

In order to provide immediate to long-term Disaster Case Management during a Presidentially-declared major disaster declaration when Individual Assistance has been authorized, the Federal Emergency Management Agency may: (1) Directly provide Disaster Case Management services; (2) contract with a non-profit organization or qualified private organization who implements Disaster Case Management on behalf of the Federal Emergency Management Agency; (3) enter into an interagency agreement or mission assignment with another federal agency who implements Disaster Case Management on behalf of the Federal Emergency Management Agency; or (4) award federal funding through a grant or cooperative agreement to a state or local government, a tribe, or a qualified private organization who implements their own Disaster Case Management program.

This System of Records Notice only applies to Disaster Case Management services administered directly by the Federal Emergency Management Agency or by a non-profit organization, qualified private organization, or federal

agency on the Federal Emergency Management Agency's behalf. Records collected and maintained during Disaster Case Management program implementation will be used to provide these services and to monitor and assess the effectiveness of the Federal Emergency Management Agency-administered Disaster Case Management programs. Disaster Case Management may also include: Making intake assessments and referrals for critical unmet needs; providing outreach and triage at locations such as shelters, congregate areas, and temporary disaster housing locations; developing and monitoring a disaster recovery plan, which documents a survivor's unmet needs, recovery goals, referral resources, and status of survivor recovery efforts; connecting the disaster survivor to recovery resources that are locally available; and advocating for available resources to assist survivors.

In addition, the Federal Emergency Management Agency and the entities providing Federal Emergency Management Agency-administered Disaster Case Management may share information with federal, state, tribal, local, and voluntary entities, as well as Federal Emergency Management Agency-recognized and/or state-recognized long term recovery committees (LTRC) and their members (long term recovery groups (LTRG)) for a declared county charged through legislation or chartered with administering disaster relief or assistance programs consistent with the routine uses set forth in this system of records notice. Note that a state, local, or tribal entity providing case management services is not acting on behalf of the Federal Emergency Management Agency. However, this System of Records Notice does support sharing with state, local, and tribal entities when the Federal Emergency Management Agency is sharing information after a Federal Emergency Management Agency-administered Disaster Case Management implementation.

The records that the Federal Emergency Management Agency or another federal agency, a non-profit organization, or a qualified private organization will collect and maintain on behalf of the Federal Emergency Management Agency in order to provide Federal Emergency Management Agency-administered Disaster Case Management services may be first collected in the field from disaster survivors or may be provided by the Federal Emergency Management Agency to these entities. The implementing non-profit organization, qualified private organization, or other federal agency will enter into agreements with the Federal Emergency Management Agency to maintain the records in accordance with the National Archives and Records Administration (NARA) and Federal Emergency Management Agency-approved records polices. The Federal Emergency Management Agency is currently working with the National Archives and Records Administration to establish the appropriate records retention schedule for the records collected and covered by this System of Records.

Consistent with the Department of Homeland Security' information sharing mission, information stored in the DHS/FEMA–016 Disaster Case Management Files System of Records may be shared with other Department of Homeland Security components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, the Federal Emergency Management Agency may share information with appropriate federal, state, tribal, local, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This newly established system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other information assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the Judicial Redress Act, along with judicial review for denials of such requests. In addition, the Judicial Redress Act prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/FEMA–016 Disaster Case Management Files System of Records.

In accordance with 5 U.S.C. 552a(r), the Department of Homeland Security has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)–016 Disaster Case Management (DCM) Files System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Federal Emergency Management Agency Headquarters in Washington, DC; Federal Emergency Management Agency Regional Offices; Joint Field Offices; Disaster Field Offices; National Processing Service Centers; Disaster Recovery Centers; and the Federal Emergency Management Agency data centers located in Bluemont, Virginia, and Clarksville, Virginia. Subject to agreement with an organization chosen by the Federal Emergency Management Agency to implement Disaster Case Management on its behalf, records may be maintained at the facilities of federal agencies with interagency agreements or mission assignments or with non-profit organizations or qualified private organizations under contract.

SYSTEM MANAGER(S):

Division Director, Individual Assistance Division, (202) 646–3642, *femahqiafrontoffice@fema.dhs.gov,* Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 426 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5189d); Executive Order 12148, as amended by Executive Order 12673 and Executive Order 13286.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to enable the Federal Emergency Management Agency, and its chosen providers (which can be non-profit organizations, qualified private organizations, or federal agencies working on behalf of the Federal Emergency Management Agency), to provide services in an efficient and expeditious manner that support the overall Federal Emergency Management Agency-administered Disaster Case Management programs. Records will primarily be used to connect disaster survivors who have disaster-related

unmet needs to locally available services and will additionally support long term recovery assistance provided by state, tribal, and local entities and the Federal Emergency Management Agency and/or state recognized long term recovery committees and their members (*e.g.,* long term recovery groups).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Following a Presidentially-declared major disaster when Individual Assistance is authorized, all individuals and their family and household members who register for Federal Emergency Management Agency-administered Disaster Case Management, who express interest in registering for Federal Emergency Management Agency-administered Disaster Case Management, or who may benefit from Federal Emergency Management Agency-administered Disaster Case Management, as well as employees, contractors, or other personnel providing Disaster Case Management assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Disaster-related case management records, consisting of:

- Disaster number;
- Case ID numbers (*e.g.,* FEMA Registration ID, client numbers);
- Written consents;
- Disaster Case Management Applicant/Co-Applicant and Household Information:
  - Full name;
  - Languages spoken, written, or signed;
  - Address;
  - Location types;
  - Dates of occupation;
  - Location at time of registration;
  - Phone numbers;
  - Email addresses;
  - Disaster Case Management-related healthcare records (*e.g.,* health insurance type, status, service provider, type of appointment referral);
  - Household size;
  - Demographic information (*e.g.,* age, gender, relationship to head of household, marital status);
  - Referral assessment and tracking information/Disaster Recovery Plan:
    - Referral source;
    - Appointment times and attendance/no show to appointment;
    - Reported symptoms and feelings of distress;
    - Behavioral health advocacy assessment;
    - Children and youth, clothing assessment;
    - Employment assessment;
    - Food assessment;
    - Furniture and appliances assessment;
    - Healthcare needs assessment;
    - Housing assessment;
    - Transportation assessment;
    - Senior services assessment;
    - Legal services assessment;
    - Assistance animals and household pets; and
    - Funeral assistance.
- Federal Emergency Management Agency Disaster Assistance Registration Assistance Records:
  - Homeowners insurance coverage details (including flood coverage and compliance);
  - Details on damage to real and personal property (Federal Emergency Management Agency verified);
  - Degree of total damage incurred (Federal Emergency Management Agency verified);
  - Residence type;
  - Self-reported income;
  - Housing Assistance (HA) eligibility, types, and amounts;
  - Other Needs Assistance (ONA) eligibility, types, and amounts;
  - Approved direct assistance received, including Direct Housing Assistance eligibility, types, received status;
  - Total Individuals and Households Program (IHP) amount approved, assistance sought, assistance received, source of assistance;
  - Small Business Administration (SBA) referral details, and status of access and functional needs and/or emergency needs; and
  - Self-reported disability or access and functional need, such as Personal Assistance Services.
- Business contact information collected from employees, contractors, and other personnel providing Disaster Case Management assistance (*e.g.,* name, title, email address, phone number).

RECORD SOURCE CATEGORIES:

Records may be obtained from disaster survivors (*i.e.,* applicant) or a member of the applicant's family or household, or may be provided by other governmental entities (*e.g.,* federal, state, tribal, or local governments) through the Federal Emergency Management Agency-Administered Disaster Case Management Intake Form and the Federal Emergency Management Agency-Administered Disaster Case Management Consent Form, as well as the Federal Emergency Management Agency's Disaster Assistance Registration Form (FEMA Forms 009–0–1 and 009–0–2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. Department of Homeland Security or any component thereof;

2. Any employee or former employee of the Department of Homeland Security in his/her official capacity;

3. Any employee or former employee of the Department of Homeland Security in his/her individual capacity, only when the Department of Justice or the Department of Homeland Security has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) the Department of Homeland Security suspects or has confirmed that there has been a breach of the system of records; (2) the Department of Homeland Security has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of Homeland Security (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 Department of Homeland Security's efforts to respond

to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when the Department of Homeland Security determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment or agreement for the Department of Homeland Security, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department of Homeland Security officers and employees.

I. To a voluntary organization, as defined in 44 CFR 206.2(a)(27), or to a Federal Emergency Management Agency-recognized or state-recognized long term recovery committee and its members (long term recovery groups) for a declared county charged through legislation or chartered with administering disaster relief or assistance programs, that is actively involved in the recovery efforts of the disaster and that has an assistance program to address one or more unmet disaster-related needs of disaster survivors. The Federal Emergency Management Agency may disclose to such voluntary organizations lists of applicant names and contact information, as well as information necessary to provide the identified additional disaster assistance and/or address a specified unmet need.

J. To a state, tribal, or local agency for a statistical or research purpose, including the development of methods or resources to support statistical or research activities, provided that the records support Department of Homeland Security programs and activities that relate to the purpose(s) stated in this System of Records Notice, and will not be used in whole or in part in making any determination regarding an individual's rights, benefits, or privileges under federal programs, or published in any manner that identifies an individual.

K. To recipients of a long-term Disaster Case Management federal award, such as a state, tribal, or local government entity or a non-profit entity, to ensure continuity of services for each disaster survivor, if the disaster survivor still has unmet needs at the conclusion of the Federal Emergency Management Agency-administered Disaster Case Management program.

L. To the subject of a Disaster Case Management case file, the name, title, and business contact information of the employee or contractor providing Disaster Case Management assistance.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of the Department of Homeland Security, or when disclosure is necessary to demonstrate the accountability of the Department of Homeland Security's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Federal Emergency Management Agency and non-profit organizations, qualified private organizations, or federal agencies supporting Federal Emergency Management Agency-administered Disaster Case Management programs store records in this system in a secure computer system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The Federal Emergency Management Agency and non-profit organizations, qualified private organizations, or federal agencies supporting the Federal Emergency Management Agency-administered Disaster Case Management program may retrieve records by a case identification number, name, or address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with National Archives and Records Administration Authority N1–311–86–1, Item 4C10a, records pertaining to disaster assistance will be placed in inactive storage when two years old and will be destroyed when they are six years and three months old. In accordance with National Archives and Records Administration Authority N1–311–86–1, Item 4C6a, Disaster Case Management files covering the administrative management, program, and information functions (such as mission assignments and correspondence with state and local officials) will be consolidated at appropriate regional offices upon close of the Disaster Field Office (DFO). These files will be retired to off-site storage one year after closeout and destroyed three years after closeout.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Federal Emergency Management Agency safeguards records in this system according to applicable rules and policies, including all applicable federal and national standard automated systems security and access policies. The Federal Emergency Management Agency has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to computer systems containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and the Federal Emergency Management Agency Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655.

Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the Freedom of Information Act staff determine which the Department of Homeland Security component agency may have responsive records.

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered Judicial Redress Act records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

* * * * *

Lynn P Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–00182 Filed 1–7–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2021–0051]

Privacy Act of 1974; System of Records

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify, retitle, and reissue a current DHS system of records titled, ''DHS/U.S. Customs and Border Protection (CBP)–025 National Frontline Recruitment Hiring System of Records.'' This system of records allows DHS/CBP to collect and maintain records on individuals for the purpose of marketing information related to CBP employment, managing communication with potential applicants or individuals who attend career fairs or meetings at which CBP maintains a presence for recruitment and hiring, and for other recruitment and hiring activities for which mailing or contact lists may be created. DHS/CBP is updating this system of records notice to (1) change the name of the system of records to ''CBP Recruitment and Hiring System of Records;'' (2) expand the category of individuals covered by the system to include all potential applicants for employment with CBP; (3) update the authority for maintenance of this system; (4) modify the retention and disposal of records; and (5) expand the category of records to include disability status and education. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This modified system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before February 9, 2022. New or modified routine uses will be effective February 9, 2022.

ADDRESSES: You may submit comments, identified by docket number USCBP–2021–0051 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCBP–2021–0051. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.3D, Washington, DC 20229, *Privacy.CBP@cbp.dhs.gov* or (202) 344–1610. For privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

CBP is modifying, retitling, and reissuing DHS/CBP–025 National Frontline Recruitment and Hiring System of Records. CBP is updating this SORN to re-name and expand the purpose of the existing SORN to ''CBP Recruitment and Hiring System of Records,'' eliminating the term ''National Frontline'' since CBP conducts recruitment and hiring outreach across all CBP positions within the United States and abroad. CBP uses records covered by this SORN to recruit and retain a world-class civilian and law enforcement workforce as one of CBP's top mission support priorities. Through recruitment outreach, market research, data analytics, advertising, technology innovations, call center support, and marketing services, CBP conducts recruitment and hiring

campaigns to meet staffing requirements. These targeted efforts identify potential applicants and help them navigate the complex and multi-step hiring process for CBP positions.

CBP is expanding the category of individuals contained in this SORN to include all applicants for any CBP civil service and law enforcement recruitment opportunities within the United States and abroad, instead of only providing coverage for CBP national frontline law enforcement positions. To generate a sufficient number of qualified applicants and meet aggressive recruiting goals, CBP must cultivate a large volume of interested and well-qualified applicants for all positions.

CBP is removing references to Executive Order 13767, Border Security and Immigration Enforcement Improvements, as an authority for the maintenance of the system because it was revoked by a subsequent Executive Order. CBP is now relying on 5 U.S.C. 2301(b)(1)–(2), Merit system principles; 5 U.S.C. 3101, General authority to employ; 5 U.S.C. 3301, Civil service; generally; Section 501 of the Rehabilitation Act of 1973; Americans with Disability Act (ADA) Amendments of 2008; Executive Order 14035, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce (June 25, 2021); and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 10, 2010) as the authority for maintaining the system.

CBP is modifying this SORN to update the retention and disposal of records to reflect the most recent National Archives and Records Administration (NARA)-approved records schedule which permits CBP to retain records in the system for five years.

Finally, in support of CBP's affirmative action plans, pursuant to 29 U.S.C. 791 and 29 CFR 1614.203, subparagraphs (d), we are expanding the category of records to include the disability status and education to allow individuals who are interested in CBP to voluntarily self-identify and permit CBP to direct the individual to the correct CBP recruitment office.[1] CBP conducts coordinated initiatives in support of recruitment and hiring, including: (1) Marketing, branding, and public opinion research; (2) direct advertising to individuals who have expressed an interest in employment opportunities with CBP; (3) direct advertising to individuals who have expressed an interest in employment opportunities to a third-party for employment purposes, who have affirmed that they may be contacted by potential employers; and (4) communication with individuals who have provided their information to CBP, including response to screening questions, in support of the preliminary application process. These activities might entail the collection of limited biographic information, contact information, and information pertinent to employment from members of the public who have not yet applied for a CBP job announcement.

This SORN provides coverage for CBP's recruitment and hiring efforts. The SORN does not cover records associated with the formal hiring process once a potential applicant submits a formal application for employment. The Office of Personnel Management (OPM) is responsible for all hiring activities for employment with Federal agencies. For these activities, the relevant Office of Personnel Management SORNs continue to apply.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–025 CBP Recruitment and Hiring System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the Judicial Redress Act, along with judicial review for denials of such requests. In addition, the Judicial Redress Act prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP–025 CBP Recruitment and Hiring System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–025 CBP Recruitment and Hiring System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

DHS/CBP maintains records at its Headquarters at 1300 Pennsylvania Avenue NW, Washington, DC 20229, and in field offices, and contractor-owned and operated facilities. DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media and will be maintained within a CBP web portal.

SYSTEM MANAGER(S):

Executive Assistant Commissioner, Enterprise Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20029.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302, Delegation of authority; 5 U.S.C. 2301(b)(1)–(2), Merit system principles; 5 U.S.C. 3101, General authority to employ; 5 U.S.C. 3301, Civil service; generally; Section 501 of the Rehabilitation Act of 1973; Americans with Disability Act Amendments of 2008; Executive Order 14035, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce (June 25, 2021); Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 10, 2010).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to conduct recruitment, marketing, outreach, and advertising to potential candidates for all CBP positions located

[1] The Americans with Disability Act and the Equal Employment Opportunity Commission (EEOC) provide specific guidance when asking applicants to self-identify and the request is pursuant to an agency's affirmative action program. *See* EEOC Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, No. 915.002 (Oct. 10, 1995), available at *https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical.*

in the United States and abroad; generate leads and maintain lists of potential applicants for recruiting purposes based on commercially available demographic or subscription lists or from community, civic, educational institutions, military, and other sources; identify quality leads based on pre-screening question responses; manage all tracking and communications with potential leads and conduct outreach to attract applicants during the hiring process; maintain logs and respond to applicant questions from a national call center; reengage withdrawn applicants for hiring positions and invite them to reapply to CBP opportunities; and conduct data analytics for recruitment strategies, to measure the effectiveness of outreach campaigns. CBP invites candidates to voluntarily self-identify their disability status for purposes of CBP's affirmative action program, which includes those policies, practices, and procedures to ensure that all qualified individuals and potential applicants receive an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with CBP employment opportunities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential applicants or individuals interested in CBP employment opportunities covered by the system include:

1. Individuals who express interest in any CBP position and voluntarily provide information to CBP.

2. Individuals who withdraw from the hiring process for CBP positions.

3. Individuals who receive targeted marketing information from CBP to apply for a CBP position based on commercially available mailing lists (*e.g.,* particular magazine or cable channel subscribers) or from community, civic, educational institutions, military, and other sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

CBP maintains various types of information related to recruiting and outreach records for CBP positions located in the United States and abroad, including:

- First and last name;
- Age or date of birth;
- Disability status; [2]
- Gender;
- Phone numbers;
- Email addresses;
- Mailing addresses, including ZIP code;
- Military status (*e.g.,* veteran, active duty);
- Other biographic and contact information voluntarily provided to DHS by individuals covered by this system of records solely for recruitment and hiring activities;
- Computer-generated identifier or case number when created in order to retrieve information; and
- Status of opt-in/consent to receive targeted marketing and advertising based on the individual's expressed area of interest in CBP employment opportunities;
- Responses to pre-screening questions, including information related to: (1) An individual's possession of, or eligibility to, carry a valid driver's license (yes or no response only); (2) any reason why the individual may not be able to carry a firearm (yes or no response only); (3) interest level in CBP employment; (4) U.S. residency information (limited to length of residency only); (5) education related questions; and (6) any additional information in support of preliminary hiring activities.

RECORD SOURCE CATEGORIES:

CBP may obtain records about potential applicants in this system either directly from the individual, from a third party with whom the individual has granted permission to share his or her information with potential employers, or from community, civic, educational institutions, military, and other sources. CBP will obtain records about withdrawn applicants from existing internal CBP human resources systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys' Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

[2] Self-identified, in support of CBP's affirmative action plans pursuant to 29 U.S.C. 791 and 29 CFR 1614.203(d).

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/CBP retrieves records by an individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with General Records Schedule (GRS) 2.1, Item 180, DHS/CBP will delete records when superseded, obsolete, or when an individual submits a request to the agency to remove the records. In general, and unless it receives a request for removal, CBP will maintain these records for five years, after which point, they will be considered obsolete and no longer necessary for CBP operations.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and DHS/CBP's Freedom of Information Act Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528–0655 or electronically at *https://www.dhs.gov/dhs-foia-privacy-act-request-submission-form.* Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the DHS staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered Judicial Redress Act records, see ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

83 FR 27014 (June 11, 2018).

* * * * *

Lynn P. Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–00183 Filed 1–7–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6308–N–01]

Announcement of the Housing Counseling Federal Advisory Committee; Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling Federal Advisory Committee public meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The HCFAC meeting will be held on Wednesday, January 19, 2022. The meeting is open to the public and is accessible to individuals with disabilities. This notice is being published less than 15 days prior to the meeting date due to unforeseen administrative delays.

DATES: The virtual meeting will be held on Wednesday, January 19, 2022, starting at 12:30 p.m. Eastern Standard Time (EST) via teleconference.

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Program Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 600 East Broad Street, Richmond VA 23219; telephone number 540–894–7790 (this is not a toll-free number); email *virginia.f.holman@hud.gov.* Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Individuals may also email *HCFACCommittee@hud.gov.*

SUPPLEMENTARY INFORMATION: HUD is convening the virtual meeting of the HCFAC on Wednesday, January 19, 2022, from 12:30 p.m. to 4:00 p.m. EST. The meeting will be held via teleconference. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting—January 19, 2022

I. Welcome
II. Advisory Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjourn

Registration

The public is invited to attend this one-day virtual meeting. Advance registration is required to participate. To register, please send an email requesting registration to *HCFACCommittee@ajantaconsulting.com.*

After completing the registration process above, individuals will receive details with the meeting link and passcode needed to attend. Individuals with speech or hearing impairments may follow the discussion by first calling the toll-free Federal Relay Service (FRS): (800) 977–8339 and providing the FRS operator with the conference call number that will be provided in the registration confirmation.

Comments

With advance registration, members of the public will have an opportunity to provide oral and written comments relative to agenda topics for the HCFAC's consideration. To provide oral comments, please be sure to indicate your desire to do so in your registration email no later than January 10, 2022. The total amount for such comments will be limited to ensure pertinent HCFAC business is completed. Further, the amount of time allotted to each individual commenter will be limited to two minutes and will be allocated on a first-come first-served basis by HUD. Written comments must be provided no later than January 10, 2022, to *HCFACCommittee@hud.gov.* Please note, written statements submitted will not be read during the meeting. The HCFAC will not respond to individual written or oral statements; but, it will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting as well as other information about the work of the HCFAC, will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzvQAAQ.* Information on the Committee is also available on *hud.gov* at *https://www.hud.gov/program_offices/housing/sfh/hcc* and HUD Exchange at *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/.*

Janet M. Golrick,

Acting Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–00128 Filed 1–7–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2021–N211; FF09E20000 FXES1111090FEDR 212; OMB Control Number 1018–0119]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 9, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0119 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On May 20, 2021, we published in the **Federal Register** (86 FR 27461) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 19, 2021. We received the following comment in response to that notice:

Comment 1: Email dated July 19, 2021, from Thomas R. Jones, Amphibians and Reptiles Program Manager, Arizona Game and Fish Department. Mr. Jones confirmed the Service's time burden estimates are accurate.

Agency Response to Comment 1: The commenter agreed with our time burden estimates, so we did not make any changes to the estimates.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal

identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 4 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) outlines the process by which we can list a species as a threatened species or an endangered species. When we consider whether to list a species, the ESA requires us to take into account the efforts made by any State or any political subdivision of a State to protect such species. We also take into account the efforts made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or described in such documents could prevent some species from becoming so imperiled that they meet the definition of a threatened species or an endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003) encourages the development of conservation agreements or plans and provides the standard that an individual conservation effort must meet in order for us to consider whether it is likely to make a difference in a species' status. PECE applies to formalized conservation efforts that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document. To assist us in evaluating whether a formalized conservation effort meets the standard under PECE, we collect information such as conservation plans, monitoring results, and progress reports. The development of any agreement or plan is voluntary. The PECE is posted on our Candidate Conservation website at *http://www.fws.gov/endangered/esa-library/pdf/PECE-final.pdf.*

Title of Collection: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

OMB Control Number: 1018–0119.

Form Number: None.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Primarily State, local, or Tribal governments. However, individuals, businesses, and not-for-profit organizations also could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement or plan.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of annual respondents	Average number of submissions each	Estimated number of annual responses	Completion time per response (hours)	Estimated annual burden hours
PECE—Reporting					
Individuals	1	1	1	120	120
Private Sector	1	1	1	120	120
Government	1	1	1	120	120
PECE—Monitoring					
Individuals	1	1	1	600	600
Private Sector	1	1	1	600	600
Government	1	1	1	600	600
PECE—Development of Conservation Plan/Agreement (One-time Burden)					
Individuals	1	1	1	2,000	2,000
Private Sector	1	1	1	2,000	2,000
Government	1	1	1	2,000	2,000
Totals	9		9		8,160

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.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–00139 Filed 1–7–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033205; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native

Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Beloit College, Logan Museum of Anthropology at the address in this notice by February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Director, Logan Museum of Anthropology, Beloit College, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime between 1875 and 1889, 26 cultural items were removed from San Nicolas Island in Ventura County, CA. The cultural items were removed by Reverend Stephen Bowers. Bowers made multiple collecting trips to San Nicolas Island, during which he removed thousands of cultural items. He later sold those items to museums and collectors. Between 1880 and 1881, Reverend Bowers owned two newspapers in Wisconsin, one in Clinton and one in Beloit, and they provide the context for his sale of cultural items to the Logan Museum. The 26 unassociated funerary objects are 13 modified shells (965.01; 965.02; 965.03; 965.04; 965.05; 965.06; 965.07; 965.08; 965.09; 965.10; 965.11; 966.01; 966.02), six unmodified shells (1008.01; 1008.02; 1008.03; 1009.01; M.05.0085), two modified shells or bone (907), and five stone pestles (18204; 18205; 18206; 18207; 18208). One pestle (18208) is currently missing from museum collections, but upon being located, it will be transferred with the other cultural items listed in this notice.

Based on archeological information, a relationship of shared group identity may reasonably be traced between the following Indian Tribes and the people who occupied San Nicolas for at least 10,000 years: La Jolla Band of Luiseno Indians, California [previously listed as La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation]; Pala Band of Mission Indians [previously listed as Pala Band of Luiseno Mission Indians of the Pala Reservation, California]; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of Rincon Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the Soboba Band of Luiseno Indians, California. Hereafter, these Indian Tribes are referred to as ''The Tribes.''

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 26 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by February 9, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: January 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–00226 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033210; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Nebraska State Historical Society DBA History Nebraska, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Nebraska, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to History Nebraska. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to History Nebraska at the address in this notice by February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Trisha Nelson, History Nebraska, 1500 R Street, Lincoln, NE 68508–1651, telephone (402) 471–4760, email *trisha.nelson@nebraska.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of History Nebraska, Lincoln, NE, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native

American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1939, a large collection of items known as the Zimmerman collection was donated to History Nebraska. Among the items are the three sacred objects listed in this notice. Initially, this collection was loaned by Mary R. Zimmerman to History Nebraska in 1934; it became a donation upon her death in 1939. From 1898 to 1928, Dr. Charles F. Zimmerman and his wife Mary ''Mollie'' Zimmerman operated a drug store in Naper, Nebraska. Mr. Zimmerman was also employed by the United States Government Indian Medical Service. Museum records indicate that Charles amassed a collection of Native American objects through purchases and gifts. The three sacred objects listed in this notice are one eagle feather hand fan (object id 4364–278), one two-piece pipestone pipe [object id 4364–273–(1–2)], and one pair of beaded leggings [object id 4364–276–(1–2)].

According to the Museum's donation records, the three items came from High Eagle, and is presumed to be Joseph High Eagle, the Oglala Sioux warrior, medicine man, and cousin of Crazy Horse. On October 14, 2021, Lilla Pearl Asmund requested the repatriation of the three items. She presented information to show that the items are sacred objects and that they had been owned by her great-grandfather, Joseph High Eagle. During consultation between History Nebraska and the Oglala Sioux Tribe, the Tribe corroborated the information provided to the Museum by Lilla Pearl Asmund.

Determinations Made by History Nebraska

Officials of History Nebraska have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the three cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents; and
- Pursuant to 25 U.S.C. 3005(a)(5)(A) and 43 CFR 10.2(b)(1), Lilla Pearl Asmund is the direct lineal descendant of the individual who owned the sacred objects.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Trisha Nelson, History Nebraska, 1500 R Street, Lincoln, NE 68508–1651, telephone (402) 471–4760, email *trisha.nelson@nebraska.gov,* by February 9, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to Lilla Pearl Asmund may proceed.

History Nebraska is responsible for notifying Lilla Pearl Asmund and the Oglala Sioux Tribe [previously listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota] that this notice has been published.

Dated: January 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–00225 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–33139; PPWODIREP0; PPMPSPD1Y.YM0000]

Advisory Committee on Reconciliation in Place Names Establishment; Request for Nominations

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior (Department) is establishing and seeking nominations for the Advisory Committee on Reconciliation in Place Names (Committee). The Committee will identify geographic names and Federal land unit names that are considered derogatory and solicit proposals on replacement names.

DATES: Nominations for the Committee must be submitted by February 24, 2022.

ADDRESSES: Nominations should be emailed to Joshua Winchell, Office of Policy, National Park Service, at *joshua_winchell@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, telephone number 202–641–4467, or email *joshua_winchell@nps.gov*.

SUPPLEMENTARY INFORMATION: The Committee is established under the authority of the Secretary and regulated by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. appendix 2). The Committee's duties are strictly advisory and consist of providing recommendations for implementation of Secretary's Order No. 3405—Addressing Derogatory Geographic Names.

Duties shall include, but are not limited to (1) recommending to the Secretary changes to existing Federal land unit names and additional terms that may be considered derogatory and identifying resources required to implement any resulting name changes; (2) recommending to the Secretary a process to solicit, encourage, and assist proposals to change derogatory geographic names; and (3) soliciting proposals to replace derogatory geographic features and Federal land unit names from Indian Tribes, appropriate State and local governments, affected Federal agencies and departments, and members of the public.

The term ''Federal land unit'' includes (1) National Forest System land; (2) a unit of the National Park System; (3) a component of the National Wilderness Preservation System; (4) any part of the National Landscape Conservation System; and (5) a unit of the National Wildlife Refuge System.

The Committee will meet approximately two to four times per year. The Committee will consist of no more than 17 discretionary members to be appointed by the Secretary of whom, to the extent practicable:

1. At least four will be members of an Indian Tribe;
2. At least one will represent a Tribal organization;
3. At least one will represent a Native Hawaiian organization;
4. At least four will have backgrounds in civil rights or race relations;
5. At least four will have expertise in anthropology, cultural studies, geography, or history; and
6. At least three will represent the general public.

Appointments will be on a staggered term basis for a term not to exceed 3 years.

Nominations must include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department to contact a potential member.

Members who are appointed to the Committee in their official capacity as Federal employees are subject to applicable Federal ethics statutes and regulations, to include applicable exceptions and exemptions.

Members of the Committee appointed as special Government employees (SGEs) are subject to applicable Federal ethics statutes and regulations, to include applicable exceptions and exemptions. Additionally, SGE

members are required, prior to appointment and annually thereafter, to file a Confidential Financial Disclosure Report. SGE members are also required to receive initial ethics training prior to performing any Committee duties and to receive annual ethics training thereafter. The Department will provide materials to those members serving as SGEs, explaining their ethical obligations.

Non-Federal members of the Committee and subcommittees appointed as representatives are not subject to Federal ethics statutes and regulations. However, no non-Federal Committee or subcommittee members will participate in any Committee or subcommittee deliberations or votes relating to a specific party matter before the Department or its bureaus and offices including a lease, license, permit, contract, grant, claim, agreement, or litigation, in which the member or the entity the member represents has a direct financial interest.

Members serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Committee as approved by the Designated Federal Officer, members may be allowed travel expenses, including per diem in lieu of subsistence.

In addition, the Committee will have ex-officio members including, but not limited to a Department of the Interior representative; a Department of Agriculture representative; a Department of Defense representative; and a Department of Commerce representative.

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information with your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Certification Statement: I hereby certify that the Advisory Committee on Reconciliation in Place Names is necessary, in the public interest, and is in connection with the performance of duties imposed on the Department of the Interior and in furtherance of the National Park Service Organic Act (54 U.S.C. 100101 *et seq.*), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), and other Acts applicable to specific bureaus.

Authority: 5 U.S.C. appendix 2.

Dated: December 28, 2021.

Deb Haaland,

Secretary, Department of the Interior.

[FR Doc. 2022–00224 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033207; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: State University at Buffalo, Department of Anthropology, Buffalo, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State University at Buffalo, Department of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State University at Buffalo, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State University at Buffalo, Department of Anthropology at the address in this notice by February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Douglas J. Perrelli, Ph.D., RPA, State University at Buffalo Department of Anthropology, 380 Academic Center, Ellicott Complex, Buffalo, NY 14261–0026, telephone (716) 645–2297, email *perrelli@buffalo.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State University at Buffalo, Department of Anthropology, Buffalo, NY. The human remains and associated funerary objects were removed from the Village of Youngstown, Niagara County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University at Buffalo, Department of Anthropology professional staff in consultation with representatives of the Seneca Nation of Indians [previously listed as Seneca Nation of New York].

History and Description of the Remains

From February through October of 1997, human remains representing, at minimum, 13 individuals were removed from burials located at the intersection of Jackson Street and Lower River Road/Main Street in Youngstown, Niagara County, NY. Following excavation, the human remains were accessioned into the Marian E. White Anthropology Museum at the State University at Buffalo, Department of Anthropology. The condition of the human remains varies as a result of their having been uncovered by heavy machinery. No known individuals were identified. The 100 associated funerary objects are 85 nail fragments, 10 chert flakes, one bullet, one shell button, two brass pins, and one glass fragment.

Determinations Made by the State University at Buffalo, Department of Anthropology

Officials of the State University at Buffalo, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the location and condition of the burials and the nature of the skeletal remains and dentition.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 13

individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 100 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Seneca Nation of Indians [previously listed as Seneca Nation of New York].

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Seneca Nation of Indians [previously listed as Seneca Nation of New York].

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Douglas J. Perrelli, Ph.D., RPA, University at Buffalo Department of Anthropology, 380 Academic Center, Ellicott Complex, Buffalo NY 14261–0026, telephone (716) 645–2297, email *perrelli@buffalo.edu,* by February 9, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Seneca Nation of Indians [previously listed as Seneca Nation of New York] may proceed.

The State University at Buffalo, Department of Anthropology is responsible for notifying the Seneca Nation of Indians [previously listed as Seneca Nation of New York] that this notice has been published.

Dated: January 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–00229 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033206; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Fowler Museum at the University of California Los Angeles (Fowler Museum at UCLA) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on July 19, 2021. This notice corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Fowler Museum at UCLA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Fowler Museum at UCLA at the address in this notice by February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Wendy G Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Fowler Museum at the University of California Los Angeles, Los Angeles, CA. The human remains and associated funerary objects were removed from San Luis Obispo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (86 FR 38118–38120, July 19, 2021). On October 7, 2021, the Fowler Museum at UCLA transferred human remains from site SLO–157 to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. Following repatriation, additional associated funerary objects were discovered. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** of July 19, 2021, in FR Doc 2021–15252, on page 38119, in the first column, second paragraph, correct the 12th sentence to read:

Accession 290 includes five associated funerary objects that are two flakes, one core, and two scrapers.

In the **Federal Register** of July 19, 2021, in FR Doc 2021–15252, on page 38119, in the third column, first paragraph, correct sentence 2 under the heading ''Determinations Made by the Fowler Museum at the University of California Los Angeles,'' to read:

Pursuant to 25 U.S.C. 3001(3)(A), the 83 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wendy G Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by February 9, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The Fowler Museum at the University of California Los Angeles is responsible for notifying the Indian Tribes and

Groups referred to in the July 19, 2021 notice as ''The Consulted Tribes and Groups'' that this notice has been published.

Dated: January 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–00228 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033208; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Berkshire Museum, Pittsfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Berkshire Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Berkshire Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Berkshire Museum at the address in this notice by February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Jason Vivori, Berkshire Museum, 39 South Street, Pittsfield, MA 01201, telephone (413) 443–7171 Ext. 341, email *jvivori@berkshiremuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Berkshire Museum, Pittsfield, MA, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In the mid-18th century, two cultural items were removed from Whahktukuk in Berkshire County, MA. According to museum documentation, both items were donated to the Berkshire Museum in 1958 by Allen Peck of Pittsfield. According to the donor, both items had been given to Israel Dickinson of Pittsfield (1736–1777), his great-great grandfather, by Sachem John Konkapot of Stockbridge (ca. 1690–1765), a significant leader in the Stockbridge Munsee Community, Wisconsin. The two objects of cultural patrimony are one wampum pouch and one pair of moccasins.

In consultation with the Stockbridge Munsee Community, Wisconsin, the Berkshire Museum has determined that the date and provenience of the cultural items reasonably accord with the lives of both John Konkapot and Israel Dickinson. Consequently, the information in the possession of the Berkshire Museum shows that Sachem Konkapot was the caretaker of the pouch and moccasins prior to the donor's great-great grandfather, Israel Dickinson, coming into possession of them.

The wampum pouch has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual, and cannot be alienated, appropriated, or conveyed by an individual regardless of whether or not the individual is a member of the Indian Tribe. Written histories establish the wampum pouch as a continuing culturally significant artifact since at least the eighteenth century. In *Stockbridge Past and Present, or, Records of an Old Mission Station,* Hendrick Aupaumut, a well-known 18th century Stockbridge Mohican historian and diplomat wrote, ''The Sachem is allowed to keep Mnoti, or peaceable bag, or bag of peace. . . In this bag they keep various Squau-thowon, or belts of wampum: Also strings; which belts and strings they used to establish peace and friendship with different nations, and to use them on many occasions, and passed as coin. In this bag they keep all belts and strings which they received of their allies of different nations.'' Aupaumut added, ''Another, and important use of the Wampum was its substitution in the place of writing. The red bead signified blood, the black or dark colors had a severe meaning, while white denoted peace. Then ideas could be conveyed by various figures into which It was wrought, a red hatchet, for instance, readily suggesting the idea of war. Thus, not only the fact that a treaty had been made, but its terms could be kept in mind, and the various circumstances in the history of a nation could be recorded.'' Accordingly, the wampum pouch is hereditary to the office of the Sachem, allowing the Stockbridge Munsee Community, Wisconsin to establish treaties with other nations serving as a literal container of history and oral tradition.

The pair of moccasins also satisfy NAGPRA's definition of cultural patrimony. They are significant for having belonged to Stockbridge-Munsee Sachem John Konkapot.

Determinations Made by the Berkshire Museum

Officials of the Berkshire Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the cultural patrimony and the Stockbridge Munsee Community, Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jason Vivori, Berkshire Museum, 39 South Street, Pittsfield, MA 01201, telephone (413) 443–7171 Ext. 341, email *jvivori@berkshiremuseum.org,* by February 9, 2022. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to the Stockbridge Munsee Community, Wisconsin may proceed.

The Berkshire Museum is responsible for notifying the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: January 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–00227 Filed 1–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 29, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of South Carolina, in the lawsuit entitled *United States* v. *New-Indy Catawba LLC,* Civil Action No. 0:21–cv–02053–SAL.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief related to emissions of Hydrogen Sulfide from defendant's paper mill in Catawba, South Carolina. The consent decree requires the defendant to perform injunctive relief to abate hydrogen sulfide emissions, and to pay a $1.1 million civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *New-Indy Catawba LLC,* D.J. Ref. No. 90–5–2–1–12471. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined at and downloaded from this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–00198 Filed 1–7–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation and Settlement Agreement Under The Toxic Substances Control Act

On January 3, 2022, the Department of Justice lodged a proposed stipulation and settlement agreement with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America* v. *SYG Realties, L.L.C., All Year Management NY, Inc., and All Year Management, L.L.C.,* Case No. 22–CV–14.

The United States filed this lawsuit to seek civil penalties and injunctive relief for violations of the Toxic Substances Control Act, 15 U.S.C. 2682(c), 2686(b) and 2687, (''TSCA'') and the Renovation, Repair and Painting Rule, 40 CFR part 745, subpart E (''RRP Rule''). The alleged violations concern the alleged failure of SYG Realties, L.L.C., All Year Management NY, Inc., and All Year Management, L.L.C. (''defendants''), business entities that renovated residential units, to comply with TSCA and the RRP Rule at five locations in Brooklyn, New York. The Complaint alleges that defendants, *inter alia,* failed to obtain firm certification, failed to use certified renovators, failed to comply with safe work-practice requirements, failed to provide the ''Renovate Right'' Pamphlet or post warning signs, and failed to establish records demonstrating compliance with the RRP Rule, maintain those records, and make them available to EPA.

The Stipulation and Settlement Agreement requires defendants to implement injunctive relief that includes advising EPA of any intent to engage in any renovation work governed by the RRP Rule in the future and then to negotiate a compliance plan with EPA that is enforceable through the Stipulation and Settlement Agreement.

The publication of this notice opens a period for public comment on the proposed Stipulation and Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *SYG Realties, L.L.C., All Year Management NY, Inc., and All Year Management, L.L.C.,* Civil Action No. 22–CV–14, D.J. Ref. No. 90–5–1–1–11074. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Stipulation and Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Stipulation and Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $1.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 2022–00174 Filed 1–7–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12065]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of

1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to Credit Suisse AG (CSAG) and Credit Suisse Securities (Europe) Limited (CSSEL) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14, notwithstanding the judgments of conviction against CSAG and CSSEL, described below.

DATES: If granted, this proposed exemption will be in effect for one year beginning on the date of conviction of Credit Suisse Securities (Europe) Limited in Case Number 1:21–cr–00520–WFK.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by February 22, 2022.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12065 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Erin Scott Hesse of the Department at (202) 693–8546. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[1] If the proposed exemption is granted, the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs, as defined below, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84–14 (PTE 84–14),[2] notwithstanding the judgment of conviction against Credit Suisse AG (CSAG) and upcoming judgment of conviction against Credit Suisse Securities (Europe) Limited (CSSEL), described below.[3]

This proposed exemption will be effective for a one-year period beginning on the date a judgment of conviction against CSSEL (the CSSEL Conviction) is entered in the United States District Court for the Eastern District of New York in case number 1:21–cr–00520–WFK, provided that the conditions set out in Section III of the Proposed Exemption are satisfied.

Summary of Facts and Representations[4]

Credit Suisse Group AG

1. CSG is a publicly-traded corporation headquartered in Zurich, Switzerland. CSG and its affiliates operate in about 50 countries and

[1] For purposes of this proposed exemption reference to specific provisions of Title I of the ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010). Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including a violation of 18 U.S.C. 1349.

[3] As described in more detail below, to the extent that any investor believes that it has suffered losses in connection with the impending CSSEL Conviction, Credit Suisse's resolutions with the U.S. Securities and Exchange Commission (SEC) and Department of Justice (DOJ) provide those potentially damaged investors with two potential avenues through which to receive compensation, should they be able to support their claims with sufficient evidence.

[4] The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D–12065 are true and complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

currently have approximately 48,770 employees, providing services including private banking, investment banking, and asset management. As of December 31, 2020, CSG and its consolidated subsidiaries had total balance sheet assets of approximately $890 billion and $47 billion, respectively.

2. CSG owns a 100% interest in Credit Suisse AG (CSAG). CSAG operates as a bank, in Switzerland and abroad. Currently, two Credit Suisse asset management affiliates, Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) (together, the CS Affiliated QPAMs), manage the assets of ERISA-covered plans and IRAs (together, Covered Plans) on a discretionary basis. The CS Affiliated QPAMs also advise or sub-advise pooled funds. These affiliates routinely rely upon PTE 84–14 to provide relief for party in interest investment transactions.

3. CSSEL is headquartered in London, United Kingdom and is indirectly a wholly-owned subsidiary of CSG. CSSEL provides a broad range of financial products and services including global securities sales, trading and execution, prime brokerage and capital markets, with an active securities branch in Korea.

4. The Applicant represents that the investment management businesses that operate out of the CS Affiliated QPAMs are separate businesses from CSAG and CSSEL. The CS Affiliated QPAMs have dedicated systems, management, risk and compliance officers and/or legal coverage. The management of plan assets is conducted separately from: (a) The non-investment management business activities of the Applicant, including the investment banking businesses; and (b) the conduct that is the subject of the CSSEL Plea Agreement (described below). The policies and procedures create information barriers designed to prevent employees of the CS Affiliated QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the CS Affiliated QPAMs. The Applicant maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

5. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans but that are not affiliates of CSAG (the CS Related QPAMs). CSSEL, however, currently has no subsidiaries in which it has a five percent or more interest but which are not commonly controlled with CSAG and that are QPAMs within the meaning of PTE 2019–07.[5]

6. The CS Affiliated QPAMs' clients include plans subject to Part IV of Title I of ERISA and plans subject to Code section 4975, with respect to which the CS Affiliated QPAMs rely on PTE 84–14, or with respect to which the CS Affiliated QPAMs (or a CSG affiliate) have expressly represented that the managers qualify as a QPAM or rely on PTE 84–14.[6] These plans are referred to collectively as Covered Plans throughout this Notice.

Relevant ERISA Provisions and PTE 84–14

7. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans. Under ERISA, such parties are known as ''parties in interest.'' ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[7]

8. The prohibited transaction provisions under ERISA section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[8] Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) if the Departments finds an exemption is (i) administratively feasible, (ii) in the interests of the plan and of its participants and beneficiaries, and (iii) protective of the rights of participants and beneficiaries.

9. PTE 84–14 reflects the Department's conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA section 406(a) and Code section 4975(c)(1), in the circumstances set forth in that exemption, only if the commitments and the investments of plan assets, and the negotiations leading thereto, are the sole responsibility of an independent discretionary manager.

10. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an ''affiliate'' [9] or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

11. The inclusion of Section I(g) in PTE 84–14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself but also to those who may be in a position to influence the policies of the QPAM.

Prior 2014 Conviction of CSAG (the CSAG Conviction) and Related Exemptions

The CSAG Conviction

12. On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the CSAG Information) in the District Court for the Eastern District of Virginia (the Virginia District Court) charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18,

[5] See the heading below regarding ''Related Individual Exemptions'' for a description of PTE 2019–07.

[6] A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[7] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[8] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b) and Code section 4975(c)(1)(E) and (F). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84–14 provides only very narrow conditional relief for transactions described in ERISA section 406(b).

[9] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

United States Code, Section 371. The CSAG Information identified the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., of willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

13. According to the Statement of Facts filed in the criminal case (the CSAG Statement of Facts), for decades prior to and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including by: Assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain records in the United States related to the accounts; destroying account records sent to the United States for client review; using Credit Suisse [10] managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

14. CSAG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in CSAG business entities that complied with U.S. law. For instance, starting in or about 2009, CSAG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at CSAG. In December 2010, the Tax Division of the U.S. Department of Justice (DOJ) informed Credit Suisse AG that it had begun a criminal investigation of CSAG that had uncovered evidence of tax law violations. Although CSAG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, CSAG continued to identify U.S. customer accounts for closure until on or about 2013.

15. On May 19, 2014, pursuant to a plea agreement (the CSAG Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The conviction (the CSAG Conviction) occurred on November 21, 2014.

Related Individual Exemptions

16. In connection with the CSAG Conviction, the Department first granted PTE 2014–11,[11] a one-year exemption, which allowed CS Affiliated and Related QPAMs to continue to rely on PTE 84–14, notwithstanding the CSAG Conviction, as long as a number of conditions were met. Subsequent to granting PTE 2014–11, the Department granted PTE 2015–14, an additional four-year exemption that continued to provide extended relief for CS Affiliated and Related QPAMs.[12] Before the expiration of PTE 2015–14, the Department granted PTE 2019–07, which would have provided the final five-years of relief needed in connection with the CSAG Conviction.[13]

Impending Conviction of CSSEL (the CSSEL Conviction) and CSG Deferred Prosecution Agreement (DPA)

The CSSEL Conviction

17. On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York (collectively, the Offices), filed a criminal information (the CSSEL Information) in the District Court for the Eastern District of New York (the New York District Court) charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349.

18. CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL Information (the CSSEL Plea). In addition, CSSEL will make an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against CSSEL that will require remedies that are materially the same as those set forth in the CSSEL Plea Agreement. On October 19, 2021, in connection with the CSSEL Plea, the ultimate parent of CSSEL, CSG, entered into a Deferred Prosecution Agreement (the DPA) with the Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section of the DOJ and the United States Attorney's Office for the Eastern District of New York.

19. For purposes of Section I(g) of PTE 84–14, the date CSSEL is sentenced will be the conviction date (the CSSEL Conviction Date). As of that date, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by PTE 84–14 as of the CSSEL Conviction Date. The CSSEL Conviction will also violate PTE 2019–07 and therefore, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by either PTE 84–14 or PTE 2019–07 as of the CSSEL Conviction Date.

20. According to the Statement of Facts (the CSSEL Statement of Facts) [14] that accompanied the CSSEL Plea Agreement,[15] CSSEL acted as a Joint Lead Manager underwriting the issuance of $500 million in loan participation notes (LPNs) to partially finance an $850 million loan for a tuna fishing project in Mozambique in 2013, and acted as Joint Dealer Manager in the exchange of those LPNs for a sovereign

[10] The CSAG Statement of Facts defined ''Credit Suisse'' to mean CSAG, its parent, and Switzerland-based subsidiaries and affiliates, including Clariden Leu.

[11] 79 FR 68716 (Nov. 18, 2014).

[12] 80 FR 59817 (Oct. 2, 2015).

[13] *See* 84 FR 61928 (Nov. 14, 2019).

[14] Unless otherwise specified, all information in this section is taken from the Applicant's exemption application and supporting documents, the CSSEL Plea Agreement, and the CSSEL Statement of Facts. According to the CSSEL Plea Agreement ''[t]he Defendant is pleading guilty because it is guilty of the charge contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information and the Statement of Facts are true and correct, that it is responsible for the acts of its officers, directors, employees, and agents described in the Information and the Statement of Facts, and that the Information and the Statement of Facts accurately reflect the Defendant's criminal conduct.'' P. 11. Additionally, as part of the CSSEL Plea Agreement, the Defendant ''expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information and the Statement of Facts.'' P. 23.

[15] Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York and Credit Suisse Securities (Europe) Limited, Cr. No. 21–520 (MKB), filed Oct. 19, 2021.

bond (EMATUM [16] Exchange) (collectively, the EMATUM Securities) in 2016.

21. CSSEL, through its employees, conspired to use U.S. wires and the U.S. financial system to defraud U.S. and international investors. Credit Suisse [17] and its co-conspirators conspired to use international and interstate wires to, from, and through the United States to transmit false and misleading statements to investors in the EMATUM Securities, transfer proceeds obtained from those investors through the fraudulent scheme to the co-conspirators, and pay kickbacks to three former Credit Suisse bankers.

22. CSSEL, through Surjan Singh (Singh), who left Credit Suisse in 2017, and Andrew Pearse (Pearse) and Detelina Subeva (Subeva), who both left Credit Suisse in 2013, among other things, conspired to defraud investors and potential investors in the EMATUM Securities by concealing and misrepresenting the fact that approximately $50 million in kickbacks were paid to Pearse, Singh, and Subeva from the loan proceeds of the EMATUM LPN transaction. Jean Boustani, an agent of Privinvest,[18] an entity not affiliated with Credit Suisse, paid bribes totaling approximately $150 million to various Mozambican government officials and others, including Manuel Chang, Mozambique's Minister of Finance, and Antonio do Rosario, an official in Mozambique's governmental state intelligence and security service, known as Servico de Informacoes e Seguranca do Estado, which, together with other Mozambican government agencies, was an owner of ProIndicus [19] and EMATUM.

23. Credit Suisse also arranged the EMATUM Exchange, whereby, in 2015, when EMATUM began encountering problems servicing the EMATUM loans, Credit Suisse arranged for the LPNs to be exchanged for Mozambique-issued Eurobonds. According to the Statement of Facts, in seeking investors' consent to the EMATUM Exchange, CSSEL prepared documents about the EMATUM Exchange that were sent to investors and included false and misleading statements regarding the use of proceeds of the original EMATUM loan and omitted certain other facts concerning the EMATUM Exchange. Credit Suisse ignored or only nominally addressed a number of red flags in connection with these transactions.

24. On or about August 30, 2013, Credit Suisse agreed to move forward with the EMATUM transaction. In addition to Credit Risk Management, the European Investment Banking Committee, Reputational Risk, and the Compliance and Anti-Money Laundering functions considered the transaction, and agreed to allow the EMATUM transaction to go forward. The CSSEL Statement of Facts indicates that after Credit Suisse transferred the funds raised to finance EMATUM to Privinvest, Privinvest secretly paid millions of dollars to three of the signatories on the EMATUM deal—Singh, Do Rosario, and Chang.

25. Credit Suisse approved the EMATUM loan notwithstanding the fact that its earlier due diligence process for ProIndicus had identified significant risks of bribery and the size of the project had expanded greatly without apparent justification, and Credit Suisse, through Pearse, Singh, and Subeva, knew that Privinvest had paid kickbacks to Pearse in connection with the ProIndicus transaction, and would pay further kickbacks to Pearse and Singh in connection with the EMATUM loan.

26. Credit Suisse sent potential investors materials that included the EMATUM loan agreement and marketing materials such as the offering circular (the LPN Investor Documents), notwithstanding the fact that the LPN Investor Documents represented that the loan proceeds would be used exclusively to fund the EMATUM project, and that none of the proceeds would be used to pay bribes or kickbacks. For example, (a) Pearse and Singh knew that they would receive millions of dollars in illegal kickback payments from Privinvest in connection with the EMATUM loan while employed by Credit Suisse; (b) Firm 1 had expressly warned Credit Suisse about Privinvest and Privinvest Co-Conspirator 1's history of corruption and bribery; and (c) a senior Credit Suisse executive had previously said ''no'' to Pearse to the combination of Privinvest Co-Conspirator 1 and Mozambique in November 2012.[20]

27. Despite the use of proceeds concerns raised by the significant valuation shortfall and other previously identified red flags, which underscored the risk that the EMATUM proceeds had been used for corruption and bribery, Credit Suisse approved the EMATUM Exchange. Although Credit Suisse did disclose in investor documents that it had been ''widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,'' and that ''subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes,'' Credit Suisse did not disclose any of the information it had about the significant shortfall between the price Privinvest charged EMATUM for the purchase of assets and the value of those assets. In the EMATUM Exchange documentation, Credit Suisse also: (a) Included false and misleading statements regarding the use of proceeds of the original EMATUM loans; (b) failed to disclose kickbacks to Singh, Pearse, and Subeva, of which Singh was aware; (c) did not disclose any of the information Credit Suisse had about the significant shortfall between the price Privinvest charged EMATUM for the 27 boats and the fair market value of those boats; and (d) failed to disclose the existence of the ProIndicus and MAM loans,[21] and their maturity dates, and instead disclosed that Credit Suisse and VTB Bank ''have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and have performed and continue to perform services for the Issuer and its affiliates in the ordinary course of business for which they have received and for which they will in the future receive, fees. . . . In particular, an affiliate of [CSSEL] has a lending relationship with a wholly-owned state entity whose obligations have the benefit of a guarantee from Mozambique.'' Credit Suisse did disclose, however, that it had been ''widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,'' and that ''subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes.''

28. By agreeing to the EMATUM Exchange, which delayed the EMATUM loan repayment date, Credit Suisse knew that EMATUM loan participation

[16] EMATUM was a company owned, controlled, and overseen by the Government of Mozambique. EMATUM was created to undertake a project to create a state-owned tuna fishing company for Mozambique.

[17] The CSSEL Statement of facts defined ''Credit Suisse'' to mean CSG together with its wholly-owned subsidiaries and affiliated entities.

[18] Privinvest was a holding company based in Abu Dhabi, United Arab Emirates. Privinvest was engaged in shipbuilding of various types of vessels.

[19] ProIndicus was a company owned, controlled, and overseen by the Government of Mozambique. ProIndicus was created to undertake a project to create a state-owned coastal surveillance and protection plan for Mozambique.

[20] The CSSEL Statement of Facts did not identify Privinvest Co-conspirator 1 or Firm 1 other than that Firm 1 was a ''diligence firm'' used by Credit Suisse.

[21] MAM was a company owned, controlled, and overseen by the Government of Mozambique. MAM was created to build and maintain shipyards.

note investors were agreeing to be paid after any other investors in other Mozambique government loans that matured earlier, such as ProIndicus. Credit Suisse arranged and was an investor in the ProIndicus loan. As a result, by extending the EMATUM loan repayment date through the EMATUM Exchange, Credit Suisse would be repaid on its investment in the private ProIndicus loan before EMATUM Securities investors were repaid.

29. During the investor road show for the EMATUM Exchange, Credit Suisse and Do Rosario and the then-Minister of Finance for Mozambique did not inform investors of (a) the significant valuation shortfall and risk that loan proceeds were improperly diverted, including to pay bribes; (b) the existence or maturity dates of the ProIndicus and MAM loans; (c) that Mozambique had not disclosed its true level of debt to the ProIndicus and MAM loans to the International Monetary Fund (IMF); and (d) kickbacks paid to Credit Suisse bankers in connection with the EMATUM loan.

30. Under the CSSEL Plea Agreement, CSSEL agreed, among other things, as follows: First, that CSSEL shall cooperate fully with the Offices in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and other conduct under investigation by the Offices or any other component of the Department of Justice at any time during the term of the DPA (the Term) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, CSSEL shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of CSSEL, CSG, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should CSSEL learn during the Term of any evidence or allegations of conduct that may constitute a violation of the federal wire fraud statute had the conduct occurred within the jurisdiction of the United States, CSSEL shall promptly report such evidence or allegation to the Offices. CSSEL also agreed to commit no further crimes and to work with Credit Suisse in fulfilling the obligations of CSG's DPA.

Impacted Investors

31. The Applicant represented to the Department that the LPNs were distributed from Credit Suisse's UK operations via CSSEL into international capital markets in 2013, to non-U.S. entities, pursuant to U.S. Securities and Exchange Commission (SEC) Regulation S. Credit Suisse is aware that the purchasers of those LPNs were made up of hedge funds, banks, and other institutions, but due to Regulation S, the purchasers' only obligation was to certify their status as Qualified Institutional Buyers (QIBs) in the applicable subscription agreements. The Applicant represents that it is unlikely that Covered Plans were initial purchasers of those LPNs. According to the Applicant, Credit Suisse has no way of knowing, and does not know in any systematic manner, whether (a) the fund owners or investors in the initial purchasers' funds themselves were Covered Plans, or (b) parties buying and selling the LPNs in the secondary market were Covered Plans.

32. Furthermore, the Applicant represented that in 2016, LPN investors had the option to exchange their LPNs for sovereign-issued Mozambique Exchange Bonds (the Exchange Bonds) issued under either Regulation S or SEC Rule 144A, in London, England. Credit Suisse represents that it is unlikely that those investors who chose to exchange their LPNs for Regulation S bonds, and who must have been QIBs and non-U.S. entities, were Covered Plans. The 2016 Exchange also included a Rule 144A tranche into which investors could exchange their LPNs; however, those buyers also were required to represent that they were QIBs, and as a result, it is unlikely that their clients were Covered Plans. According to the information on purchasers which Credit Suisse does have, at the time of the Exchange, Credit Suisse was aware that the LPNs, and subsequently, the Eurobonds, were held via either Euroclear or Clearstream accounts in Europe. While Credit Suisse has identified a list of the entities that maintained custodial accounts at Euroclear and Clearstream in connection with those transactions, Credit Suisse represents that it has no way of knowing the identities of the ultimate beneficial owners of the LPNs at the time of the Exchange.

33. To the extent that any investor believes that it has suffered losses in connection with the LPNs or the 2016 Exchange Bonds, Credit Suisse's resolutions with the SEC and DOJ provide those potentially damaged investors with two potential avenues through which to receive compensation, should they be able to support their claims with sufficient evidence. First, the SEC may set up a ''fair fund'' in connection with this matter pursuant to 15 U.S.C. 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, which would provide up to $65,000,000 (the civil penalty amounts levied in the underlying SEC settlement with Credit Suisse in connection with this matter) to compensate any investor able to prove losses to the SEC. Second, in connection with the CSSEL Plea, the Mandatory Victim Restitution Act (MVRA) requires the DOJ to contact potentially harmed investors, apprise them of their right to compensation from CSSEL if they are able to prove the charged conduct was the proximate cause of the harm suffered, and for Credit Suisse to provide that compensation pursuant to a judicially-administered process. To the extent that investors claim monetary damages in excess of those amounts provided for in any SEC Fair Fund, Credit Suisse and the DOJ have agreed to a methodology for determining investor eligibility and calculating eligible investor losses, which will be subject to ratification by the court presiding over CSSEL's sentencing hearing, which currently is scheduled for early March 2022. Credit Suisse does not currently know which, if any, potentially impacted investors might file claims on the SEC Fair Fund or MVRA restitution mechanism.

Department's Note: The Department is particularly interested in receiving comments from retirement plans or retirement accounts (including Covered Plans but not limited to retirement plans or retirement accounts that are subject to ERISA or the Code) that believe they were impacted by the conduct described above that forms the basis for the CSSEL Conviction along with the dollar amount of harm incurred. The Department is also interested in receiving comments on whether the remedies under the MVRA restitution mechanism or offered through the SEC Fair Fund are adequate to fully compensate retirement plans and retirement accounts that suffered losses. To the extent that retirement plans and retirement accounts are not made whole, the Department seeks comment on the extent of losses that would remain uncompensated.

The CSG DPA

34. On October 19, 2021, in addition to the CSSEL Plea, the ultimate parent entity of CSSEL, CSG, entered into a three-year DPA with the Offices in connection with the same conduct as set forth in the CSSEL Statement of Facts

that forms the basis for the CSSEL Plea Agreement.

35. The DPA indicates that CSG admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the CSSEL Information, and as set forth in the CSSEL Statement of Facts, and that the allegations described in the CSSEL Information and the facts described in the CSSEL Statement of Facts are true and accurate.

36. Under the DPA, CSG also agreed to continue to cooperate with the Offices, to enhance its compliance program and internal controls, and to provide enhanced reporting to the Offices on CSG's remediation and compliance program. Among other things, the enhanced reporting provisions require CSG to meet with the Offices at least quarterly and to submit yearly reports regarding the status of its remediation efforts, the results of its testing of its compliance program, and its proposals to ensure that its compliance program is reasonably designed, implemented, and enforced so that it is effective in deterring and detecting violations of fraud, money laundering, the Foreign Corrupt Practices Act, and other applicable anti-corruption laws.

Department's Note: Interested persons can access the CSG DPA and related materials at *https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global.*

Current Exemption Request

37. On October 19, 2021, the Applicant filed an exemption application with the Department for Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to continue to rely on PTE 84–14, notwithstanding the criminal sentencing of CSSEL, which is tentatively scheduled for March 9, 2022. The Applicant represents that the exemption will enable the affected Covered Plans to continue their current investment strategy with their current investment manager or trustee without disruption. According to the Applicant, if the Department denies the requested exemption, plans would incur significant costs if they decide to find other asset managers. The Applicant states that many of the assets in the accounts could be difficult to transition, and the interruption of certain investment strategies, such as stable value, could create significant disruption for Covered Plans that are 401(k) plans and their participants and beneficiaries.

38. The Applicant represents that ineligibility from PTE 84–14 would result in hardship to plans (and their participants and beneficiaries) and that neither the protection of plans and participants nor the public interest would be served by permitting Section I(g) ineligibility to apply to the CS Affiliated QPAMs. According to the Applicant, ineligibility would deprive client plans of the investment management services (some of which are highly specialized) that these plans expected to receive when they appointed these managers, and could result in the termination of relationships that the fiduciaries of the plans have determined to be in the best interests of the plans. The Applicant goes on to represent that it would be disruptive and expensive to cause plan fiduciaries to reconsider their arrangements with their chosen investment manager because of uncertainties relating to PTE 84–14. This uncertainty, according to the Applicant, could disrupt certain investment strategies and result in significant redemptions from pooled funds, which would frustrate efforts to effectively manage the pooled funds' assets, harm remaining plan investors, and increase the expense ratios of the investment funds.

Department's Note: The Department specifically seeks comments from ERISA-covered plans and IRAs, as well as the Applicant, on the validity and magnitude of the costs and harms to Covered Plans as identified by the Applicant. In this regard, the Department also strongly emphasizes that a fiduciary's duties of prudence and loyalty under ERISA section 404 apply in the context of hiring, monitoring, evaluating, and retaining an asset manager, regardless of whether the asset manager retains the ability to continue relying on PTE 84–14 under a supplemental individual exemption. A fiduciary's failure to abide by these duties may give rise to fiduciary liability, including co-fiduciary liability or personal liability.[22]

39. The Applicant further represents that, with respect to many Covered Plans, virtually every counterparty may be a service provider to that plan. Transactions between the Covered Plan and the party-in-interest service provider would be prohibited under one or more provisions of ERISA section 406, absent an exemption. The Applicant states that because counterparties are familiar and comfortable with PTE 84–14 for a wide variety of transactions, it is generally the most commonly used prohibited transaction exemption, and the exemption generally relied on by counterparties as the ''backup'' exemption for all transactions. Counterparties may provide less advantageous pricing or may not bid at all where the plan's investment manager is not a QPAM. Various strategies in which plans and IRAs are managed may depend significantly on PTE 84–14, including but not limited to stable value, leveraged loans, domestic and international fixed income and equities, and strategies that use structured products, options, swaps, and derivatives.

Department's Note: The Department specifically requests comments from ERISA-covered plans and IRAs as to the specific costs or harms, if any, that would flow from denial of the exemption, including evidence as to any valuable investment opportunities that they would have to forego, and the basis for concluding that those investments would be available to plans and IRAs on less advantageous terms.

Applicant's Request for an Exemption With a Ten-Year Duration

40. In its exemption request, the Applicant sought a ten-year exemption term. However, given the magnitude, gravity, duration and pervasiveness of Credit Suisse's misconduct, along with numerous Credit Suisse compliance control failures associated with both the CSAG and the CSSEL misconduct, the Department is unable to determine that a ten-year exemption would be in the interest of, and protective of, the Covered Plans. Therefore, the relief described in this proposed exemption is limited to one year. If the Applicant seeks additional exemptive relief, it must submit a new exemption application request before the end of the exemption's one-year term, assuming this proposed exemption is ultimately granted. At that time, the Department will review the application and other information it deems necessary to determine whether additional relief is warranted. No inference regarding whether the Department will grant additional relief should be drawn from the Department's decision to propose this one-year exemption.

41. The Department is particularly interested in comments from interested persons, including the Applicant, regarding whether any additional relief should be limited to an individual exemption that permits the types of transactions permitted by PTE 84–14, but that does not otherwise allow Credit Suisse asset managers to refer to themselves as QPAMs under PTE 84–14, with respect to Covered Plans that

[22] *See* ERISA sections 404, 405, and 409.

become clients following the CSSEL Conviction Date.

Department's Note: The Department specifically requests comment from interested persons regarding any other investigations or misconduct (including any alleged misconduct) that Credit Suisse is a party to which may result in criminal prosecution.

The Exemption's Protective Conditions

42. In developing administrative exemptions under ERISA section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective of, and in the interest of, affected plans and IRAs. The Department is proposing this exemption with a number of protective conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of the CS Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid the costs and disruption to investment strategies that may arise if such plans and IRAs are forced, on short notice, to hire a different QPAM or asset manager because the CS Affiliated and Related QPAMs are no longer able to rely on the relief provided by PTE 84–14 and PTE 2019–07 due to the CSSEL Conviction. Covered Plan fiduciaries are cautioned that the Department's decision to propose this exemption should not be taken, in any way, as an indication that Credit Suisse asset managers will receive additional exemptive relief.

43. It is a material condition of this exemption that the CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs) did not know or have reason to know of, and did not participate in the criminal conduct of CSAG and CSSEL that is the subject of either the CSAG or CSSEL Conviction. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of, and did not participate in the criminal conduct that is the subject of either the CSAG or CSSEL Conviction.

44. The protective conditions in this proposed exemption include a requirement that the CS Affiliated QPAMs do not currently and may not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG or CSSEL that is the subject of the CSAG or CSSEL Conviction.

45. This proposed exemption requires that no CS Affiliated QPAM may use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code to enter into any transaction with CSAG or CSSEL, or to engage CSAG or CSSEL to provide any service to such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, neither CSAG nor CSSEL may act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

46. Each CS Affiliated QPAM must continue to maintain, adjust to the extent necessary, implement, and follow written policies and procedures (the Policies) that are reasonably designed to ensure: (a) That the asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG and CSSEL's corporate management and business activities; (b) that the CS Affiliated QPAMs fully comply with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction provisions; (c) that the CS Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (d) that any filings or statements made by the CS Affiliated QPAMs to regulators on behalf of, or in relation to, Covered Plans are materially accurate and complete; (e) that the CS Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with such regulators, or in their communications with Covered Plans; and (f) that the CS Affiliated QPAMs comply with the terms of the exemption.

47. This proposed exemption requires each CS Affiliated QPAM to maintain, adjust to the extent necessary, and implement a program of training (the Training), to be conducted at least annually, for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel. This required Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions described in this proposal, and the requirement for prompt reporting of wrongdoing.

48. This proposed exemption requires that each CS Affiliated QPAM submit to an audit, conducted by an independent auditor, to evaluate the adequacy of and compliance with, the Policies and Training required by the exemption, as described below. The independent auditor must be prudently selected and have appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by the exemption. The CS Affiliated QPAMs must grant the auditor unconditional access to their business, and the auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training.

49. The independent auditor must issue a written audit report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies, that describes the procedures performed by the auditor in connection with its examination. Further, the CS Affiliated QPAMs must promptly address any identified noncompliance, and must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations, if any, with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. The Audit Report must also be provided to the Department and will be made a part of the public record regarding this one-year exemption.

50. This proposed exemption further requires the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, to certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and the exemption, and that the CS Affiliated QPAM has addressed, corrected, and remedied (or has an appropriate written plan to address) any identified instance of noncompliance or inadequacy regarding the Policies and Training identified in the Audit Report.

51. With respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, this proposal requires the CS Affiliated QPAMs to agree and warrant: (a) To comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA section 404; (b) to refrain from engaging in prohibited transactions that are not otherwise exempt; (c) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from, among other things, the CS Affiliated

QPAM's violation of ERISA's fiduciary duties; (d) with narrow exceptions, to not restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM; (e) with narrow exceptions, to not impose any fees, penalties, or charges for such termination or withdrawal; and (f) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the CS Affiliated QPAM for a violation of such agreement's terms.

52. Each CS Affiliated QPAM must provide a notice of its obligations under this exemption to each Covered Plan. Each CS Affiliated QPAM also must provide to each sponsor and beneficial owner of a Covered Plan a copy of the notice of the exemption as published in the **Federal Register**, a separate summary describing the facts that led to the CSAG and CSSEL Conviction (the Summary), and a prominently displayed statement (the Statement) that the CSAG and CSSEL Conviction each results in a failure to meet a condition in PTE 84–14 and that the CSSEL Conviction results in a failure to meet a condition in PTE 2019–07.

53. This proposed exemption requires each CS Affiliated QPAM, consistent with PTE 2019–07 to maintain a designated senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described in this proposed exemption. The Compliance Officer must conduct a review, for the twelve-month period that begins on November 21, 2021 (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training, and issue a written report (the Exemption Report) on the findings.

54. This proposal requires Credit Suisse to impose internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the CSAG and CSSEL Convictions.

Statutory Findings

55. ERISA section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. These criteria are discussed below.

56. ''*Administratively Feasible.*'' The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering each CS Affiliated QPAM's compliance with the terms of the exemption, and a corresponding written audit report will be provided to the Department and be made available to the public. The independent audit will provide an incentive for compliance while reducing the immediate need for review and oversight by the Department.

57. ''*In the interest of.*'' The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers, at significant costs to the Covered Plans. According to the Applicant, ineligibility under Section I(g) of PTE 84–14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers, and could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

58. ''*Protective of.*'' The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans. As described above, the proposed exemption is subject to a suite of conditions including but not limited to: (a) The development and maintenance of the Policies; (b) the implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the CS Affiliated QPAMs; (e) specific notices and disclosures concerning the circumstances necessitating the need for exemptive relief and the CS Affiliated QPAMs' obligations under this proposed exemption; and (f) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer's completion of an Exemption Review and corresponding Exemption Report. Further, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.

Summary

59. This proposed one-year exemption provides relief from certain of the restrictions set forth in ERISA section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed one-year exemption would terminate immediately if, among other things, an entity within the CSAG corporate structure is convicted of any crime covered by Section I(g) of PTE 84–14 (other than the CSAG Conviction or the CSSEL Conviction). While such an entity could request a new exemption in that event, the Department is not obligated to grant the request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA section 408(a) and Code section 4975(c)(2).

60. When interpreting and implementing this exemption, the Applicant and the CS Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations, at 202–693–8540.

61. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within ten (10) days of the publication of the notice of proposed one-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty (40) days of the date of publication of this proposed one-year

exemption in the **Federal Register**. All comments will be made available to the public.

Warning

If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting a one-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[23] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) The term ''Convictions'' means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS, on November 21, 2014 (the CSAG Conviction); and (2) the judgment of conviction against CSSEL, when it is entered, in Case Number 1:21–cr–00520–WFK (the CSSEL Conviction).

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84–14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''CSAG'' means Credit Suisse AG.

(d) The term ''CSSEL'' means Credit Suisse Securities (Europe) Limited.

(e) The term ''CS Affiliated QPAM'' means Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) and any current or future ''affiliate'' of CSAG or CSSEL (as defined in Part VI(d) of PTE 84–14) that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14)[24] and that relies on the relief provided by PTE 84–14 and with respect to which CSAG or CSSEL is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14), but is not a CS Related QPAM. The term ''CS Affiliated QPAM'' excludes CSAG and CSSEL.

(f) The term ''CS Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CSAG or CSSEL owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG or CSSEL is not an ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14) The term ''CS Related QPAM'' excludes CSAG and CSSEL.

(g) The term ''Exemption Period'' means the one-year period that begins on the date of the CSSEL Conviction.

(h) The term ''CSAG Plea Agreement'' means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, and the United States Attorney's Office for the Eastern District of Virginia, and CSSEL in Case Number 1:14–cr–188–RBS.

(i) The term ''CSSEL Plea Agreement'' means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York, and CSSEL in Case Number 1:21–cr–00520–WFK.

Section II. Covered Transactions

If this proposed exemption is granted, the CS Affiliated QPAMs, as defined in Section I(d), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14)[25] during

[23] For purposes of this proposed one-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

[24] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

[25] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR

Continued

the Exemption Period, notwithstanding the ''Convictions'' against CSAG and CSSEL (as defined in Section I(a)), provided that the conditions in Section III are satisfied.

Section III. Conditions

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of, and did not participate in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of, and did not participate in the criminal conduct that is the subject of the Convictions. For purposes of this exemption, including paragraph (c) below, ''participate in'' refers not only to active participation in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors.

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and the CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the subject of the Convictions;

(c) The CS Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions;

(d) At all times during the Exemption Period, no CS Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or CSSEL or to engage CSAG or CSSEL to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code section 4975 (an IRA) in a manner that it knew or should have known would further the criminal conduct that is the subject of the Convictions; or cause the CS Affiliated QPAM or CS Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Neither CSAG nor CSSEL will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. Neither CSAG nor CSSEL will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies). Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section III(d)(1) through (3) of this exemption before the date the Policies below have been developed, implemented, and followed. The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAM are conducted independently of CSAG's and CSSEL's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate other than CSSEL;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this one-year exemption, and CSAG complies with the terms of Section III(d)(2);

49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the CS Affiliated QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training), to be conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the 12-month period that begins on November 21, 2021. The audit must be completed no later than 180 days after the period to which it applies (May 19, 2023);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(m);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such

officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAGE or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) A copy of the Audit Report must be provided CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer at either the Risk Committee or the Conduct and Financial Crime Control Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each CS Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. The delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such CS Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising from acts outside the control of the CS Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after a date that is 120 days after the effective date of this exemption, the CS Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For Covered Plans that were provided a previous form of investment management agreement prior to the effective date of this exemption, and sign and return such agreement with a CS Affiliated QPAM within 120 days after the

effective date of this exemption, the CS Affiliated QPAM shall provide the documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019–07 that meets the terms of this condition.

(k) Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14 and the CSSEL Conviction results in a failure to meet a condition in PTE 2019–07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a CS Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a CS Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for the applicable CS Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019–07; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAG and to each CS Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAG and the relevant CS Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the twelve month period beginning on November 21, 2021. The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(n) CSAG imposes its internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) CSAG complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions;

(p) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, CSAG must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Credit Suisse Group AG or CSAG or any of its affiliates (as defined

in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[26] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A CS Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different CS Affiliated QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This exemption will be in effect for one (1) year, beginning on the date of the CSSEL Conviction.

George Christopher Cosby,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–00170 Filed 1–7–22; 8:45 am]

BILLING CODE 4510–29–P

[26] If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 10, 17, 24, 31, February 7, 14, 2022.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 10, 2022

There are no meetings scheduled for the week of January 10, 2022.

Week of January 17, 2022—Tentative

There are no meetings scheduled for the week of January 17, 2022.

Week of January 24, 2022—Tentative

Thursday, January 27, 2022

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting); (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the web address—*https://video.nrc.gov/.* For those who would like to attend in person, note that all visitors are required to complete the NRC Self-Health Assessment and Certification of Vaccination forms. Visitors who certify that they are not fully vaccinated or decline to complete the certification must have proof of a negative Food and Drug Administration-approved polymerase chain reaction (PCR) or Antigen (including rapid tests) COVID–19 test specimen collection from no later than the previous 3 days prior to entry to an NRC facility. The forms and additional information can be found here *https://www.nrc.gov/about-nrc/covid-19/guidance-for-visitors-to-nrc-facilities.pdf.*

Week of January 31, 2022—Tentative

There are no meetings scheduled for the week of January 31, 2022.

Week of February 7, 2022—Tentative

February 8, 2022

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the web address—*https://video.nrc.gov/.* For those who would like to attend in person, note that all visitors are required to complete the NRC Self-Health Assessment and Certification of Vaccination forms. Visitors who certify that they are not fully vaccinated or decline to complete the certification must have proof of a negative Food and Drug Administration-approved polymerase chain reaction (PCR) or Antigen (including rapid tests) COVID–19 test specimen collection from no later than the previous 3 days prior to entry to an NRC facility. The forms and additional information can be found here *https://www.nrc.gov/about-nrc/covid-19/guidance-for-visitors-to-nrc-facilities.pdf.*

Week of February 10, 2022—Tentative

There are no meetings scheduled for the week of February 10, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 5, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–00246 Filed 1–6–22; 11:15 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Performance Review Board Members

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) announces the appointment of members of the PBGC Performance Review Board.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), made applicable by PBGC's Senior Level Performance Management System, PBGC announces the appointment of those individuals who have been selected to serve as members of PBGC's Performance Review Board. The Performance Review Board is responsible for making recommendations on each senior level (SL) professional's annual summary rating, performance-based adjustment, and performance award to the appointing authority.

The following individuals have been designated as members of PBGC's 2021 Performance Review Board:

1. Gordon Hartogensis, Director
2. Kristin Chapman, Chief of Staff
3. David Foley, Chief of Benefits Administration
4. Patricia Kelly, Chief Financial Officer
5. Alice Maroni, Chief Management Officer

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–00233 Filed 1–7–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 15, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–31 and CP2022–38.

Joshua Hofer,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–00210 Filed 1–7–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93897; File No. SR–FINRA–2021–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change To Amend FINRA Rule 2231 (Customer Account Statements)

January 4, 2022.

I. Introduction

On September 29, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2021–024 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend FINRA Rule 2231 (Customer Account Statements) to add new supplementary materials, incorporate specified provisions from dual FINRA–NYSE temporary rules, and delete those temporary rules.[3] The proposed rule change was published for public comment in the **Federal Register** on September 30, 2021.[4] On November 9, 2021, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 4, 2022.[5] On January 4, 2022, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the proposed rule change (''Amendment No. 1'').[6]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing to amend Rule 2231 (Customer Account Statements) to add new supplementary materials, incorporate specified provisions from dual FINRA–NYSE temporary rules, and delete those temporary rules. The proposed rule change would amend Rule 2231 to add new supplementary materials pertaining to compliance with FINRA Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with FINRA Rule 3150 (Holding of Customer Mail).

Specifically, proposed new Supplementary Material .01 to Rule 2231 would remind firms of their obligations under Rule 4311, including specifically the rights and obligations of carrying firms under Rule 4311(c)(2) that generally require each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of Exchange Act Rule 15c3–3 and for preparing and transmitting statements of account to customers.

Proposed new Supplementary Material .02 to Rule 2231 would prohibit member firms from sending customer account statements to third parties unless: (1) The customer provided written instructions to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 93215 (September 30, 2021), 86 FR 55641 (October 6, 2021) (File No. SR–FINRA–2021–024) (''Notice'').

[4] *See supra* note 3.

[5] *See* letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Office of Chief Counsel, Division of Trading and Markets, Commission, dated November 9, 2021.

[6] *See* letter from Sarak Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 4, 2022 (''FINRA Response'').

[7] 15 U.S.C. 78s(b)(2)(B).

member to send statements to such third parties; and (2) the member sends duplicate account statements directly to the customer either in paper format or electronically. The proposed Supplementary Material .02 would add that a member firm may cease sending duplicate account statements to a customer where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on a customer's behalf, and such court-appointed fiduciary provides written instructions to the member and furnishes to the member an official copy of the court appointment that establishes authority over the customer's accounts.

Proposed new Supplementary Material .03 to Rule 2231 would allow member firms to satisfy their delivery obligations under the rule by using electronic media, subject to compliance with standards established by the Commission on the use of electronic media for delivery purposes.

Proposed new Supplementary Material .04 to Rule 2231 would permit member firms to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

Proposed new Supplementary Material .05 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/02 by requiring the following information to be clearly and prominently disclosed on the front of a customer account statement: (1) The identity of the introducing and clearing firm, if different, and their respective contact information for customer service (although the proposed rule change would permit the identity of the clearing firm and its contact information to appear on the back of the statement provided such information is in ''bold'' or ''highlighted'' letters); (2) that the clearing firm is a member of SIPC; and (3) the opening and closing balances for the account.

Proposed new Supplementary Material .06 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/04 which provides that where a customer account statement includes assets the member firm does not carry on behalf of a customer and are not included on the member's books and records, such assets must be clearly and distinguishably separated on the account statement. The proposed rule change would also require the account statement to: (1) Clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information (including valuation) for such externally held assets included on the statement is derived from the customer or other external source for which the member is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

Proposed new Supplementary Material .07 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/05, which provides that where the logo, trademark or other identification of a person (other than the introducing firm or clearing firm) appears on a customer account statement, then the identity of such person and the relationship to the introducing, clearing, or other firm included on the statement must be provided and may not be used in a manner that is misleading or causes customer confusion.

Proposed new Supplementary Material .08 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/06 by establishing a member firm's obligations where the member holding a customer's account and another person who separately offers financial related products or services to the same customer jointly provide their respective customer account statements together with a statement summarizing or combining assets held in different accounts.

Finally, FINRA is proposing to delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions will have been included in Rule 2231, are duplicative of other rules, or are outdated.

Amendment No. 1 would modify the proposed rule change by changing the term ''clearing firm'' to ''carrying firm'' in the following places: (1) Proposed Rule 2231(a); (2) proposed Rule 2231.05(a) and (b); (3) proposed Rule 2231.07; and (4) proposed Rule 2231.08(d). FINRA stated that changing the term ''clearing firm'' to ''carrying firm'' would maintain consistency given the proposed supplementary materials are derived largely from their corresponding NYSE provisions, which use the term ''carrying organization.'' [8]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2021–024 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change, *as modified by Amendment No. 1,* should be approved or disapproved.[9] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, *as modified by Amendment No. 1.*

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[11]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by January 31, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 14, 2022.

Comments may be submitted by any of the following methods:

[8] *See* FINRA Response.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.*

[11] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 No. SR–FINRA–2021–024 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 No. SR–FINRA–2021–024. 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 FINRA.

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 No. SR–FINRA–2021–024 and should be submitted on or before January 31, 2022. If comments are received, any rebuttal comments should be submitted on or before February 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00157 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93894; File No. SR–PEARL–2021–58]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port

January 4, 2022.

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 December 21, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend the fees for the Exchange's MIAX Express Network Full Service (''MEO'') [3] Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the fees for its Full Service MEO Ports, Bulk and Single (the ''Proposed Access Fees''), which allow Members [4] to submit electronic orders in all products to the Exchange. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change [7] and subsequently suspended the Frist Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on November 1, 2021, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and now submits this proposal for immediate effectiveness (''Third Proposed Rule Change''). This Third Proposed Rule Change meaningfully attempts to provide additional justification and

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (July 15, 2021) (SR–PEARL–2021–33).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter'').

[8] *See* Securities Exchange Act Release No. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53).

[10] *See id.*

explanation for the proposed fee changes, directly respond again to the points raised in the single comment letter submitted on the First Proposed Rule Change, and be responsive to feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Second Proposed Rule Change.

Full Service MEO Port Fee Changes

The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[11] a Full Service MEO Port-Single,[12] and a Limited Service MEO Port.[13] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine [14] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees per matching engine based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) Two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[15] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described below. For illustrative purposes and as described in more detail below, the Exchange currently assesses a fee of $5,000 per month for Members that reach the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[16] The Exchange now proposes to increase Full Service MEO Port fees as further described below, with the highest monthly fee of $10,000 for the Full Service MEO Port—Bulk. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates [17] on the Exchange across all origin types, not including Excluded Contracts,[18] as compared to the Total Consolidated Volume (''TCV''),[19] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees on Members in each month the market participant is credentialed to use a Port in the production environment.

Current Full Service MEO Port—Bulk Fees. Currently, the Exchange assesses

[11] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[12] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[13] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[14] A ''Matching Engine'' is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[15] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* Nasdaq Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, Nasdaq PHLX LLC (''Nasdaq Phlx'') and Nasdaq BX, Inc. (''Nasdaq BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option underlyings. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[16] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[17] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[18] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[19] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port—Bulk Fees. The Exchange now proposes to assess Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

Current Full Service MEO Port—Single Fees. Currently, the Exchange assesses Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port—Single Fees. The Exchange now proposes to assess Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers [20] or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange now proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[21] which are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge fees for their high throughput, low latency MIAX Express Interface (''MEI'') Ports in a similar fashion as the Exchange charges for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[22] This concept is not new or novel. The Exchange also notes that the proposed increased fees for the Exchange's Full Service MEO Ports are in line with, or cheaper than, the similar port fees for similar membership fees charged by other options exchanges.[23]

The Exchange has historically undercharged for Full Service MEO Ports as compared to other options exchanges [24] because the Exchange provides Full Service MEO Ports as a package for a single monthly fee. As described above, this package includes two Full Service MEO Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The Exchange believes other exchange's port fees are a useful example of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access.

Exchange	Type of port	Monthly fee
MIAX Pearl (as proposed) ...	MEO Full Service—Bulk	Tier 1: $5,000 (or $208.33 per Matching Engine). Tier 2: $7,500 (or $312.50 per Matching Engine). Tier 3: $10,000 (or $416.66 per Matching Engine).
	MEO Full Service—Single	Tier 1: $2,500 (or $104.16 per Matching Engine). Tier 2: $3,500 (or $145.83 per Matching Engine). Tier 3: $4,500 (or $187.50 per Matching Engine).
NYSE American, LLC (''NYSE American'') [25].	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
NYSE Arca, Inc. (''NYSE Arca'') [26].	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
NASDAQ [27]	Specialized Quote Interface	Ports 1–5: $1,500 each. Ports 6–20: $1,000 each.

[20] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[21] *See supra* note 16.

[22] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[23] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees; NYSE Arca Options Fee Schedule, Port Fees; Nasdaq Stock Market LLC (''NASDAQ''), Options 7, Pricing Schedule, Section 3.

[24] *See id.*

Exchange	Type of port	Monthly fee
		Ports 21 or more: $500.

Implementation

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [28] in general, and furthers the objectives of Section 6(b)(4) of the Act [29] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[30] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[31] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange and its affiliates, MIAX and MIAX Emerald, to establish or increase other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

The Proposed Access Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees are reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems the Full Service MEO Port fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements.

In its Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [32] The Commission Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [33] In its Guidance, the Commission staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.'' [34] The Exchange does not assert that the Proposed Access Fees are constrained by competitive forces. Rather, the Exchange asserts that the Proposed Access Fees are reasonable because they will permit recovery of the Exchange's costs in providing access via Full Service MEO Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [35] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [36] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the Proposed Access Fees are reasonable and do not result in a ''supra-competitive'' [37] profit. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees. As a result of this analysis, the Exchange believes the Proposed Access Fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering Full Service MEO Port access to the Exchange.

The Proposed Access Fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide Full Service MEO Ports, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of Full Service MEO Ports) to estimate such costs,[38] as well as the

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4) and (5).

[30] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[31] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[32] *See id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] For example, the Exchange only included the costs associated with providing and supporting Full Service MEO Ports and excluded from its cost

relative costs of providing and maintaining Full Service MEO Ports, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining Full Service MEO Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port needs and the likely potential for increased costs to procure the third-party services described below.

To determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of access services associated with the Proposed Access Fees. This analysis included discussions with each Exchange department head to determine the expenses that support access services associated with the Proposed Access Fees. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services for the Proposed Access Fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice.

To determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing Full Service MEO Ports, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the majority of 2021 (other than July and August 2021), the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services. The Exchange notes that this is the same justification process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed and not suspended by the Commission when MIAX Emerald adopted MEI Port fees.[39] As outlined in more detail below, the Exchange projects that the annualized expense for 2021 to provide Full Service MEO Ports to be approximately $897,084 per annum or an average of $74,757 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 20 Full Service MEO Ports, for which the Exchange charged a total of approximately $71,625. This resulted in a loss of $3,132 for that month (a margin of −4.37%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 19 Full Service MEO Ports,[40] for which the Exchange charged a total of approximately $122,000 for that month. This resulted in a profit of $47,243 for that month, representing a profit margin of approximately 38%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 38% per-month.[41] The Exchange cautions that this profit margin may fluctuate from month to month based on the uncertainty of predicting how many Full Service MEO Ports may be purchased from month to month as Members and non-Members are able to add and drop ports at any time based on their own business decisions, which they frequently do. This profit margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[42]

calculations any cost not directly associated with providing and maintaining such ports. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining Full Service MEO Port access.

[39] *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers) (adopting tiered MEI Port fee structure ranging from $5,000 to $20,500 per month).

[40] The Exchange notes that one Member dropped one Full Service MEO Port—Bulk between June 2021 and November 2021, as a result of the Proposed Access Fees.

[41] The Exchange notes that this profit margin differs from the First and Second Proposed Rule Changes because the Exchange now has the benefit of using a more recent billing cycle under the Proposed Access Fees (November 2021) and comparing it to a baseline month (June 2021) from before the Proposed Access Fees were in effect.

[42] *See* ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, *available at https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html*

Continued

The Exchange has been subject to price increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

As mentioned above, the Exchange projects that the annualized expense for 2021 to provide the services associated with the Proposed Access Fees to be approximately $897,084 per annum or an average of $74,757 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[43] The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide access services associated with the Proposed Access Fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue and cost recovery mechanisms: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[44] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems.[45] To do so, the Exchange chose to waive the fees for some non-transaction related services or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[46] the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $897,084, or approximately $74,757 per month. The $897,084 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[47] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[48] The $897,084 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $40,166. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center

(October 18, 2021); *and* ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, *available at https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[43] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network.

[44] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

[45] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[46] The Exchange has not yet finalized its 2021 year end results.

[47] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[48] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[49] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, NASDAQ, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to the providing access services in connection with the Proposed Access Fees. Only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 1.80% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[50]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 0.90% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[51]

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, NASDAQ, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which

[49] In fact, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. This fee increase by ICE data services, while not subject to Commission review, has material impact on cost to exchanges and other market participants that provide downstream access to other market participants. The Exchange notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

[50] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

[51] *Id.*

the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 0.90% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[52]

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 0.90% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[53]

Internal Expense Allocations

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $856,918. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

For clarity, and as stated above, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the access services in connection with the Proposed Access Fees. Only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, as part its ongoing assessment of costs and expenses (described above), the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $783,513, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 8.55% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[54]

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $64,456, which is only a portion of the $2,864,716[55] total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] The Exchange notes that the total depreciation expense is different from the total for the Exchange's filing relating to Trading Permits because the Exchange factors in the depreciation of its own internally developed software when assessing costs for Full Service MEO Ports, resulting in a higher depreciation expense number in this filing.

toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 2.25% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[56]

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $8,949, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 1.80% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[57]

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Based on the above, the Exchange believes that its provision of access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. As discussed above, the Exchange projects that the annualized expense for 2021 to provide Full Service MEO Ports to be approximately $897,084 per annum or an average of $74,757 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 20 Full Service MEO Ports, for which the Exchange charged a total of approximately $71,625. This resulted in a loss of $3,132 for that month (a margin of −4.37%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 19 Full Service MEO Ports, for which the Exchange charged a total of approximately $122,000 for that month. This resulted in a profit of $47,243 for that month, representing a profit margin of 38%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to generate an approximate profit margin of 38% per-month. The Exchange believes this modest profit margin will allow it to continue to recoup its expenses and continue to invest in its technology infrastructure. Therefore, the Exchange also believes that this proposed profit margin increase is reasonable because it represents a reasonable rate of return.

Again, the Exchange cautions that this profit margin may fluctuate from month to month based in the uncertainty of predicting how many Full Service MEO Ports may be purchased from month to month as Members and non-Members are free to add and drop ports at any time based on their own business decisions. This profit margin may also decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems.[58] Accordingly, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the

[56] *Id.*

[57] *Id.*

[58] *See supra* note 42.

Exchange versus the projected annual revenue from the Proposed Access Fees.

The Proposed Tiered-Pricing Structure Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes the proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it launched operations for its Full Service MEO Port fees. Moreover, the tiered pricing structure for Full Service MEO Ports is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. The proposed tiers of Full Service MEO Port fees will continue to apply to all Members and non-Members in the same manner based upon the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl-listed options. Members and non-Members may choose to purchase more than the two Full Service MEO Ports the Exchange currently provides upfront based on their own business decisions and needs. All similarly situated Members and non-Members would be subject to the same fees. The fees do not depend on any distinction between Members and non-Members because they are solely determined by the individual Members' or non-Members' business needs and their impact on Exchange resources.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to access the Exchange and the amount of the fees are based on the number of Full Service MEO Ports utilized, in addition to the amount of volume conducted on the Exchange. The proposed tiered pricing structure should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV. The higher the volume, the greater pull on Exchange resources. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.

There are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange notes that the firms that purchase more than two Full Service MEO Ports that the Exchange initially provides essentially do so for competitive reasons amongst themselves and choose to utilize numerous ports based on their business needs and desire to attempt to access the market quicker by using the port with the least amount of latency. These firms are generally engaged in sending liquidity removing orders to the Exchange and seek to add more ports so they can access resting liquidity ahead of their competitors. For instance, a Member may have just sent numerous messages and/or orders over one of their Full Service MEO Ports that are in queue to be processed. That same Member then seeks to enter an order to remove liquidity from the Exchange's Book. That Member may choose to send that order over one or more of their other Full Service MEO Ports with less message and/or order traffic to ensure that their liquidity taking order accesses the Exchange quicker because that port's queue is shorter. These firms also tend to frequently add and drop ports mid-month to determine which have the least latency, which results in increased costs to the Exchange to constantly make changes in the data center.

The firms that engage in the above-described liquidity removing and advanced trading strategies typically require more than two Full Service MEO Ports and, therefore, generate higher costs by utilizing more of the Exchange's resources. Those firms may also conduct other latency measurements over their ports and drop and simultaneously add ports mid-month based on their own assessment of their performance. This results in Exchange staff processing such requests, potentially purchasing additional equipment, and performing the necessary network engineering to replace those ports in the data center. Therefore, the Exchange believes it is equitable for these firms to experience increased port costs based on their disproportionate pull on Exchange resources to provide the additional ports.

In addition, the proposed tiered-pricing structure is equitable because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to connect to the Exchange. Section 6(b)(5) of the Exchange Act requires the Exchange to provide access on terms that are not unfairly discriminatory.[59] As stated above, Full Service MEO Ports are not an unlimited resource and the Exchange's network is limited in the amount of ports it can provide. However, the Exchange must accommodate requests for additional ports and access to the Exchange's System to ensure that the Exchange is able to provide access on non-discriminatory terms and ensure sufficient capacity and headroom in the System. To accommodate requests for additional ports on top of current network capacity constraints, requires that the Exchange purchase additional equipment to satisfy these requests. The Exchange also needs to provide personnel to set up new ports and to maintain those ports on behalf of

[59] 15 U.S.C. 78f(b)(5).

Members and non-Members. The proposed tiered-pricing structure is equitable because it is designed to encourage Members and non-Members to be more efficient and economical in selecting the amount of ports they request while balancing that against the Exchange's increased expenses when expanding its network to accommodate additional port access.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide ports and port access or their fee markup over those costs, and therefore cannot use other exchanges' port fees as a benchmark to determine a reasonable markup over the costs of providing port access. Nevertheless, the Exchange believes the other exchanges' port fees are a useful example of alternative approaches to providing and charging for port access. To that end, the Exchange believes the proposed tiered-pricing structure for its Full Service MEO Ports is reasonable because the proposed highest tier is still less than or similar to fees charged for similar port access provided by other options exchanges with comparable market shares. For example, NASDAQ (equity options market share of 8.38% as of December 15, 2021 for the month of December) [60] charges $1,500 per port for SQF ports 1–5, $1,000 per SQF port for ports 6–20, and $500 per SQF port for ports 21 and greater,[61] all on a per matching engine basis, with NASDAQ having multiple matching engines.[62] NYSE American (equity options market share of 6.74% as of December 15, 2021 for the month of December) [63] charges $450 per port for order/quote entry ports 1–40 and $150 per port for ports 41 and greater,[64] all on a per matching engine basis, with NYSE American having 17 match engines.[65] The below table further illustrates this comparison.

Exchange	Type of port	Monthly fee
MIAX Pearl (as proposed)	MEO Full Service—Bulk	Tier 1: $5,000 (or $208.33 per Matching Engine). Tier 2: $7,500 (or $312.50 per Matching Engine). Tier 3: $10,000 (or $416.66 per Matching Engine).
	MEO Full Service—Single	Tier 1: $2,500 (or $104.16 per Matching Engine). Tier 2: $3,500 (or $145.83 per Matching Engine). Tier 3: $4,500 (or $187.50 per Matching Engine).
NYSE American	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
NYSE Arca	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
NASDAQ	Specialized Quote Interface	Ports 1–5: $1,500 each. Ports 6–20: $1,000 each. Ports 21 or more: $500.

In the each of the above cases, the Exchange's highest tiered port fee, as proposed, is similar to or less than the port fees of competing options exchanges with like market share. Further, as described in more detail below, many competing exchanges generate higher overall operating profit margins and higher ''access fees'' than the Exchange, inclusive of the projected revenues associated with the proposed fees. The Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic system, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive access fees. Each of the port fee rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[66] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[67] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port—Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports—Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

[60] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited December 15, 2021).

[61] *See supra* note 27.

[62] *See supra* note 15.

[63] *See supra* note 60.

[64] *See supra* note 25.

[65] *See supra* note 15.

[66] *See supra* note 15.

[67] *See supra* note 16.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Pearl have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Pearl. There are a number of large users of the MEO Interface and broker-dealers that are members of other options exchange but not Members of MIAX Pearl. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[68] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change[69] and no comment letters on the Second Proposed Rule Change. The Exchange now responds to the one comment letter in this filing. The SIG Letter cites Rule 700(b)(3) of the Commission's Rules of Fair Practice which places ''the burden to demonstrate that a proposed rule change is consistent with the Act on the self-regulatory organization that proposed the rule change'' and states that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.'' [70] The SIG Letter's assertion that the Exchange has not met this burden is without merit, especially considering the overwhelming amounts of revenue and cost information the Exchange included in the First and Second Proposed Rule Changes and this filing.

Until recently, the Exchange has operated at a net annual loss since it launched operations in 2017.[71] As stated above, the Exchange believes that exchanges in setting fees of all types should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange believes it has achieved this standard in this filing and in the First and Second Proposed Rules Changes. Similar justifications for the proposed fee change included in the First and Second Proposed Rule Changes, but also in this filing, were previously included in similar fee changes filed by the Exchange and its affiliates, MIAX Emerald and MIAX, and SIG did not submit a comment letter on those filings.[72] Those filings were not suspended by the Commission and continue to remain in effect. The justification included in each of the prior filings was the result of numerous withdrawals and re-filings of the proposals to address comments received from Commission Staff over many months. The Exchange and its affiliates have worked diligently with Commission Staff on ensuring the justification included in past fee filings fully supported an assertion that those proposed fee changes were consistent with the Act.[73] The Exchange leveraged

[68] *See supra* note 60.

[69] *See supra* note 7.

[70] 17 CFR 201.700(b)(3).

[71] See *supra* note 44.

[72] *See* Securities Exchange Act Release Nos. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers); 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers); *and* 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR–MIAX–2021–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers).

[73] *See, e.g.,* Securities Exchange Act Release No. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). *See* Securities Exchange Act Release Nos. 90601 (December 8, 2020), 85 FR 80864 (December 14, 2020) (SR–EMERALD–2020–18) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–11); *and* 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–18). The Exchange initially filed a proposal to remove the cap on the number of additional Limited Service MEO Ports available to Members on April 9, 2021. *See* SR–PEARL–2021–17. On April 22, 2021, the Exchange withdrew SR–PEARL–2021–17 and refiled that proposal (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's revenues, costs, and profitability any time more Limited Service MEO Ports become available, in general, (including information regarding the Exchange's methodology for determining the costs and revenues for additional Limited Service MEO Ports). *See* SR–

its past work with Commission Staff to ensure the justification provided herein and in the First and Second Proposed Rule Changes included the same level of detail (or more) as the prior fee changes that survived Commission scrutiny. The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension.'' [74] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [75]

Therefore, a finding by the Commission that the Exchange has not met its burden to show that the proposed fee change is consistent with the Act would be different than the Commission's treatment of similar past filings, would create further ambiguity regarding the standards exchange fee changes should satisfy, and is not warranted here.

In addition, the arguments in the SIG Letter do not support their claim that the Exchange has not met its burden to show the proposed rule change is consistent with the Act. Prior to, and after submitting the First Proposed Rule Change, the Exchange solicited feedback from its Members, including SIG. SIG relayed their concerns regarding the proposed change. The Exchange then sought to work with SIG to address their concerns and gain a better understanding of the access/connectivity/quoting infrastructure of other exchanges. In response, SIG provided no substantive suggestions on how to amend the First Proposed Rule Change to address their concerns and instead chose to submit a comment letter. One could argue that SIG is using the comment letter process not to raise legitimate regulatory concerns regarding the proposal, but to inhibit or delay proposed fee changes by the Exchange.

Nonetheless, the Exchange has enhanced its cost and revenue analysis and data in this Third Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Among other things, these enhancements include providing baseline information in the form of data from the month before the Proposed Access Fees became effective.

General

First, the SIG Letter states that 10Gb ULL ''lines are critical to Exchange members to be competitive *and to provide essential protection from adverse market events*'' (*emphasis added*).[76] The Exchange notes that this statement is generally not true for Full Service MEO Ports as those ports are used primarily for order entry and not risk protection activities like purging quotes resting on the MIAX Pearl Options Book. Full Service MEO Ports are essentially used for competitive reasons and Members may choose to utilize one or two Full Service MEO Ports [77] based on their business needs and desire to attempt to access the market quicker by using one port that may have less latency. For instance, a Member may have just sent numerous messages and/or orders over one of their Full Service MEO Ports that are in queue to be processed. That same Member then seeks to enter an order to remove liquidity from the Exchange's Book. That Member may choose to send that order over one of their other Full Service MEO Ports with less message and/or order traffic or any of their optional additional Limit Service MEO Ports [78] to ensure that their liquidity taking order accesses the Exchange quicker because that port's queue is shorter.

The Tiered Pricing Structure for Full Service MEO Ports Provides for the Equitable Allocation of Reasonable Dues, Fees, and Other Charges

The SIG Letter challenges the below two bases the Exchange set forth in its Initial Proposed Fee Change and herein to support the assertion that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges:

- ''If the Exchanges were to attempt to establish unreasonable pricing, then no market participant would join or connect to the Exchanges, and existing market participants would disconnect.
- The fees will not result in excessive pricing or supra-competitive profit.'' [79]

The Exchange responds to each of SIG's challenges in turn below.

If the Exchanges Were To Attempt To Establish Unreasonable Pricing, Then No Market Participant Would Join or Connect to the Exchange, and Existing Market Participants Would Disconnect

SIG asserts that ''the prospect that a member may withdraw from the Exchanges if a fee is too costly is not a basis for asserting that the fee is reasonable.'' [80] SIG misinterprets the Exchange's argument here. The Exchange provided the examples of firms terminating access to certain markets due to fees to support its assertion that firms, including market makers, are not required to connect to all markets and may drop access if fees become too costly for their business models and alternative or substitute forms of connectivity are available to those firms who choose to terminate access. The Commission Staff Guidance also provides that ''[a] statement that substitute products or services are available to market participants in the relevant market (*e.g.,* equities or options) can demonstrate competitive forces if supported by evidence that substitute products or services exist.'' [81] Nonetheless, the Third Proposed Rule Change no longer makes this assertion as a basis for the proposed fee change and, therefore, the Exchange believes it is not necessary to respond to this portion of the SIG Letter.

The Proposed Fees Will Not Result in Excessive Pricing or Supra-Competitive Profit

Next, SIG asserts that the Exchange's ''profit margin comparisons do not support the Exchange's claims that they will not realize a supracompetitive profit,'' that ''the Exchanges' respective profit margins of 30% (for MIAX and Pearl) and 51% (for Emerald) in relation to connectivity fees are high in any event,'' and ''comparisons to competing exchanges' overall operating profit margins are an inapt 'apples-to-oranges' comparison.''

The Exchange has provided ample data that the proposed fees would not result in excessive pricing or a supra-competitive profit. In this Third

PEARL–2021–20. On May 3, 2021, the Exchange withdrew SR–PEARL–2021–20 and refiled that proposal to further clarify its cost methodology. *See* SR–PEARL–2021–22. On May 10, 2021, the Exchange withdrew SR–PEARL–2021–22 and refiled that proposal as SR–PEARL–2021–23. *See* Securities Exchange Act Release No. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23).

[74] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021.

[75] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the Commission despite less disclosure and justification).

[76] *See* SIG Letter, *supra* note 7.

[77] The rates set forth for Full Service MEO Ports under Section 5(d) of the Exchange's Fee Schedule entitle a Member to two (2) Full Service MEO Ports for each Matching Engine for a single monthly fee.

[78] Members may be allocated two (2) Full-Service MEO Ports per Matching Engine and may request Limited Service MEO Ports for which the Exchange will assess no fee for the first two Limited Service MEO Ports requested by the Member. *See* Fee Schedule, Section 5(d).

[79] *See* SIG Letter, *supra* note 7.

[80] *Id.*

[81] *See* Guidance, *supra* note 31.

Proposed Rule Change, the Exchange no longer utilizes a comparison of its profit margin to that of other options exchanges as a basis that the Proposed Access Fees are reasonable. Rather, the Exchange has enhanced its cost and revenue analysis and data in this Third Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Therefore, the Exchange believes it is no longer necessary to respond to this portion of the SIG Letter.

The Proposed Tiered Pricing Structure Is Not Unfairly Discriminatory

SIG challenges the proposed fees by arguing that ''the Exchange[ ] provide[s] no support for [its] claim that [the] proposed tiered pricing structure is needed to encourage efficiency in connectivity usage and the Exchange[ ] provided no support for [the] claim that the tiered pricing structure allows them to better monitor connectivity usage, nor that this is an appropriate basis for the pricing structure in any event.'' The tiered pricing structure for Full Service MEO Ports is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. Nonetheless, the Exchange provided additional justification to support that the Proposed Access Fees are equitable and not unfairly discriminatory above in response to SIG's assertions.

Recoupment of Exchange Infrastructure Costs

Nowhere in this proposal or in the First Proposed Rule Change did the Exchange assert that it benefits competition to allow a new exchange entrant to recoup their infrastructure costs. Rather, the Exchange asserts above that its ''proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.'' The Exchange no longer makes this assertion in this filing and, therefore, does not believe is it necessary to respond to SIG's assertion here.

Nonetheless, the Exchange notes that until recently it has operated at a net annual loss since it launched operations in 2017.[82] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the determinism and resiliency of the Exchange's trading systems. To do so, the Exchange chose to offer some non-transaction related services for little to no cost. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees. Further, a vast majority of the Exchange's Members, if not all, benefited from these lower fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. The SIG Letter chose to ignore this reality and instead criticize the Exchange for initially charging lower fees or providing a moratorium on certain non-transaction fees to the benefit of all market participants. The Exchange is now trying to amend its fee structure to enable it to continue to maintain and improve its overall market and systems while also providing a highly reliable and deterministic trading system to the marketplace.

[82] *See supra* note 44.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[83] and Rule 19b–4(f)(2)[84] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[83] 15 U.S.C. 78s(b)(3)(A)(ii).

[84] 17 CFR 240.19b–4(f)(2).

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–PEARL–2021–58 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–PEARL–2021–58. 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–PEARL–2021–58 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00153 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

[85] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93895; File No. SR–PEARL–2021–59]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

January 4, 2022.

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 December 21, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to remove certain credits and amend the monthly Trading Permit [3] fees for Exchange Members.[4]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to remove certain credits and amend the monthly Trading Permit fees (the ''Proposed Access Fees'') for Exchange Members. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change [7] and subsequently suspended the Frist Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on October 29, 2021, with the proposed fee changes being effective beginning November 1, 2021 (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and now submits this proposal for immediate effectiveness (''Third Proposed Rule Change''). This Third Proposed Rule Change meaningfully attempts to provide additional justification and explanation for the proposed fee changes, directly respond again to the points raised in the single comment letter submitted on the First Proposed Rule Change, and be responsive to feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Second Proposed Rule Change.

Removal of the ''Monthly Volume Credit''

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018 [11] to encourage Members to send increased Priority Customer [12] order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction rebates and fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX Interface [13] or MEO Interface.[14] Currently, the Exchange assesses the Monthly Volume Credit to each Member that has executed Priority Customer volume along with that of its Affiliates,[15] not including Excluded

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 (''SIG Letter'').

[8] *See* Securities Exchange Act Release No. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54).

[10] *See id.*

[11] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[12] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[13] The term ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[14] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[15] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which

Continued

Contracts,[16] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[17] as set forth in the following table:

Type of member connection	Monthly volume credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	1,000

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. The Monthly Volume Credit is a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange now proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange now believes it is appropriate to remove this credit. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share.

Removal of the Trading Permit Fee Credit

The Exchange proposes to amend Section (3)(b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. The Trading Permit fee credit is applicable to Members that connect via both the MEO and FIX Interfaces. Currently, Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members receive a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface. The Exchange now proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section (3)(b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amendment of Trading Permit Fees

The Exchange proposes to amend Section (3)(b) of the Fee Schedule to increase the amount of the monthly Trading Permit fees. The Exchange issues Trading Permits to Members who are either Electronic Exchange Members[18] (''EEMs'') or Market Makers.[19] The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers''[20] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Currently, each Member who connects to the System[21] via the FIX Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $250;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $350; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

Each Member who connects to the System via the MEO Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $300;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $400; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $500.

Proposed Trading Permit Fees. The Exchange now proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-

---

the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[16] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[17] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[18] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule.

[19] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules. *See* the Definitions Section of the Fee Schedule.

[20] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[21] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

Transaction Fees Volume-Based Tiers, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits grant access to the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange now proposes to increase its monthly fees since it has not done so since the fees were first adopted in 2018 [22] and are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that the its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge a similar, fixed trading permit fee to certain users, and a similar, varying trading permit fee to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.[23]

As illustrated by the table below, the Exchange notes that the proposed increased fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permits and access fees for similar membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other options exchanges. The Exchange believes other exchange's access and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

Exchange	Type of membership or trading permit fees	Monthly fee
MIAX Pearl (as proposed) ...	Trading Permit access via FIX Interface	Tier 1: $500.
		Tier 2: $1,000.
		Tier 3: $1,500.
	Trading Permit access via MEO Interface	Tier 1: $2,500.
		Tier 2: $4,000.
		Tier 3: $6,000.
NYSE Arca, Inc. (''NYSE Arca'') [24].	Options Trading Permits (''OTP'')	$6,000 for up to 175 option issues.
		Additional $5,000 for up to 350 option issues.
		Additional $4,000 for up to 1,000 option issues.
		Additional $3,000 for all option issues.
		Additional $1,000 for the 5th OTP and each OTP thereafter.
NYSE American, LLC (''NYSE American'') [25].	ATP Trading Permits	$8,000 for up to 60 plus the bottom 45% of option issues.
		Additional $6,000 for up to 150 plus the bottom 45% of option issues.
		Additional $5,000 for up to 500 plus the bottom 45% of option issues.
		Additional $4,000 for up to 1,100 plus the bottom 45% of option issues.
		Additional $3,000 for all option issues.
		Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX LLC (''Nasdaq PHLX'') [26].	Streaming Quote Trader permit fees	Tier 1 (up to 200 option classes): $0.00.
		Tier 2 (up to 400 option classes): $2,200.
		Tier 3 (up to 600 option classes): $3,200.
		Tier 4 (up to 800 option classes): $4,200.
		Tier 5 (up to 1,000 option classes): $5,200.
		Tier 6 (up to 1,200 option classes): $6,200.
		Tier 7 (all option classes): $7,200.
	Remote Market Maker Organization permit fees	Tier 1 (less than 100 option classes): $5,500.
		Tier 2 (more than 100 and less than 999 option classes): $8,000.
		Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC (''Nasdaq ISE'') [27].	Access Fees	Primary Market Maker: $5,000 per membership.
		Competitive Market Maker: $2,500 per membership.
Cboe C2 Exchange, Inc. (''Cboe C2'') [28].	Access Permit Fees	Market Makers: $5,000.
		Electronic Access Permits: $1,000.

[22] *See supra* note 11.

[23] *See* the MIAX Fee Schedule, Section (3)(b); MIAX Emerald Fee Schedule, Section (3)(b).

Implementation

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [29] in general, and furthers the objectives of Section 6(b)(4) of the Act [30] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons because, in order to attract order flow when the Exchange first launched operations, the Exchange established the Monthly Volume Credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[31] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[32] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange and its affiliates, MIAX and MIAX Emerald, to establish or increase other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

The Proposed Access Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees are reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems the Trading Permit fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements.

In its Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [33] The Commission Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [34] In its Guidance, the Commission staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.'' [35] The Exchange does not assert that the Proposed Access Fees are constrained by competitive forces. Rather, the Exchange asserts that the Proposed Access Fees are reasonable because they will permit recovery of the Exchange's costs in providing access via Trading Permits and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [36] The Commission Staff further states in the Guidance that ''the SRO should provide

[24] NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p. 1.

[25] NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24.

[26] Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees.

[27] Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services.

[28] Cboe C2 Fee Schedule, Access Fees.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4) and (5).

[31] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[33] *See id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [37] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the Proposed Access Fees are reasonable and do not result in a ''supra-competitive'' [38] profit. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees. As a result of this analysis, the Exchange believes the Proposed Access Fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering Trading Permit access to the Exchange.

The Proposed Access Fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide the services associated with Trading Permits, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of Trading Permits) to estimate such costs,[39] as well as the relative costs of providing and maintaining Trading Permits, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining the services associated with Trading Permits because of the uncertainty of forecasting subscriber decision making with respect to firms' needs and the likely potential for increased costs to procure the third-party services described below.

To determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of access services associated with the Proposed Access Fees. This analysis included discussions with each Exchange department head to determine the expenses that support access services associated with the Proposed Access Fees. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services for the Proposed Access Fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice.

To determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing Trading Permits, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the majority of 2021 (other than July and August 2021), the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services. The Exchange notes that this is the same justification process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed and not suspended by the Commission when MIAX Emerald adopted trading permit fees.[40] As outlined in more detail below, the Exchange projects that the annualized expense for 2021 to provide the services associated with Trading Permits to be approximately $844,741 per annum or an average of $70,395 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021,

[37] *Id.*

[38] *Id.*

[39] For example, the Exchange only included the costs associated with providing and supporting the access services associated with the Proposed Access Fees and excluded from its cost calculations any cost not directly associated with providing and maintaining such services. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining the access services associated with the Proposed Access Fees.

[40] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Monthly Trading Permit Fees) (adopting tiered trading permit fee structure for Market Makers ranging from $7,000 to $22,000 per month and flat fee of $1,500 per month for EEMs).

prior to the Proposed Access Fees, Members and non-Members purchased a total of 48 Trading Permits, for which the Exchange charged a total of $15,500. This resulted in a loss of $54,895 for that month (a margin of −354%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 47 Trading Permits,[41] for which the Exchange charged a total of approximately $93,500 for that month. This resulted in a profit of $23,105 for that month, representing a profit margin of approximately 24%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 24% per-month.[42] The Exchange cautions that this profit margin may fluctuate from month to month based on the uncertainty of predicting how many Trading Permits may be purchased from month to month as Members and non-Members are able to add and drop permits at any time based on their own business decisions, which they frequently do. This profit margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[43]

The Exchange has been subject to price increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

As mentioned above, the Exchange projects that the annualized expense for 2021 to provide the services associated with the Proposed Access Fees to be approximately $844,741 per annum or an average of $70,395 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[44] The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide access services associated with the Proposed Access Fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue and cost recovery mechanisms: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[45] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading systems. To do so, the Exchange chose to waive the fees for some non-transaction related services or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[46] the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $844,741 or an average of $70,395 per month. The $844,741 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[47] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[48] The $844,741 in projected

[41] The Exchange notes that one Member dropped one Trading Permit between June 2021 and November 2021, as a result of the Proposed Access Fees.

[42] The Exchange notes that this profit margin differs from the First and Second Proposed Rule Changes because the Exchange now has the benefit of using a more recent billing cycle under the Proposed Access Fees (November 2021) and comparing it to a baseline month (June 2021) from before the Proposed Access Fees were in effect.

[43] *See* ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, *available at https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); *and* ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, *available at https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[44] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network.

[45] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

[46] The Exchange has not yet finalized its 2021 year end results.

[47] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[48] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the

total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $188,815. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[49] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to the providing access services in connection with the Proposed Access Fees. Only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 8% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[50]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster

Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[49] In fact, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. This fee increase by ICE data services, while not subject to Commission review, has a material impact on costs to exchanges and other market participants that provide downstream access to other market participants. The Exchange notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

[50] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 4% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[51]

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 3% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[52]

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[53]

Internal Expense Allocations

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $655,925. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

For clarity, and as stated above, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the access services in connection with the Proposed Access Fees. Only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, as part its ongoing assessment of costs and expenses (described above), the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $549,834, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being

[51] *Id.*

[52] *Id.*

[53] *Id.*

specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 6% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[54]

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $66,316, which is only a portion of the $1,326,325 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[55]

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $39,775, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 8% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[56]

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Based on the above, the Exchange believes that its provision of access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. As described above, the Exchange projects that the annualized expense for 2021 to provide the services associated with Trading Permit to be approximately $844,741 per annum or an average of $70,395 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 48 Trading Permits, for which the Exchange charged a total of $15,500. This resulted in a loss of $54,895 for that month (a margin of –354%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 47 Trading Permits,[57] for which the Exchange charged a total of approximately $93,500 for that month. This resulted in a profit of $23,105 for that month, representing a profit margin of approximately 24%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 24% per-month. The Exchange believes this modest profit margin will allow it to continue to recoup its expenses and continue to invest in its technology infrastructure. Therefore, the Exchange also believes that this proposed profit margin increase is reasonable because it represents a reasonable rate of return.

Again, the Exchange cautions that this profit margin may fluctuate from month to month based in the uncertainty of predicting how many Trading Permits may be purchased from month to month as Members and non-Members are free to add and drop permits at any time based on their own business decisions. This profit margin may also decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] The Exchange notes that one Member dropped one Trading Permit between June 2021 and November 2021, as a result of the Proposed Access Fees.

technology and systems.[58] Accordingly, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Proposed Tiered-Pricing Structure Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes the proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it launched operations for its Trading Permit fees. Moreover, the tiered pricing structure for Trading Permits is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. The proposed tiers of Trading Permit fees will continue to apply to all Members and non-Members in the same manner based upon the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl-listed options. Members and non-Members may choose to purchase more than the one Trading Permit based on their own business decisions and needs. All similarly situated Members and non-Members would be subject to the same fees. The fees do not depend on any distinction between Members and non-Members because they are solely determined by the individual Members' or non-Members' business needs and their impact on Exchange resources.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to access the Exchange and the amount of the fees are based on the number of Trading Permits utilized using the FIX and MEO Interfaces, in addition to the amount of volume conducted on the Exchange. The proposed tiered pricing structure should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV. The higher the volume, the greater pull on Exchange resources. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.[59]

There are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide access or their fee markup over those costs, and therefore cannot use other exchanges' membership and access fees as a benchmark to determine a reasonable markup over the costs of providing the services associated with the Proposed Access Fees. Nevertheless, the Exchange believes the other exchanges' membership and participation fees are a useful example of alternative approaches to providing and charging for similar types of access. To that end, the Exchange believes the proposed tiered-pricing structure for its

[58] *See supra* note 43.

[59] Over the period from April 2021 until September 2021, the Exchange processed 3.15 billion messages via the FIX interface (0.43% of total messages received). Over that same time period, the Exchange processed 731.4 billion messages (99.57% of total messages received) over the MEO interface. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. The Exchange has also seen significant inflationary pressure on capital items that it needs to purchase to maintain its technology. The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages.

Trading Permits is reasonable because the proposed highest tier is still less than or similar to fees charged for similar access provided by other options exchanges with comparable market shares. The below table further illustrates this comparison.

Exchange	Type of membership or trading permit fees	Monthly fee
MIAX Pearl (as proposed)	Trading Permit access via FIX Interface	Tier 1: $500. Tier 2: $1,000. Tier 3: $1,500.
	Trading Permit access via MEO Interface	Tier 1: $2,500. Tier 2: $4,000. Tier 3: $6,000.
NYSE Arca [60]	Options Trading Permits (''OTP'')	$6,000 for up to 175 option issues. Additional $5,000 for up to 350 option issues. Additional $4,000 for up to 1,000 option issues. Additional $3,000 for all option issues. Additional $1,000 for the 5th OTP and each OTP thereafter.
NYSE American [61]	ATP Trading Permits	$8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX [62]	Streaming Quote Trader permit fees	Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200.
	Remote Market Maker Organization permit fees	Tier 1 (less than 100 option classes): $5,500. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE [63]	Access Fees	Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe C2 [64]	Access Permit Fees	Market Makers: $5,000. Electronic Access Permits: $1,000.

In each of the above cases, the Exchange's highest tiered port fee, as proposed, is similar to or less than the port fees of competing options exchanges with like market share. Further, as described in more detail below, many competing exchanges generate higher overall operating profit margins and higher ''access fees'' than the Exchange, inclusive of the projected revenues associated with the proposed fees. The Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic system, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive access fees. Each of the membership, trading permit and participation fee rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

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.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for users that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange

[60] *See supra* note 24.
[61] *See supra* note 25.
[62] *See supra* note 26.
[63] *See supra* note 27.
[64] *See supra* note 28.

should continue to attract order flow and maintain market share.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large users that connect via the MEO Interface and broker-dealers that are members of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[65] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change[66] and no comment letters on the Second Proposed Rule Change. The SIG Letter cites Rule 700(b)(3) of the Commission's Rules of Fair Practice which places ''the burden to demonstrate that a proposed rule change is consistent with the Act on the self-regulatory organization that proposed the rule change'' and states that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.''[67] The SIG Letter's assertion that the Exchange has not met this burden is without merit, especially considering the overwhelming amounts of revenue and cost information the Exchange included in the First and Second Proposed Rule Changes and this filing.

Until recently, the Exchange has operated at a net annual loss since it launched operations in 2017.[68] As stated above, the Exchange believes that exchanges in setting fees of all types should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange believes it has achieved this standard in this filing and in the First and Second Proposed Rules Changes. Similar justifications for the proposed fee change included in the First and Second Proposed Rule Changes, but also in this filing, were previously included in similar fee changes filed by the Exchange and its affiliates, MIAX Emerald and MIAX, and SIG did not submit a comment letter on those filings.[69] Those filings were not suspended by the Commission and continue to remain in effect. The justification included in each of the prior filings was the result of numerous withdrawals and re-filings of the proposals to address comments received from Commission Staff over many months. The Exchange and its affiliates have worked diligently with Commission Staff on ensuring the justification included in past fee filings fully supported an assertion that those proposed fee changes were consistent with the Act.[70] The Exchange leveraged its past work with Commission Staff to ensure the justification provided herein and in the First and Second Proposed Rule Changes included the same level of detail (or more) as the prior fee changes that survived Commission scrutiny. The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings

[65] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited December 20, 2021).

[66] *See supra* note 7.

[67] 17 CFR 201.700(b)(3).

[68] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 29, 2021, *available at https://sec.report/Document/9999999997-21-004367/*.

[69] *See* Securities Exchange Act Release Nos. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers); 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers); *and* 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR–MIAX–2021–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers).

[70] *See, e.g.,* Securities Exchange Act Release No. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). *See* Securities Exchange Act Release Nos. 90601 (December 8, 2020), 85 FR 80864 (December 14, 2020) (SR–EMERALD–2020–18) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–11); *and* 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–18). The Exchange initially filed a proposal to remove the cap on the number of additional Limited Service MEO Ports available to Members on April 9, 2021. *See* SR–PEARL–2021–17. On April 22, 2021, the Exchange withdrew SR–PEARL–2021–17 and refiled that proposal (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's revenues, costs, and profitability any time more Limited Service MEO Ports become available, in general, (including information regarding the Exchange's methodology for determining the costs and revenues for additional Limited Service MEO Ports). *See* SR–PEARL–2021–20. On May 3, 2021, the Exchange withdrew SR–PEARL–2021–20 and refiled that proposal to further clarify its cost methodology. *See* SR–PEARL–2021–22. On May 10, 2021, the Exchange withdrew SR–PEARL–2021–22 and refiled that proposal as SR–PEARL–2021–23. *See* Securities Exchange Act Release No. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23).

that have been permitted to take effect without suspension.'' [71] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [72] Therefore, a finding by the Commission that the Exchange has not met its burden to show that the proposed fee change is consistent with the Act would be different than the Commission's treatment of similar past filings, would create further ambiguity regarding the standards exchange fee changes should satisfy, and is not warranted here.

In addition, the arguments in the SIG Letter do not support their claim that the Exchange has not met its burden to show the proposed rule change is consistent with the Act. Prior to and after submitting the First Proposed Rule Change, the Exchange solicited feedback from its Members, including SIG. SIG relayed their concerns regarding the proposed change. The Exchange then sought to work with SIG to address their concerns and gain a better understanding of the access/connectivity/quoting infrastructure of other exchanges. In response, SIG provided no substantive suggestions on how to amend the First Proposed Rule Change to address their concerns and instead chose to submit a comment letter. One could argue that SIG is using the comment letter process not to raise legitimate regulatory concerns regarding the proposal, but to inhibit or delay proposed fee changes by the Exchange. Nonetheless, the Exchange has further enhanced its cost and revenue analysis and data in this Third Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Among other things, these enhancements include providing baseline information in the form of data from the month before the Proposed Access Fees became effective.

MIAX Pearl Provided More Than Sufficient Justification for the Proposed Fees

The SIG Letter asserts that the Exchange provided ''no affirmative justifiable reason that its legacy fees are no longer sufficient.'' [73] This statement assumes that the previous fees were ''sufficient'' and does not state how the legacy fees might have been sufficient to cover the Exchange's expenses. As evidenced above, the previous fees were not sufficient to cover the costs the Exchange incurred in providing access to the Exchange. However, the previous fees were sufficient to attract order flow as the pricing was set to not discourage participation on the Exchange. The Exchange is relatively new as it only began operations in 2017.[74] Like other new exchange entrants, the Exchange chose to charge lower fees than other more established exchanges to attract order flow and increase membership.[75] The Exchange chose that approach by setting the price of its Trading Permits (as well as other access-type fees) below market rates. SIG's statement assumes that exchanges should charge at market rates that are sufficient to cover its costs. This statement ignores pricing incentives exchanges may offer to attract order flow and that exchanges, like many businesses including SIG, may make a business decision to price certain offerings at a loss or ''on sale'' as they build their business. Further, a vast majority of the Exchange's Members, if not all, benefited from these lower fees.

As a new entrant in the market, the Exchange chose to forgo any potential additional revenue that may have been generated by higher Trading Permit fees to encourage participation on the new platform. This served to attract participation on the Exchange so market participants could evaluate the Exchange's quality, technology and the quality of their overall customer/user experience. Setting higher rates for non-transaction fees could have served to dissuade market participants from trading on the Exchange and not experiencing the high quality technological system the Exchange built.

Nonetheless, the Exchange provided significant cost based justification for the proposed fees not only in this filing, but also in the First and Second Proposed Rule Changes. The SIG Letter conveniently ignores this fact. In fact, the level of disclosure by the Exchange provided in this filing and the First and Second Proposed Rule Changes has been worked on with Commission Staff over numerous past filings that have been published for comment and remain effect.[76] The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension.'' [77] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [78]

The Exchange believes the proposed fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange provided sufficient transparency into how the Exchange determined to charge such fees. Accordingly, the Exchange provided an analysis of its revenues, costs, and profitability associated with the proposed fees. This analysis included information regarding its methodology for determining the costs and revenues associated with the proposal.

To determine the Exchange's costs to provide the access services associated with the proposed fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually

[71] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021.

[72] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the Commission despite less disclosure and justification).

[73] *See* SIG Letter, *supra* note 7.

[74] *See* ''Miami International Holdings Receives Approval from SEC to Launch MIAX PEARL; Targets February 6, 2017 Launch'' (December 14, 2016) *available at https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_12142016.pdf* (last visited October 18, 2021) (stating that the Exchange ''plans to launch with an initial moratorium on most non-transaction fees.'').

[75] *See, e.g.,* ''Members Exchange Unveils Transaction Pricing'' (September 10, 2020), *available at https://www.businesswire.com/news/home/20200910005183/en/Members-Exchange-Unveils-Transaction-Pricing* (last visited October 18, 2021) (quoting Jonathan Kellner, CEO of Members Exchange, ''[t]o further incentivize participants to connect to a new destination, we are implementing initial pricing that generates a net loss for the exchange on each transaction. We are confident that as participants experience the benefits of our platform, they will continue to incorporate MEMX in their routing strategies.''); *and* ''Miami International Holdings Announces Fully Subscribed Strategic Equity Rights Transaction with Leading Equities Firms to Trade on MIAX PEARL Equities Trading to Begin September 25, 2020'' *available at https://www.miaxoptions.com/sites/default/files/press_release-files/Press_Release_09142020.pdf* (last visited October 18, 2021) (quoting Douglas M. Schafer, Jr., Executive Vice President and Chief Information Officer of MIH, MIAX PEARL Equities, ''[w]e are excited to be offering a simpler, transparent, low cost venue to market participants and have no doubt that MIAX PEARL Equities will become a competitive alternative venue following our launch on September 25th.'').

[76] *See supra* note 70.

[77] *See supra* note 71.

[78] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the Commission despite less disclosure and justification).

supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the proposed fees.

Furthermore, the Exchange is beginning to see significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems.[79] The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

The Proposed Fee Increases are not Part of a Discriminatory Fee Structure and Tiered Fee Structures are Commonplace Amongst Exchanges

The SIG Letter correctly notes that the proposed Trading Permit fees are higher for Members who connect through the MEO Interface than for Members who connect through the FIX Interface. Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

The SIG Letter asserts that the Exchange ''provides no description of the 'capacity and resources' being utilized, and no information on the nature or extent of the disparity in such utilization between the two Interface types.'' As a MEO user, SIG is uniquely positioned to understand and appreciate the differences between the MEO and FIX interfaces and why rates for the MEO interface are justifiably higher. Nonetheless, the Exchange is providing the below additional data to address the statements made in the SIG Letter.

Orders on the Exchange are supplied by Members via two different interfaces, FIX and MEO. MEO is the Exchange's proprietary binary order interface. Over the period from April 2021 until September 2021, 3.15 billion messages were processed via the FIX interface (0.43% of total messages received). Over that same time period, 731.4 billion messages (99.57% of total messages received) were processed over the MEO interface. Also, the MEO interface allows for mass purging of orders which has a significant impact on the number of messages processed. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. As noted above, the Exchange has seen significant inflationary pressure on capital items that it needs to purchase to maintain its technology.[80] The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages.

SIG is also uniquely positioned to know that the fee structure utilized by the Exchange, which charges different Trading Permit fees for MEO interface users than FIX interface users is not a new proposal. In fact, it was first adopted by the Exchange over 3½ years ago in March 2018, published by the Commission and received no comment letters, not even by SIG.[81] SIG claims a fee structure that they have been subject to for years as an MEO interface user is just now unfairly discriminatory.

The Proposed Fees Are in Line With, or Cheaper Than, the Trading Permit Fees or Similar Membership/Access Fees Charged by Other Options Exchanges

The Exchange correctly asserts herein and in the Initial Proposed Fee Change that it's proposed Trading Permit fees ''are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.'' The SIG letter challenges this assertion is an ''apples to oranges'' comparison because NYSE American and NYSE Arca based their rates on the number of options issued to the member and not trading volume, like the exchange does. In fact, the number of options traded by a member of NYSE American or NYSE Arca is an appropriate proxy for trading volume as the more options issued to the member would result in higher volumes traded by that member. Firms that trade more liquid options generate increased message traffic and greater pull on exchange resources. Therefore, comparing options traded to trading volume is an ''apples to apples'' comparison.

The Exchange proposes a range of fees from $500 to $6,000 per month depending on trading volume and the type of interface that is utilized by the Member. These rates are undoubtedly similar to or lower than the rates charged by NYSE Arca and NYSE American. As of December 20, 2021, the Exchange maintained a market share of approximately 4.03%.[82] Among Exchanges with similar market share, the Exchange's proposed Trading Permit Fees remain similar to or lower than fees charged by other options exchanges with comparable market share for access/membership fees.[83] The proposed rates are also lower than those of its affiliates, MIAX and MIAX Emerald, which remain in effect today.[84]

The SIG Letter states that ''[the Exchange] offers no information about the capacity and resource costs of access to the other exchanges or any other basis to support the reasonability of those fees, let alone compare such costs to those of MIAX Pearl.'' [85] This statement is misleading as SIG should be aware that the Exchange does not have access to this information and when it asked SIG to assist the Exchange in better

[79] *See* ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, *available at https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); *and* ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, *available at https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[80] *See id.*

[81] *See supra* note 11.

[82] *See supra* note 65.

[83] *See supra* notes 24, 25, 26, 27 and 28, and accompanying table. The below market share numbers are as of December 20, 2021. *Id.* Cboe C2 had a market share of 3.72% and charges a monthly Access Fee of $5,000 for market makers and $1,000 per month for an additional Electronic Access Permit regardless of trading volume or options traded. *See supra* note 28. Nasdaq ISE had a market share of 6.95% and charges a monthly Access Fee to Primary Market Makers of $5,000 and Competitive Market Maker of $2,500 regardless of trading volume or options traded. *See supra* note 27.

[84] *See* MIAX Fee Schedule, Section 3)b); MIAX Emerald Fee Schedule, Section 3)b).

[85] *See* SIG Letter, *supra* note 7.

understanding the access structure of other exchanges, SIG refused.

The SIG Letter further asserts that the Exchange ''has not established that the other exchange fees are reasonable, nor that this would mean that the MIAX Pearl fees are reasonable as well.[86] SIG should be aware that it is not the Exchange's obligation to justify why another exchange's fees are reasonable and it is presumed that such fees were deemed reasonable by the Commission when filed by the exchange that proposed said fee. If SIG felt another exchange's fees were or are unreasonable, they are free to share that concern with the Commission and were provided an opportunity to submit comment letter on those earlier proposals from other exchanges. It is the Exchange's responsibility to show that its own proposed fee change is reasonable and consistent with the Act, and that assertion is amply supported by the statements made in this Item 5 and elsewhere herein.

The Proposed Fees Are Consistent With Section 6(b)(4) of the Act Because the Proposed Fees Will Not Result in Excessive Pricing or Supra-Competitive Profit

The Exchange has provided ample data that the proposed fees would not result in excessive pricing or a supra-competitive profit. In this Third Proposed Rule Change, the Exchange no longer utilizes a comparison of its profit margin to that of other options exchanges as a basis that the Proposed Access Fees are reasonable. Rather, the Exchange has enhanced its cost and revenue analysis and data in this Third Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Therefore, the Exchange believes it is no longer necessary to respond to this portion of the SIG Letter.

Recoupment of Exchange Infrastructure Costs

Nowhere in this proposal or in the First Proposed Rule Change did the Exchange assert that it benefits competition to allow a new exchange entrant to recoup their infrastructure costs. Rather, the Exchange asserts above that its ''proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.'' The Exchange no longer makes this assertion in this filing and, therefore, does not believe is it necessary to respond to SIG's assertion here.

[86] *See id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[87] and Rule 19b–4(f)(2) [88] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–59 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–PEARL–2021–59. 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 (*https://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–PEARL–2021–59 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[89]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00158 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

[87] 15 U.S.C. 78s(b)(3)(A)(ii).

[88] 17 CFR 240.19b–4(f)(2).

[89] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93896; File No. SR–BX–2021–054]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Add Liquidity Order and Post-Only Quote Configuration Functionality

January 4, 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 December 22, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 1 (Days and Hours of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Business), Section 7 (Types of Orders and Quote Protocols), Section 13 (Price Improvement Auction (''PRISM'')) and Section 15 (Risk Protections).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the following rules: Options 3, Section 1 (Days and Hours of Business), Section 7 (Types of Orders and Quote Protocols), Section 13 (Price Improvement Auction (''PRISM'')) and Section 15 (Risk Protections). Each change will be described below.

Options 3, Section 1

The Exchange proposes to amend Options 3, Section 1 concerning the Days and Hours of Business. The Exchange proposes to amend the title from ''Days and Hours of Business'' to ''Hours of Business.'' BX recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[3] At this time the Exchange proposes to amend Options 3, Section 1(c) which provides, ''BX Options shall not be open for business on any holiday observed by BX.'' The Exchange proposes to instead provide, ''BX Options shall not be open for business as provided within General 3, Section 1030.'' This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. Finally, the Exchange proposes to update citations to the Options 4 rules related to Exchange-Traded Fund Shares and Index-Linked Securities.

Options 3, Section 7

The Exchange proposes to amend Options 3, Section 7 to add a new order type entitled ''Add Liquidity Order'' within Options 3, Section 7(a)(12). Today, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') have a similar order type within Options 3, Section 7(n). ISE adopted the Add Liquidity Order to provide an additional order type that will give market participants greater control over the circumstances in which their orders are executed.[4] ISE's 2012 rule change explained that

> [s]ome investors and market participants wish only to provide liquidity in certain circumstances, such as to receive a maker fee (rebate) upon execution of an order. To accommodate this strategy, the Exchange proposed to adopt a new order type called an add liquidity order (''ALO''). ALOs are limit orders that will only be executed as a ''maker'' on the ISE. Members can choose whether an ALO that is executable on the ISE upon entry (or that locks or crosses an away market upon entry) will be cancelled or re-priced to one minimum price variation above the national best bid or below the national best offer. An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price.[5]

ISE subsequently amended this order type in 2012 such that, if at the time of entry, an ALO would lock or cross one or more non-displayed orders on the Exchange, the ALO will be cancelled or re-priced to the minimum price variation[6] (''MPV'') above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders).[7] ISE noted in that filing that it believed that adding this functionality was imperative to ensure that ALOs are only executed when providing liquidity. Without the ability to re-price an ALO that locks or crosses a non-displayed order, under certain circumstances, an incoming ALO could execute against a non-displayed order resting on the ISE limit order book, which would be in direct contravention with the purpose of an ALO—to provide liquidity, not take liquidity.[8]

At this time, the Exchange proposes to adopt an Add Liquidity Order similar to ISE, GEMX and MRX Options 3, Section 7(n). The proposed Add Liquidity Order would be a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. Participants would be able to specify whether an Add Liquidity Order shall be cancelled or re-priced to the MPV above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity Order would lock or cross one or more non-displayed orders or quotes on the Exchange, the Add Liquidity Order shall be cancelled or re-priced to the MPV above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). Notwithstanding the aforementioned, if an Add Liquidity Order would not lock or cross an order or quote on the System but would lock or cross the NBBO,[9] the order will be handled pursuant to Options 3, Section 5(d).[10] This repricing of Add Liquidity Orders is the way other order types are currently re-priced on ISE, GEMX and

[3] *See* Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR–NASDAQ–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). BX's General 3 rules incorporate by reference The Nasdaq Stock Market LLC's General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[4] *See* Securities Exchange Act Release No. 66617 (March 19, 2012), 77 FR 17102 (March 23, 2012) (SR–ISE–2012–20) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Order Type).

[5] *Id* at 17103.

[6] *See* Options 3, Section 3 (Minimum Increments).

[7] *See* Securities Exchange Act Release No. 67353 (July 5, 2012), 77 FR 40935 (July 11, 2012) (SR–ISE–2012–61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange To Amend ISE Rule 715 To Reflect a Modification in the Functionality of the Add Liquidity Order).

[8] *Id* at 40935.

[9] The term ''NBBO'' means the national best bid or offer as calculated by BX Options based on market information received by BX Options from OPRA. *See* Options 3, Section 1(a)(33).

[10] Options 3, Section 5(d) provides, ''An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

MRX. The Exchange notes that the same sentence does not appear in the ISE, GEMX and MRX Add Liquidity Order description.[11]

Finally, BX proposes to add rule text that is not currently in the ISE, GEMX and MRX rule. Add Liquidity Orders may only be submitted when an options series is open for trading.[12] Therefore, an Add Liquidity Order would not be accepted during the Opening Process when the order book is not available.

The Exchange believes that, similar to ISE, GEMX and MRX, the adoption of an Add Liquidity Order will give market participants greater control over the circumstances in which their orders are executed in addition to the order types which are currently offered today on BX. Below are some examples of the Add Liquidity Order.

Add Liquidity Only Order Re-Price Example

- Non-Penny Program MPV Option in open trading state
- Market Maker A quote $0.90 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Firm A sends Add Liquidity Only Order to buy 5 arrives at $1.00
  - Reprices on book to $0.95
  - Displays on $0.95 bid, which is National Best displayed bid with 5 quantity
- Order to sell 10 arrives at $0.90
  - 5 execute with Firm A @ $0.95
  - 5 execute with Market A @ $0.90
  - NBBO updates back to $0.90 × $1.00

Add Liquidity Only Reject Example

- Non-Penny Program MPV Option in open trading state
- Market Maker A quote $0.90 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Firm A sends Add Liquidity Only Order to buy 5 arrives at $1.00
  - Order is rejected back to sender because the sender configured the order for reject instead of re-price

The Exchange also proposes to amend Options 3, Section 7(a)(11) to remove the title ''Block Order'' at the beginning of the sentence to conform the style of the description to the remaining order types within Options 3, Section 7.

Options 3, Section 13

The Exchange proposes to amend the Exchange's PRISM rule in Options 3, Section 13 to delete an obsolete auction eligibility requirement and clarify existing rule text.

Today, Options 3, Section 13(i) describes the various eligibility criteria under which a PRISM auction may be initiated, including requirements for when PRISM orders may be submitted. In particular, Section 13(i)(F) provides that PRISM orders submitted during the final two seconds of the trading session in the affected series are not eligible to initiate a PRISM auction and will be immediately cancelled. This restriction was introduced when PRISM was first adopted on the Exchange,[13] and was based on certain technical restraints from BX's original technical design which required no ongoing auctions to begin preparing for the end of trading day transition to closing state. However, with the Exchange's recent technology migration,[14] this system restriction was removed in order to be more consistent with the price improvement mechanisms on the Exchange's affiliated options markets, Nasdaq ISE, GEMX, and MRX.[15] The corresponding rule text in Options 3, Section 13(i)(F) should have likewise been deleted with the legacy functionality. Accordingly, the Exchange now proposes to delete the obsolete rule text in Section 13(i)(F) in its entirety, and renumber Section 13(i)(G) as (F).

Additionally, the Exchange proposes to amend rule text regarding the PRISM Auction process. Currently, Options 3, Section 13(ii) describes the manner in which a PRISM auction may be conducted. Specifically, with respect to an unrelated market or marketable limit order, Options 3, Section 13(a)(ii)(D) provides,

> An unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the auction ends, they will be considered for participation in the order allocation process described in sub-paragraphs (E) and (F) below.

The term ''marketable limit order'' is too narrow a term as both orders and quotes on the opposite side of the market from the PRISM Order received during the PRISM auction would not cause the PRISM auction to end early and will execute against interest outside of the PRISM auction. Therefore, the Exchange proposes to replace the term ''marketable limit order'' with the broader term ''marketable interest'' to accurately describe the interest a PRISM auction would interact with in the order book on the opposite side of the market from the PRISM Order. The Exchange believes that this amendment will bring greater clarity to the PRISM rule. The proposed new rule text would provide,

> Unrelated market or marketable interest (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated interest at the time the auction ends, they will be considered for participation in the order allocation process described in sub-paragraphs (E) and (F) below.

The Exchange notes that Nasdaq PHLX LLC's Price Improvement XL (''PIXL'') auction does not early terminate from contra-side unrelated marketable interest.[16]

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15, Risk Protections, to adopt an optional quoting protection for BX Market Makers. This optional risk protection would allow BX Market Makers to prevent their quotes from removing liquidity from the Exchange's order book upon entry.

Specifically, the Exchange proposes to adopt a new risk protection within Options 3, Section 15(c)(3). With this risk protection, NOM Market Makers may elect to configure their SQF [17] protocols to prevent their quotes from

[11] *See* ISE, GEMX and MRX Options 3, Section 5(d). The Exchange will amend the ISE, GEMX and MRX rules in separate rule changes.

[12] ISE, GEMX and MRX will propose a change to Options 3, Section 7(n) to add similar rule text.

[13] *See* Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt a New Price Improvement Auction, BX PRISM).

[14] *See* Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (SR–BX–2020–017) (August 10, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Rules in Connection With a Technology Migration).

[15] None of these markets have similar system restrictions preventing the submission of orders in their respective price improvement mechanisms during the last two seconds of the trading day. *See* Nasdaq ISE, GEMX, and MRX Options 3, Section 13.

[16] *See* Phlx Options 3, Section 13(b)(4). The Exchange will separately amend Phlx's rule to make a similar change to the rule text.

[17] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(e)(1)(B).

removing liquidity (''Post-Only Quote Configuration''). This Post-Only Quote Configuration would re-price or cancel a BX Market Maker's quote that would otherwise lock or cross any resting order [18] or quote on the BX order book upon entry. The Exchange notes that this functionality does not apply during an Opening Process [19] because the order book is established once options series are open for trading.

Participants may elect whether to re-price or cancel their quotes with this functionality. When configured for re-price, quotes would be re-priced to one MPV below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one MPV below the current low offer (for bids) or above the current best bid (for offers). Notwithstanding the aforementioned, if a quote with a Post-Only Quote Configuration would not lock or cross an order or quote on the System but would lock or cross the NBBO, the quote will be handled pursuant to Options 3, Section 4(b)(6).[20] When configured for cancel, Participants will have their quotes returned whenever the quote would lock or cross the NBBO or be placed on the book at a price other than its limit price.

This optional risk protection would enable BX Market Makers to better manage their risk when quoting on BX. Today, BOX Exchange LLC (''BOX''),[21] NYSE Arca, Inc. (''NYSE Arca''),[22] and MIAX Emerald, LLC (''MIAX Emerald'')[23] have similar functionality. BOX does not permit Market Maker's quotes to take liquidity and will reject the quote. Other options markets, unlike BOX, continue to permit their market makers to add or remove liquidity from the order book.[24] NYSE Arca and MIAX Emerald will re-price quotes one MPV to avoid the quote from trading as a liquidity taker against the resting order similar to BX's proposal. Also, the Exchange's proposal permits a BX Market Maker a choice as to whether to cancel or re-price its quote when using the Post-Only Quote Configuration.

Finally, the Nasdaq Options Market LLC (''NOM'') recently codified [25] a similar risk protection, however, unlike BX, NOM reprices $.01 below the current low offer (for bids) or above the current best bid (for offers) and displays the quote at one MPV below the current low offer (for bids) or above the current best bid (for offers). The Exchange notes that, unlike BX, NOM does not offer auction functionality. Because an auction mechanism may interact adversely with Add Liquidity Only Orders or quotes with a Post-Only Quote Configuration that are re-priced in $0.01 increments and displayed at MPV increments, the Exchange proposes to re-price at one MPV.[26] BX has the PRISM auction.[27] The Exchange believes that it is consistent with the protection of investors and the general public to utilize one MPV to re-price an Add Liquidity Only Order or quote with a Post-Only Quote Configuration to avoid a PRISM auction rejecting against a non-displayed Add Liquidity Only Order or quote with a Post-Only Quote Configuration. The Exchange notes that a similar result could not be obtained on NOM as there are no auctions. The Add Liquidity Order on ISE, GEMX and MRX [28] also re-prices in one MPV as those markets have a price improvement auction.[29]

Further, with the adoption of Add Liquidity Orders as proposed herein within Options 3, Section 7, all BX Participants may utilize the Add Liquidity Order. The Post-Only Quote Configuration is available to Market Makers only as a risk protection.

Below are some examples of the Post-Only Quote Configuration functionality.

Post-Only Quote Configuration Reprice Example

- Penny Interval Program MPV in open trading state
- Market Makers A and C do not have Post-Only Quote Configuration risk protection configured
- Market Maker B is configured for Post-Only Quote Configuration re-price
- Market Maker A quote $0.98 (10) × $1.00 (10)
- ABBO $0.96 × $1.03
- Market Maker B quote $1.00 (10) × $1.01 (10) arrives
  - Bid side of quote re-prices onto order book @ 0.99 and updates displayed NBBO to 20 quantity
  - Offer side rests at 1.01 without issue
- Market Maker C quote $0.97 (20) × 0.98 (20) arrives

Trades 10 with Market Maker A and 10 with Market Maker B

Market Maker B avoids taking liquidity while Market Maker C, who chose not to be configured for such, removes liquidity by interacting with re-priced interest on BX's order book.

Re-Priced Post-Only Quote Configuration—Penny Interval Program Display and Execution Example—Non-Penny Interval Program (Options 3, Section 7(a)(9))

- Non-Penny Interval Program MPV in open trading state
- Market Maker A quote $0.95 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Market Maker B (configured at the badge level for Post-Only Quote Configuration and selection of re-price upon quote) quote arrives 1.00 (5) × $1.05 (5)
  - Bid side quote re-prices on order book to $0.95
  - Displays on order book @ $0.95 (bid), which now shows (15 quantity)
  - Offer side quote books and displays at $1.05
- Order to sell 10 contracts arrives @ $0.95
  - 5 contracts execute with Market Maker B @ $0.95
  - 5 contracts execute with Market A @ $0.95

[18] This would include any re-priced orders as described in Options 3, Section 5(d), any re-priced quotes as described in Options 3, Section 4(b)(6), and the proposed Add Liquidity Orders within proposed Options 3, Section 7(a)(12). As noted herein, Add Liquidity Orders may re-price.

[19] The Exchange's Opening Process is described at Options 3, Section 8.

[20] Options 3, Section 4(b)(6) provides, ''A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

[21] BOX Rules provide, ''Notwithstanding Rule 100(a)(56), all quotes and quote updates on BOX after the opening are liquidity adding only. Specifically, after the Opening Match pursuant to Rule 7070, a Market Maker's quote will not execute against a resting order or quote on the BOX Book. If an incoming quote is marketable against the BOX Book and will execute against a resting order or quote, it will be rejected.'' *See* BOX IM–8050–3. *See also* Securities Exchange Act Release No. 79311 (November 15, 2016), 81 FR 83322 (November 21, 2016) (SR–BOX–2016–45) (Order Approving a Proposed Rule Change To Amend the Treatment of Quotes To Provide That All Quotes on BOX Are Liquidity Adding Only).

[22] NYSE Arca permits a market maker to optionally designate a quote as ''Add Liquidity Only.'' *See* NYSE Arca Rule 6.37A–O(a)(3)(B).

[23] *See* MIAX Emerald Rule 517(a)(1)(i).

[24] Miami International Securities Exchange LLC (''MIAX'') permits its market makers to add and remove liquidity from the order book. *See* MIAX's Fee Schedule which delineates Maker and Taker pricing. Nasdaq ISE, LLC (''ISE'') also permits market makers to add and remove liquidity from the order book. *See* ISE's Pricing Schedule at Options 7.

[25] *See* Securities and Exchange Release No. 93662 (November 23, 2021), 86 FR 68009 (November 30, 2021) (SR–NASDAQ–2021–094) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Post-Only Quote Configuration Risk Protection).

[26] For example, the inbound auction would reject against the non-displayed Add Liquidity Only Order or quote with a Post-Only Quote Configuration with an auction mechanism.

[27] *See* Options 3, Section 13.

[28] *See* Options 3, Section 7(n).

[29] *Id.*

In this example, the Market Maker avoided taking liquidity by deploying the Post-Only Quote Configuration with re-price.

Implementation

The Exchange will issue an Options Trader Alert to Participants with the date of implementation for the Add Liquidity Order and the Post-Only Quote Configuration functionality.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[30] in general, and furthers the objectives of Section 6(b)(5) of the Act,[31] 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.

Options 3, Section 1

The Exchange's proposal to amend Options 3, Section 1 concerning the Days and Hours of Business is consistent with the Act. The proposal to amend the title from ''Days and Hours of Business'' to ''Hours of Business'' will bring greater clarity to the rule. BX recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[32] Amending Options 3, Section 1(c) to reference General 3, Section 1030 will provide Participants with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. The proposed updated citations to the Options 4 rules will provide correct references for Participants and thereby bring greater clarity to the rules.

Options 3, Section 7

The Exchange's proposal to amend Options 3, Section 7 to add a new order type entitled ''Add Liquidity Order'' within Options 3, Section 7(a)(12) is consistent with the Act. Today, ISE, GEMX and MRX have a similar order type within Options 3, Section 7(n). The Add Liquidity Order will provide an additional order type that will give market participants greater control over the circumstances in which their orders are executed. For investors and market participants that elect only to provide liquidity in certain circumstances, such as to receive a maker fee (rebate) upon execution of an order, the proposed order type will accommodate this strategy. Add Liquidity Orders will only be executed as a ''maker'' if elected.

Participants may choose to cancel or re-price Add Liquidity Orders if, at the time of entry, the order is executable on BX or the order is not executable on BX but would lock or cross the national best bid or offer. Allowing Add Liquidity Order to re-price ensures that Add Liquidity Orders are only executed when providing liquidity and avoid executing against a non-displayed order or quote resting on BX's order book, which would be in direct contravention with the purpose of the order type—to provide liquidity, not take liquidity. The Add Liquidity Order type is one of the order types that Participants may elect to utilize on BX to accomplish their trading strategies. The Exchange believes that adoption of the Add Liquidity Order will protect investors and the general public by making clear the manner in which the order would re-price on BX's order book if re-price is elected, that is to the MPV above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). As is the case today, if an order would not lock or cross an order or quote on the System but would lock or cross the NBBO, the order will be handled pursuant to Options 3, Section 5(d).

Add Liquidity Orders may only be submitted when an options series is open for trading.[33] Therefore, an Add Liquidity Order would not be accepted during the Opening Process as the order book is not available. The Exchange believes that similar to ISE, GEMX and MRX, the adoption of an Add Liquidity Order will give market participants greater control over the circumstances in which their orders are executed in addition to the order types which are currently offered today on BX.

The Exchange's proposal to amend Options 3, Section 7(a)(11) to remove the title ''Block Order'' at the beginning of the sentence will conform the style of the description to the remaining order types within Options 3, Section 7.

Options 3, Section 13

With respect to amendments to Options 3, Section 13, first, the proposed rule change deletes a PRISM auction eligibility requirement that restricts PRISM orders from being submitted during the final two seconds of the trading day. As discussed above, this system restriction is legacy functionality that was removed as part of the Exchange's technology migration in 2020. The Exchange is therefore proposing to remove the corresponding rule text in Options 3, Section 13(i)(F) as obsolete. The Exchange believes that the proposed changes will align the PRISM rule with the current operation of the Exchange's system and will reduce potential confusion about when PRISM orders may be submitted. As noted above, the Exchange's affiliated options markets, Nasdaq ISE, GEMX, and MRX, do not have similar system restrictions for their respective price improvement mechanisms.[34] Furthermore, the Exchange believes that removing this system restriction may encourage greater participation in PRISM as Participants are no longer restricted from submitting PRISM orders during the last two seconds of the trading day, thereby increasing the opportunity for options orders to receive executions and price improvement on the Exchange.

Second, the proposed rule change amends Options 3, Section 13(a)(ii)(D) which describes the manner in which a PRISM auction may be conducted. As noted herein, the term ''marketable limit order'' is too narrow a term as both orders and quotes on the opposite side of the market from the PRISM Order received during the PRISM auction would not cause the PRISM auction to end early and execute against interest outside of the PRISM auction. Amending Options 3, Section 13(a)(ii)(D) to replace the term ''marketable limit order'' with the broader term ''marketable interest'' will more accurately describe the way a PRISM auction would interact with interest in the order book on the opposite side of the market from the PRISM Order. The Exchange believes that this amendment is consistent with the Act as it will bring greater clarity to the PRISM rule.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to codify new paragraph (c)(3) to permit BX Market Makers to prevent their quotes from removing liquidity from the Exchange's order book promotes equitable principles of trade and protects investors and the public interest by enhancing the risk protections available to BX Market Makers. The proposal also promotes the policy goals of the Commission which has encouraged execution venues, exchanges, and non-exchanges alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* note 3 above.

[33] ISE, GEMX and MRX will propose a change to Options 3, Section 7(n) to add similar rule text.

[34] *See* note 15 above.

While BX Market Makers may manage their risk by utilizing the Post-Only Quote Configuration to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on the BX order book upon entry, there are also downstream benefits to market participants. Re-priced interest on the order book provides price improvement for market participants that interact with that non-displayed interest that is priced better than the NBBO. For example, the proposed Add Liquidity Order may re-price to the MPV above the national best bid price (for sell orders) or below the national best offer price (for buy orders) resulting in better-priced non-displayed interest that is available on the order book. Market participants are entitled to the better-priced interest when they interact with the re-priced Add Liquidity Order on the order book. Additionally, the benefits of enhanced risk protections flow downstream to counterparties both within and away from the Exchange, thereby increasing systemic protections as well.

The proposed risk protection allows BX Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on BX's order book upon entry, thereby protecting investors and the general public as BX Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. BX Market Makers would utilize the proposed risk protection to avoid unexpectedly taking liquidity with non-displayed, non-transparent interest [35] on the order book. As a result of taking liquidity, BX Market Makers would incur a taker fee that may impact the BX Market Maker's ability to provide liquidity and meet quoting obligations. BX Market Makers are required to add liquidity on NOM and, in turn, are rewarded with lower pricing [36] and enhanced allocations.[37] Specifically, the risk protection would permit BX Market Makers to add liquidity only and avoid removing non-displayed interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to BX by allowing BX Market Makers to provide as much liquidity as possible, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. There is no impact to other market participants by introducing this Post-Only Quote Configuration as other non-Market Makers may utilize the proposed Add Liquidity Only order type that will continue to benefit downstream counterparties, both within and away from the Exchange, who may interact with non-displayed interest on BX's order book and thereby interact with order flow that is priced better than the NBBO. Also, other market participants may interact with the liquidity provided by BX Market Makers.

This optional risk protection enables BX Market Makers to better manage their risk when quoting on BX. Today, BOX,[38] NYSE Arca,[39] MIAX Emerald [40] and NOM [41] have similar functionality. BOX does not permit Market Maker's quotes to take liquidity and will reject the quote. Other options markets, unlike BOX, continue to permit their market makers to add or remove liquidity from the order book.[42] NYSE Arca and MIAX Emerald will re-price quotes one MPV to avoid the quote from trading as a liquidity taker against the resting order similar to BX's proposal. Also, the Exchange's proposal permits a BX Market Maker a choice as to whether to cancel or re-price its quote when using the Post-Only Quote Configuration.

Finally, NOM recently codified [43] a similar risk protection, however, unlike BX which re-prices in MPVs, NOM reprices $.01 below the current low offer (for bids) or above the current best bid (for offers) and displays the quote at one MPV below the current low offer (for bids) or above the current best bid (for offers). The Exchange notes that, unlike BX, NOM does not offer auction functionality. Because an auction mechanism may interact adversely with Add Liquidity Only Orders or quotes with a Post-Only Quote Configuration that are re-priced in $0.01 increments and displayed at MPV increments, the Exchange proposes to re-price at one MPV.[44] BX has the PRISM auction.[45] The Exchange believes that it is consistent with the protection of investors and the general public to utilize one MPV to re-price an Add Liquidity Only Order or quote with a Post-Only Quote Configuration to avoid a PRISM auction rejecting against a non-displayed Add Liquidity Only Order or quote with a Post-Only Quote Configuration. The Exchange notes that a similar result could not be obtained on NOM as it has no auctions. The Add Liquidity Order on ISE, GEMX and MRX [46] also re-prices in one MPV as those markets have a price improvement auction.[47]

Further, with the adoption of Add Liquidity Orders as proposed herein within Options 3, Section 7, all BX Participants may utilize the Add Liquidity Order. The Post-Only Quote Configuration is available to Market Makers only as a risk protection.

Unlike other market participants, BX Market Makers have certain obligations on the market. BX Market Makers are required to provide continuous two-sided quotes on a daily basis [48] and are subject to various obligations associated with providing liquidity on the market.[49] BX Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Options 3, Section 15 to allow them to manage their risk more effectively.[50] The proposed Post-Only Quote Configuration is another risk protection afforded to BX Market Makers to assist them in managing their risk while continuing to comply with their obligations. The Exchange notes that

[35] *See* note 18 above.

[36] *See* Options 7, Section 2.

[37] *See* Options 3, Section 10.

[38] BOX Rules provide, ''Notwithstanding Rule 100(a)(56), all quotes and quote updates on BOX after the opening are liquidity adding only. Specifically, after the Opening Match pursuant to Rule 7070, a Market Maker's quote will not execute against a resting order or quote on the BOX Book. If an incoming quote is marketable against the BOX Book and will execute against a resting order or quote, it will be rejected.'' *See* BOX IM–8050–3. *See also* Securities Exchange Act Release No. 79311 (November 15, 2016), 81 FR 83322 (November 21, 2016) (SR–BOX–2016–45) (Order Approving a Proposed Rule Change To Amend the Treatment of Quotes To Provide That All Quotes on BOX Are Liquidity Adding Only).

[39] NYSE Arca permits a market maker to optionally designate a quote as ''Add Liquidity Only.'' *See* NYSE Arca Rule 6.37A–O(a)(3)(B).

[40] *See* MIAX Emerald Rule 517(a)(1)(i).

[41] *See* Securities and Exchange Release No. 93662 (November 23, 2021), 86 FR 68009 (November 30, 2021) (SR–NASDAQ–2021–094) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Post-Only Quote Configuration Risk Protection).

[42] Miami International Securities Exchange LLC (''MIAX'') permits its market makers to add and remove liquidity from the order book. *See* MIAX's Fee Schedule which delineates Maker and Taker pricing. Nasdaq ISE, LLC (''ISE'') also permits market makers to add and remove liquidity from the order book. *See* ISE's Pricing Schedule at Options 7.

[43] *See* Securities and Exchange Release No. 93662 (November 23, 2021), 86 FR 68009 (November 30, 2021) (SR–NASDAQ–2021–094) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Post-Only Quote Configuration Risk Protection).

[44] For example, the inbound auction would reject against the non-displayed Add Liquidity Only Order or quote with a Post-Only Quote Configuration with an auction mechanism.

[45] *See* Options 3, Section 13.

[46] *See* Options 3, Section 7(n).

[47] *Id.*

[48] *See* BX Options 2, Section 4(j) and Section 5(d).

[49] *See* BX Options 2, Section 4.

[50] Options 3, Section 15(c) describes the Anti-Internalization and Quotation Adjustments Protections that are available today to BX Market Makers.

enhancing the ability of BX Market Makers to add liquidity and avoid taking liquidity from the order book promotes just and equitable principles of trade on BX and protects investors and the public interest, thereby enhancing market structure by allowing BX Market Makers to add liquidity only. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by BX Market Makers. Also, an increase in the activity of BX Market Makers in turn facilitates tighter spreads.

Finally, with the proposed addition of Add Liquidity Orders, all Participants may utilize similar functionality for orders and quotes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 3, Section 1

The Exchange's proposal to amend Options 3, Section 1 concerning the Days and Hours of Business does not impose an undue burden on competition. The proposal to amend the title from ''Days and Hours of Business'' to ''Hours of Business'' will bring greater clarity to the rule. Amending Options 3, Section 1(c) to reference General 3, Section 1030 will provide Participants with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. The proposed updated citations to the Options 4 rules will provide correct references for Participants and thereby bring greater clarity to the rules.

Options 3, Section 7

The Exchange's proposal to amend Options 3, Section 7 to add a new order type entitled ''Add Liquidity Order'' within Options 3, Section 7(a)(12) does not impose an undue burden on competition. Today, ISE, GEMX and MRX have a similar order type within Options 3, Section 7(n). The Add Liquidity Order will provide an additional order type that will give market participants greater control over the circumstances in which their orders are executed. All Participants may utilize the Add Liquidity Order type.

The Exchange's proposal to amend Options 3, Section 7(a)(11) to remove the title ''Block Order'' at the beginning of the sentence will conform the style of the description to the remaining order types within Options 3, Section 7.

Options 3, Section 13

Removing Options 3, Section 13(i)(F) does not impose an undue burden on competition as the rule text is obsolete and the removal of the rule text will bring greater transparency to and reducing potential confusion about the Exchange's Rulebook.

Amending Options 3, Section 13(a)(ii)(D) to utilize the broader term ''marketable interest'' does not impose an undue burden on competition as it will more accurately describe the way a PRISM auction would interact with interest in the order book on the opposite side of the market from the PRISM Order.

Options 3, Section 15

Adopting a Post-Only Quote Configuration within Options 3, Section 15(c)(3) does not impose an undue burden on competition, rather the proposal provides BX Market Makers with the opportunity to continue to avail themselves of functionality that currently exists on BOX, NYSE Arca, MIAX Emerald and NOM.[51]

The proposal does not impose a burden on inter-market competition, because Participants may choose to become market makers on a number of other options exchanges, which may have similar but not identical features. The Post-Only Quote Configuration functionality will continue to benefit downstream counterparties, both within and away from the Exchange, who may interact with non-displayed interest on BX's order book and thereby interact with order flow that is priced better than the NBBO.

The proposal does not impose a burden on intra-market competition. BX proposes to adopt an Add Liquidity Order herein which will permit all Participants to receive similar treatment for their orders. Offering BX Market Makers the ability to configure their quotes as Post-Only will allow all market participants on BX to add liquidity only if desired.

The proposed risk protection allows BX Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on BX's order book upon entry, thereby protecting investors and the general public as BX Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. BX Market Makers are required to add liquidity on BX and, in turn, are rewarded with lower pricing[52] and enhanced allocations.[53] Specifically, the risk protection would permit BX Market Makers to add liquidity only and avoid removing non-displayed interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to BX by allowing BX Market Makers to provide as much liquidity as possible. Unlike other market participants, BX Market Makers have certain obligations on the market. BX Market Makers are required to provide continuous two-sided quotes on a daily basis[54] and are subject to various obligations associated with providing liquidity on the market.[55] BX Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Options 3, Section 15 to allow them to manage their risk more effectively.[56] The proposed Post-Only Quote Configuration is another risk protection afforded to BX Market Makers to assist them in managing their risk while continuing to comply with their obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[57] and subparagraph (f)(6) of Rule 19b–4 thereunder.[58]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[51] *See* notes 21–25 above.

[52] *See* Options 7, Section 2.

[53] *See* Options 3, Section 10.

[54] *See* BX Options 2, Section 4(j) and Section 5(d).

[55] *See* BX Options 2, Section 4.

[56] Options 3, Section 15(c) describes the Anti-Internalization and Quotation Adjustments Protections that are available today to BX Market Makers.

[57] 15 U.S.C. 78s(b)(3)(A)(iii).

[58] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–054 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–BX–2021–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2021–054 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00154 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93893; File No. SR–NYSEArca–2021–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E

January 4, 2022.

On June 30, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the NYDIG Bitcoin ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 19, 2021.[3]

On August 23, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 29, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on July 19, 2021.[9] The 180th day after publication of the proposed rule change is January 15, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates March 16, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca-2021–57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00152 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93898; File No. SR–Phlx–2021–76]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules

January 4, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

[59] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92395 (July 13, 2021), 86 FR 38129. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-57/srnysearca202157.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92722, 86 FR 48268 (Aug. 27, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93191, 86 FR 55090 (Oct. 5, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 3, Section 1, Hours of Business; Options 4A, Section 2, Definitions and Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Sections 4 and 14, which are currently reserved and amend Options 8, Section 9 Trading Floor Admittance. Finally, the Exchange proposes to make technical amendments to various rules within Options 7 and Options 8. Each change is described below.

Hours of Business

The Exchange proposes to state within new Options 3, Section 1(a), ''General 3, Rule 1030 governs the days the Exchange will be open for business. This rule will govern the hours of such days during which transactions may be made on the Exchange.'' Phlx recently filed to establish General 3, Section 1030.[3] This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, Options 3, Section 1 will describe Phlx's trading hours by product.

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b). The Exchange modified the rule text to state, ''Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.'' The modified rule text provides citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes.

Next, the Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c). The Exchange modified the rule text to state, ''Options on any series of Exchange-Traded Fund Shares, as defined in Options 4, Section 3(h), so designated by the Exchange, options on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(k)(1), and options on Alpha Indexes, as defined in Options 4A, Section 3(f), may be traded on the Exchange until 4:15 P.M. Eastern Time each business day.'' The modified rule text amends ''shall freely trade'' to ''may be traded'' and adds new rule text to account for p.m.-settled products[4] and the recently approved Nasdaq–100 Volatility Index Options.[5] The new rule text provides, ''except that on the last trading day, transactions in expiring p.m.-settled broad-based index options and the Nasdaq–100 Volatility Index Options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).'' The hours noted within proposed Options 3, Section 1(c) reflect the current hours for p.m.-settled products and the hours for Nasdaq–100 Volatility Index Options, as noted within the approval order for that product.[6]

The Exchange proposes to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d). The Exchange modified the rule text to state, ''Except under unusual conditions as may be determined by the Board (or the Exchange official or officials designated by the Board) foreign currency option trading sessions shall be conducted at such times as the Board of Directors shall specify between 6:00 P.M. Eastern Time Sundays and 3:00. P.M. Eastern Time Fridays, provided that U.S. dollar-settled foreign currency options shall trade during the same hours as narrow-based index options.'' The modified rule text removes the phrase, ''The Board of Directors has resolved that'' as this rule text is unnecessary. Of note, today, foreign currencies trade from 9:30 a.m. to 4:00 p.m. the same as narrow-based indexes.

Proposed new Options 3, Section 1(e) memorializes the current hours for sector indexes that are currently listed on Phlx. The Exchange proposes to provide, ''Options on a sector index as provided for within Options 4A, Section 12 may be traded on the Exchange until 4:00 p.m. each business day.'' This rule text will account for sector indexes, which are not currently mentioned within Options 3, Section 1. Adding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR–Phlx–2021–69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[4] Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. *See* Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

[5] *See* Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–PHLX–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq–100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

[6] *See* note 5 above.

sector index hours to Options 3, Section 1 will provide additional transparency to the rule.

The Exchange proposes to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within ''Except as otherwise ordered by the Board of Directors.'' Any future amendments to this rule would be filed with the Commission, therefore, this phrase is being removed. Because the first two sentences of current Options 3, Section 1(a) relate to the Trading Floor, the Exchange proposes to relocate this rule text within the Options 8 Rules related to the Trading Floor. The relocated rule text would be placed within new Options 8, Section 9(a). The Exchange also proposes to re-letter current Options 8, Section 9 paragraph ''(a)'' as ''(b).'' Finally, the Exchange proposes to amend the title of Options 8, Section 9 to ''Trading Floor Hours of Business and Admittance'' which is a more descriptive title.

The remainder of the rule text within current Options 3, Section 1(a) is being deleted as unnecessary.[7] Current Options 3, Section 1(b) would become Supplementary Material .01 to Options 3, Section 1, with a header added to conform to the Rulebook style. The Exchange believes that these proposed amendments will bring greater clarity to the Exchange's Rules.

Index Options Values for Settlement

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule ''Index Options Values for Settlement.'' Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so all related rule text are within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(d). The rule text provides that where Exchange index options rules do not apply, Phlx index options would settle based on the current index value used to settle the exercise of an index options contract, which would be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation (''OCC'') or, if such day is not a business day, for the most recent business day. The rule text is being relocated without change.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 12(g). The Exchange proposes to add the title ''Pricing When Primary Market Does Not Open'' to proposed Options 4A, Section 4(b). The rule text provides for the current index value in the instance the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC. The rule text is being relocated without change.

Proposed Options 4A, Section 4(c) rule text is being relocated from current rule text within Supplementary Material .01 of Options 4A, Section 2. The Exchange is proposing to add the title ''Discretion'' to proposed Options 4A, Section 4(c). The rule text provides that for any series of index options the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The rule text is being relocated without change.

The Exchange proposes to add new rule text within Options 4A, Section 4(c)(1) which states,

> With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Cboe Exchange, Inc. (''Cboe'') Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.[8] The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's ''primary market'' such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration the Exchange proposes to adopt the same rule text as Cboe.[9] In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.[10] The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.[11] The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Reporting Authority

The Exchange proposes to amend Options 4A, Section 2 to adopt a new

[7] The phrase in the fourth sentence, ''The Board of Directors has resolved that no option series shall freely trade after 4:00 P.M. Eastern Time'' is being removed as unnecessary as the Exchange is specifying the hours each product may trade in the new rule.

[8] *See* Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR–CBOE–2004–42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

[9] *See* Cboe Rule 4.13 at .09 of Interpretations and Policies.

[10] *See* Options 4A, Section 2(a)(16).

[11] *See* Options 4A, Section 2(a)(7).

Supplementary Material .02 which provides, ''The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.'' The Exchange proposes to add the following chart to the rule text:

Underlying index	Reporting authority
Full Value Nasdaq 100 Index	The Nasdaq Stock Market.
Reduced Value Nasdaq 100 Index	The Nasdaq Stock Market.
Nasdaq–100 Micro Index	The Nasdaq Stock Market.
PHLX Oil Service Sector Index	The Nasdaq Stock Market.
PHLX Semiconductor Sector Index	The Nasdaq Stock Market.
PHLX Utility Sector Index	The Nasdaq Stock Market.
PHLX Gold/Silver Sector Index	The Nasdaq Stock Market.
PHLX Housing Sector Index	The Nasdaq Stock Market.
KBW Bank Index	Keefe, Bruyette & Woods, Inc.
Nasdaq–100® Volatility Index	The Nasdaq Stock Market.

The Exchange believes that the addition of the Reporting Authority for each index will add clarity to the rule. The proposed reporting authorities represent the current reporting authorities for each index without change. As noted above, a Reporting Authority represents the official source for calculating and determining the current value. The Exchange determines the Reporting Authority for each index listed on the Exchange.

Options 4A, Section 12

Generally, pursuant to Options 4A, Section 12(a)(2), index options listed on the Exchange are subject to strike price intervals of no less than $5, provided that certain classes of index options have strike price intervals of no less than $2.50 if the strike price is less than $200. Today, those classes of strike price intervals that have strike price intervals of no less than $2.50 if the strike price is less than $200 are listed within Options 4A, Section 12(a)(2). The Exchange proposes to amend Options 4A, Section 12(a)(2), to add the Nasdaq–100 Index to the list of classes where strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200. The Nasdaq–100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200 in 2021.[12] The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq–100 Index and therefore derivative of the Nasdaq–100 Index. Also, the Nasdaq–100 Index is currently permitted to trade in strike price intervals of no less than $2.50 if the strike price is less than $200 on Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'').[13] This amendment reflects current Exchange practice.

The Exchange also proposes to amend Options 4A, Section 12(a)(2)(F) to rename the ''PHLX/KBW Bank Index'' to ''KBW Bank Index'' to reflect the current name of the Index.

The Exchange proposes to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-settled indexes[14] which are proposed to be listed within proposed paragraph (f), described below, and relocating the Nasdaq-100 Micro Index Options, a p.m.-settled product, to new paragraph (f). The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and, today, have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.[15] All of the indexes listed within Options 4A, Section 12(a)(5) are European-style a.m.-settled options that are currently available on Phlx. The European-style p.m.-settled options, which are all currently listed on Phlx, are proposed to be listed within Options 4A, Section 12(f). Nasdaq-100 Micro Index Options is being relocated to proposed Options 4A, Section 12(f) because it is a p.m.-settled product. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the manner in which these products trade.

The Exchange proposes to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d) with a minor change.[16] The Exchange proposes to remove the phrase ''A.M.-settled'' as this rule text for index levels applies to P.M.-settled as well. Options 4A, Section 12(g) was relocated to proposed Options 4A, Section 4(b). This amendment is non-substantive because it merely is clarifying in nature.

The Exchange proposes to add the phrase ''on the following indexes'' to the end of Options 4A, Section 12(e)(II) for clarity. The Exchange also proposes to remove the word ''Options'' within the list of indexes at Options 4A, Section 12(e)(II) and add the following indexes which were inadvertently not on the list: PHLX Utility Sector Index and PHLX Gold/Silver Sector Index as well as the recently approved Nasdaq-100® Volatility Index. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.[17]

The Exchange proposes to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options.[18] This new paragraph would provide:

[12] *See* Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq–100 Index).

[13] *See* ISE Options 4A, Section 12(c)(1). GEMX and MRX Options 4A is incorporated by reference to ISE Options 4A.

[14] Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

[15] See *https://www.nasdaq.com/solutions/phlx-sector-based-index-options.*

[16] The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

[17] *See* Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

[18] The Nasdaq Options Market LLC (''NOM'') Rules at Options 4A, Section 12(a)(6) contain a paragraph describing p.m.-settled index options. *See* Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Approval Order); and 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order

Continued

P.M.-Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on Phlx:

This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today.[19] As noted above, the Nasdaq-100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Options 4A, Section 12(b)(5). These are both pilot programs. Finally, dashes are added in a few places to conform the name of the ''Nasdaq-100 Index.'' These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

Disclaimers

The Exchange proposes to adopt a proposed rule at Options 4A, Section 14 entitled ''Disclaimers.'' [20] The rule text is identical to rule text within ISE and NOM at Options 4A, Section 14. Currently, Options 4A, Section 14 is reserved. The disclaimer provisions are applicable to the reporting authorities identified in proposed Supplementary Material .02 to Options 4A, Section 2. The proposed rule text would provide that no Reporting Authority or affiliate of a Reporting Authority (each such Reporting Authority, its affiliates, and any other entity identified in the rule referred to collectively as a ''Reporting Authority'') makes any warranty express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. Further, the rule text provides that the Reporting Authority shall obtain information to be used in the calculation of the index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, including any opening, intra-day or closing value therefore, or any date included therein or related thereto. Also, the Reporting Authority disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. Finally, the Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC (''MIAX Pearl'') added a disclaimer to its rules in 2018.[21] The MIAX Pearl 2018 rule filing provided the following justification for the rule change, ''The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.''

The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

Technical Amendments

The Exchange proposes to remove the stray word ''Rule'' before Options 2, Section 12(a) with the description of the term ''Lead Market Maker'' within Options 7, Section 1. Also, the Exchange proposes to update the citation with the description of ''Professional'' within Options 7, Section 1 from ''Exchange Rule 1000(b)(43)'' to ''Options 1, Section 1(b)(45).'' [22]

The Exchange proposes to amend Options 7, Section 8, Membership Fees at Part A, Permit and Registration Fees. Specifically, the Exchange proposes to remove rule text regarding a waiver of the Inactive Nominee Fee which was in place from April 1, 2021 through September 30, 2021.[23] This rule text is now obsolete and removing the rule text will avoid confusion as to the effectiveness of the waiver.

The Exchange proposes to amend Options 7, Section 9, D, to add the phrase ''General 5'' before Rule 9216 to provide the complete citation. Also, the Exchange proposes to remove the stray word ''Rule'' from Options 7, Section 9, D.

The Exchange proposes a technical amendment within Options 8, Section 24, ''Bids And Offer-Premium'' to re-letter the current paragraphs. As a result of the changes to this section, the Exchange proposes to update citations to Options 8, Section 24 within E–11, ''Two-Way, Three Way and Multi-Spread Transactions (FOREIGN CURRENCY OPTION ONLY)''.

Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[19] NOM Options 4A, Section 12(a)(6) contains an identical paragraph describing p.m.-settled index options listed on that market. *See* Securities Exchange Act Release Nos. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Approval Order); and 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[20] *See* Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR–ISE–2003–05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

[21] *See* Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR–PEARL–2018–02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

[22] Exchange Rule 1000(b)(43) was relocated in a prior rule change. *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[23] *See* Securities Exchange Act Release No. 91481 (April 6, 2021), 86 FR 19064 (April 12, 2021) (SR–Phlx–2021–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's Pricing Schedule at Options 7, Section 8, ''Membership Fees'').

The Exchange proposes technical amendments to Options 8, Section 28, ''Responsibilities of Floor Brokers,'' to update a citation to Rule 1084 to Options 5, Section 2. Similar updates are proposed to B–7, ''Options Floor Based Management System,'' and C–2, ''Options Floor Based Management System''.

The Exchange proposes technical amendments to Options 8, Section 29, ''Use of Floor Based Management System by Floor Market Makers and Lead Market Makers,'' to update two citations. The first citation is to Supplementary Material .08 to Options 10, Section 6, the rule citation should be to Supplementary Material .01 to Options 10, Section 5.[24] The second citation is to Rule 1080, the rule citation should be to Options 3, Section 10.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Hours of Business

The Exchange's proposal to amend Options 3, Section 1 is consistent with the Act as the proposed amendment will make clear the hours within which various products listed on Phlx currently trade. Phlx recently filed to establish General 3, Section 1030.[27] General 3, Section 1030 governs the days the Exchange will be open for business. Amended Options 3, Section 1 will describe the hours of trading. Further, the proposed text clearly addresses the hours for the products listed on Phlx in a transparent manner for members and member organizations to reference.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning Exchange-Traded Fund shares, into new Options 3, Section 1(b) and modify the rule text to provide citations within Options 4A to Exchange-Traded Fund Shares, Index-Linked Securities, and Alpha Indexes is consistent with the Act as the modifications add clarity to existing rule text.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning broad-based indexes, into new Options 3, Section 1(c) and modify the rule text from ''shall freely trade'' to ''may be traded'' is consistent with the Act as that change is non-substantive. The addition of hours for p.m.-settled products[28] and the recently approved Nasdaq-100 Volatility Index Options,[29] does not represent a change from the current hours, rather the Exchange is noting these hours within this rule for ease of reference.

The Exchange's proposal to relocate rule text currently within Options 3, Section 1(a), concerning foreign currency options, into new Options 3, Section 1(d) and modify the rule text to remove rule text that is unnecessary is a non-substantive change.

The addition of proposed new Options 3, Section 1(e) is consistent with the Act as the rule text memorializes the current hours for sector indexes that are currently listed on Phlx. This text is consistent with the Act as the rule text will specifically account for sector indexes for ease of reference, thereby providing additional transparency to the rule.

The Exchange's proposal to relocate the first two sentences of current Options 3, Section 1(a), into current Options 8, Section 9, Trading Floor Admittance, with the exception of the phrase within ''Except as otherwise ordered by the Board of Directors'' is consistent with the Act as this text applies to the Trading Floor. The Exchange's proposal removes the current discretion permitted by the Board of Directors, thereby adding certainty to the rule text. Any changes to the rule text would be filed with the Commission. Amending the title of Options 8, Section 9 to ''Trading Floor Hours of Business and Admittance'' is a non-substantive change.

Clearly specifying the hours that each Phlx product trades within Options 3, Section 1 promotes just and equitable principles of trade by removing any confusion for members as to when the products are available.

Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule ''Index Options Values for Settlement'' is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text are within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Phlx's Options 4A, Section 4(c)(1), which is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies,[30] that follows the Exchange's current practice is consistent with the Act because the proposed rule text will clarify the Reporting Authority for a securities index on which options are traded. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, certain Phlx rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's ''primary market'' such as proposed Options 4A, Section 4(b). Because Options 4A, Section 4(b) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's

[24] The Exchange relocated rule text from Supplementary Material .08 to Options 10, Section 6 to Supplementary Material .01 to Options 10, Section 5. *See* Securities Exchange Act Release No. 92986 (September 15, 2021), 86 FR 52536 (September 21, 2021) (SR–Phlx–2021–52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing Rules).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Securities Exchange Act Release No. 93674 (November 29, 2021), 86 FR 68711 (December 3, 2021) (SR–Phlx–2021–69) Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Juneteenth National Independence Day as an Exchange Holiday and Give the Exchange the Authority To Halt or Suspend Trading or Close Exchange Facilities for Certain Unanticipated Closures). This rule memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[28] Options 4A, Section 12 includes p.m.-settled products. P.M.-settled products currently trade until 4:15. *See* Options 4A, Section 12(b)(5)(D) and Supplementary Material .01 to Options 4A, Section 12 respectively describing the Non-Standard Expirations and Nasdaq 100 Micro Index Options currently listed on Phlx.

[29] *See* Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–PHLX–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). The Approval Order for the VOLQ product provides the 4:00 p.m. timeframe. This product is operative and not yet effective.

[30] *See* Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR–CBOE–2004–42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

value at expiration the Exchange proposes to adopt rule text identical to Cboe.[31] In order to avoid investor confusion, Phlx proposes to provide that the Reporting Authority for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. The Exchange notes that this is the case today and this rule text is intended to make clear this authority.

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.[32] The current index value, with respect of a particular index, is the level of the index that is derived from the reported prices of the underlying securities that are the basis of the index that are reported by the Reporting Authority for the index.[33] The Exchange has designated a Reporting Authority for each index as discussed in this rule change. By designating the Reporting Authority the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Options 4A, Section 12

Today, those classes of strike price intervals that have strike price intervals of no less than $2.50 if the strike price is less than $200 are listed within Options 4A, Section 12(a)(2). The Exchange's proposal to amend Options 4A, Section 12(a)(2), to add the Nasdaq-100 Index to the list of classes where strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200 is consistent with the Act. The Nasdaq-100 Index was inadvertently omitted from the current list. The Exchange notes that Nasdaq 100 Micro Index Options were added to the list of classes where strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200 in 2021.[34] The Nasdaq 100 Micro Index Options are based on 1/100th of the value of the Nasdaq-100 Index and therefore derivative of the Nasdaq-100 Index. Also, the Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200 on ISE, GEMX and MRX.[35] Aligning the strike prices to the manner in which the Nasdaq-100 Index trades avoids confusion for investors and the public.

The Exchange's proposal to amend Options 4A, Section 12(a)(2)(F) to rename the ''PHLX/KBW Bank Index'' to ''KBW Bank Index'' to reflect the current name of the Index is a non-substantive amendment.

The Exchange's proposal to amend Options 4A, Section 12(a)(5) concerning European-style options, to reword the sentence to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes [36] and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. The Exchange also proposes to list the following indexes within Options 4A, Section 12(a)(5) which were inadvertently not listed in the rule today and have a European-Style Exercise: PHLX Oil Service Sector Index, PHLX Housing Sector Index, PHLX Gold/Silver Sector Index, PHLX Utility Sector Index, KBW Bank Index; and Nasdaq-100® Volatility Index.[37] The European-style p.m.-settled options, which are all currently listed on Phlx, are listed within Options 4A, Section 12(f). The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive.

The Exchange's proposal to relocate rule text from Options 4A, Section 12(f) to Options 4A, Section 12(d), with a minor change,[38] and amend Options 4A, Section 12(e)(II) are consistent with the Act as these amendments are non-substantive and clarifying in nature.

Removing the word ''Options'' within the list of indexes at Options 4A, Section 12(e)(II) and adding the sector indexes, which were inadvertently not listed, as well as the recently approved Nasdaq-100® Volatility Index is consistent with the Act and non-substantive in nature. These sector indexes are a.m.-settled products. The only indexes that are p.m.-settled are part of a pilot program.[39]

The proposal to add a new paragraph (f) within Options 4A, Section 12 which describes the p.m.-settled index options [40] is consistent with the Act and will bring greater clarity to the rule by describing the p.m.-settled products. This paragraph would serve to distinguish a.m.-settled and p.m.-settled options as there is a similar paragraph regarding a.m.-settled options in the rule today. As noted above, the Nasdaq 100 Micro Index Option would be listed within this section as it is a p.m.-settled options product. The Non-Standard Program is separately described in detail within Phlx Options 4A, Section 12(b)(5). These are both pilot programs. These changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

[31] *See* Cboe Rule 4.13 at .09 of Interpretations and Policies.

[32] *See* Options 4A, Section 2(a)(16).

[33] *See* Options 4A, Section 2(a)(7).

[34] *See* Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of Options Based on 1/100th the Value of the Nasdaq-100 Index).

[35] *See* ISE Options 4A, Section 12(c)(1).

[36] Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

[37] See *https://www.nasdaq.com/solutions/phlx-sector-based-index-options.*

[38] The current rule text within Options 4A, Section 12(d) was relocated to proposed Options 4A, Section 4(a).

[39] *See* Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

[40] *See* NOM Options 4A, Section 12(a)(6) which contains an identical paragraph describing p.m.-settled index options.

Disclaimers

The Exchange's proposal to adopt a proposed rule at Options 4A, Section 14 entitled ''Disclaimers'' [41] is consistent with the Act. The text is identical rule text within ISE and NOM at Options 4A, Section 14. The disclaimer provisions are applicable to the reporting authorities identified in Supplementary Material .02 to Options 4A, Section 2. Each index has a designated Reporting Authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index. MIAX Pearl LLC added a disclaimer to its rules in 2018.[42] The 2018 rule filing provided the following justification for the rule change, ''The proposed rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.'' The Exchange believes that the disclaimer, would encourage the Reporting Authority for each index to develop and maintain indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

Technical Amendments

The Exchange's proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B–7, C–2, and E–11 will bring greater clarity to these rules.

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.

Hours of Business

The Exchange's proposal to amend Options 3, Section 1 to make clear the hours within which various products listed on Phlx currently trade does not impose an undue burden on competition. The addition of citations, and hours for p.m-settled products, Nasdaq-100 Volatility Index Options and sector indexes will make clear when those products trade. The hours apply uniformly to all members and member organizations.

Index Options Values for Settlement

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule ''Index Options Values for Settlement'' does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4 so that it may locate all the relevant rule text within the same rule.

The proposal to add new rule text within Options 4A, Section 4(c)(1) is identical to rule text within Cboe Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.[43] The proposed rule text will clarify the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Also, by designating the Reporting Authority within Supplementary Material .02 to Options 4A, Section 2 the Exchange is providing the official source for calculating and determining the current value or the closing index value of the index. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Options 4A, Section 12

The Exchange's proposed amendments to Options 4A, Section 12 do not impose an undue burden on competition. The addition of the Nasdaq-100 Index to the list of strike price intervals of no less than $2.50 if the strike price is less than $200 will make clear the manner in which the Nasdaq-100 Index trades today. The Nasdaq-100 Index is currently permitted to trade in strike price intervals of no less than $2.50 are generally permitted if the strike price is less than $200 on ISE, GEMX and MRX.[44]

Rewording Options 4A, Section 12(a)(5), related to European-style options, will make clear which indexes are a.m.-settled and those that are p.m.-settled options. All of the indexes listed within Options 4A, Section 12(a)(5) are a.m.-settled options and currently available on Phlx. Adding a reference to the p.m.-settled indexes [45] and relocating the Nasdaq-100 Micro Index Options to new paragraph (f) will make clear which of the indexes listed today are in fact p.m.-settled. Including the sector indexes will also bring greater clarity to the rules and identify those indexes as a.m.-settled. The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity.

Disclaimers

The Exchange's proposal to amend Options 4A, Section 14 to adopt a rule text, identical to ISE and NOM,[46] at Options 4A, Section 14, entitled ''Disclaimers'' does not imposes an undue burden on competition. The disclaimer applies to all index products traded on Phlx.

Technical Amendments

The Exchange's proposal to make technical amendments within Options 2, Section 12(a), Options 7, Section 1, Options 7, Section 8, and Options 7, Section 9, D, Options 8, Section 24, Options 8, Section 28, Options 8, Section 29, B–7, C–2, and E–11 will bring greater clarity to these rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

[41] *See* Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 23507 (May 2, 2003) (SR–ISE–2003–05) (Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by International Securities Exchange, Inc., Relating to Rules for Trading Options on Indices).

[42] *See* Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018) (SR–PEARL–2018–02) (Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options).

[43] *See* Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR–CBOE–2004–42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

[44] *See* ISE Options 4A, Section 12(c)(1).

[45] Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Phlx Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

[46] *See* ISE and NOM Options 4A, Section 14.

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[47] and subparagraph (f)(6) of Rule 19b–4 thereunder.[48]

A proposed rule change filed under Rule 19b–4(f)(6)[49] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[50] 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 to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposal will increase transparency within Options 4A by referencing the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply, clarify that the Reporting Authority (identical to Cboe Rule 4.13 at .09 of Interpretations and Policies) for any securities index on which options are traded on Phlx may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value, add transparency by specifying the reporting authorities within proposed new Supplementary Material .02 to Options 4A, Section 2, and clarify which options may trade today on Phlx and the distinctions as between a.m.-settled and p.m.-settled products. The Exchange also states that proposed Options 4A, Section 12(f) is identical to NOM Options 4A, Section 12(a)(6) and proposed Options 4A, Section 14 is identical to ISE and NOM,[51] at Options 4A, Section 14. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[52]

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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–76 and should be submitted on or before January 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00156 Filed 1–7–22; 8:45 am]

BILLING CODE 8011–01–P

[47] 15 U.S.C. 78s(b)(3)(A)(iii).

[48] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[49] 17 CFR 240.19b–4(f)(6).

[50] 17 CFR 240.19b–4(f)(6)(iii).

[51] *See* ISE and NOM Options 4A, Section 14.

[52] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 13, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 6, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–00319 Filed 1–6–22; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 116]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Women and the Making of Joyce's Ulysses'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Women and the Making of Joyce's *Ulysses*'' at the Harry Ransom Center, University of Texas at Austin, in Austin, Texas, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs,Department of State.

[FR Doc. 2022–00160 Filed 1–7–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11622]

Notice of Determinations; Culturally Significant Objects Being Imported for Conservation and Exhibition—Determinations: ''Lygia Pape: Tecelar'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary conservation and display in the exhibition ''Lygia Pape: Tecelar'' at The Art Institute of Chicago, in Chicago, Illinois, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary conservation and exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00161 Filed 1–7–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11624]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Fictions of Emancipation: Carpeaux Recast'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Fictions of Emancipation: Carpeaux Recast'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00159 Filed 1–7–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2015–0326; FMCSA–2015–0329; FMCSA–2016–0003; FMCSA–2017–0058; FMCSA–2019–0111]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 17 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before February 9, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0058, or Docket No. FMCSA–2019–0111 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2012–0154, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2016–0003, FMCSA–2017–0058, or FMCSA–2019–0111 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0058, or Docket No. FMCSA–2019–0111), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2012–0154, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2016–0003, FMCSA–2017–0058, or FMCSA–2019–0111 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2012–0154, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2016–0003, FMCSA–2017–0058, or FMCSA–2019–0111 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' 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 20590–0001, 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.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without

the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The 17 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 17 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 17 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below.

As of January 6, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Steven Andrews (FL)
John Brown (MN)
Jerry Doose (MN)
Donald Howton (AL)

The drivers were included in docket numbers FMCSA–2015–0326, FMCSA–2015–0329, or FMCSA–2017–0058. Their exemptions are applicable as of January 6, 2022 and will expire on January 6, 2024.

As of January 8, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Matthew Burgoyne (MN)
Joshua Gelona (OK)
Eduardo Pedregal (TX)

The drivers were included in docket number FMCSA–2016–0003. Their exemptions are applicable as of January 8, 2022 and will expire on January 8, 2024.

As of January 14, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Geoffrey Canoyer (MN)
Chase Cooke (VA)
Douglas Gray (OR)
Sue Gregory (UT)
Morris Townsend (NC)

The drivers were included in docket numbers FMCSA–2012–0154, FMCSA–2013–0122, FMCSA–2013–0123, or FMCSA–2017–0058. Their exemptions are applicable as of January 14, 2022 and will expire on January 14, 2024.

As of January 21, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Herman Fleck (PA)
Mark Merrow (MI)
Jodyann Nipper (IA)
Michael Steffen (IN)
Sherrie Willey (WA)

The drivers were included in docket number FMCSA–2019–0111. Their exemptions are applicable as of January 21, 2022 and will expire on January 21, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–00147 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2000–7165; FMCSA–2001–10578; FMCSA–2003–15892; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0275; FMCSA–2011–0299; FMCSA–2011–0325; FMCSA–2011–0380; FMCSA–2013–0025; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2016–0208; FMCSA–2016–0212; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2017–0026; FMCSA–2018–0014; FMCSA–2019–0005; FMCSA–2019–0009; FMCSA–2019–0011; FMCSA–2019–0013; FMCSA–2019–0014; FMCSA–2019–0015; FMCSA–2020–0018]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 91 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before February 9, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–5748, Docket No. FMCSA–2000–7165, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2005–20560, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2005–22727, Docket No. FMCSA–2006–26653, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2008–0021, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2009–0206, Docket No. FMCSA–2009–0303, Docket No. FMCSA–2010–0354, Docket No. FMCSA–2010–0372, Docket No. FMCSA–2010–0385, Docket No. FMCSA–2011–0010, Docket No. FMCSA–2011–0024, Docket No. FMCSA–2011–0092, Docket No. FMCSA–2011–0275, Docket No. FMCSA–2011–0299, Docket No. FMCSA–2011–0325, Docket No. FMCSA–2011–0380, Docket No. FMCSA–2013–0025, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2013–0170, Docket No. FMCSA–2013–0174, Docket No. FMCSA–2014–0300, Docket No. FMCSA–2014–0302, Docket No. FMCSA–2014–0304, Docket No. FMCSA–2015–0048, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0071, Docket No. FMCSA–2015–0072, Docket No. FMCSA–2015–0344, Docket No. FMCSA–2015–0345, Docket No. FMCSA–2015–0347, Docket No. FMCSA–2016–0208, Docket No. FMCSA–2016–0212, Docket No. FMCSA–2016–0377, Docket No. FMCSA–2017–0017, Docket No. FMCSA–2017–0018, Docket No. FMCSA–2017–0022, Docket No. FMCSA–2017–0023, Docket No. FMCSA–2017–0026, Docket No. FMCSA–2018–0014, Docket No. FMCSA–2019–0005, Docket No. FMCSA–2019–0009, Docket No. FMCSA–2019–0011, Docket No. FMCSA–2019–0013, Docket No. FMCSA–2019–0014, Docket No. FMCSA–2019–0015, or Docket No. FMCSA–2020–0018 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–1999–5748, FMCSA–2000–7165, FMCSA–2001–10578, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2005–22727, FMCSA–2006–26653, FMCSA–2007–27897, FMCSA–2008–0021, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2009–0303, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0275, FMCSA–2011–0299, FMCSA–2011–0325, FMCSA–2011–0380, FMCSA–2013–0025, FMCSA–2013–0029, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2013–0170, FMCSA–2013–0174, FMCSA–2014–0300, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2015–0048, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0344, FMCSA–2015–0345, FMCSA–2015–0347, FMCSA–2016–0208, FMCSA–2016–0212, FMCSA–2016–0377, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2017–0026, FMCSA–2018–0014, FMCSA–2019–0005, FMCSA–2019–0009, FMCSA–2019–0011, FMCSA–2019–0013, FMCSA–2019–0014, FMCSA–2019–0015, or FMCSA–2020–0018 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1999–5748; FMCSA–2000–7165; FMCSA–2001–10578; FMCSA–2003–15892; FMCSA–

2005–20560; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0275; FMCSA–2011–0299; FMCSA–2011–0325; FMCSA–2011–0380; FMCSA–2013–0025; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2016–0208; FMCSA–2016–0212; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2017–0026; FMCSA–2018–0014; FMCSA–2019–0005; FMCSA–2019–0009; FMCSA–2019–0011; FMCSA–2019–0013; FMCSA–2019–0014; FMCSA–2019–0015; FMCSA–2020–0018), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–1999–5748, FMCSA–2000–7165, FMCSA–2001–10578, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2005–22727, FMCSA–2006–26653, FMCSA–2007–27897, FMCSA–2008–0021, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2009–0303, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0275, FMCSA–2011–0299, FMCSA–2011–0325, FMCSA–2011–0380, FMCSA–2013–0025, FMCSA–2013–0029, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2013–0170, FMCSA–2013–0174, FMCSA–2014–0300, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2015–0048, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0344, FMCSA–2015–0345, FMCSA–2015–0347, FMCSA–2016–0208, FMCSA–2016–0212, FMCSA–2016–0377, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2017–0026, FMCSA–2018–0014, FMCSA–2019–0005, FMCSA–2019–0009, FMCSA–2019–0011, FMCSA–2019–0013, FMCSA–2019–0014, FMCSA–2019–0015, or FMCSA–2020–0018 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov,* insert the docket number, FMCSA–1999–5748, FMCSA–2000–7165, FMCSA–2001–10578, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2005–22727, FMCSA–2006–26653, FMCSA–2007–27897, FMCSA–2008–0021, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2009–0303, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0275, FMCSA–2011–0299, FMCSA–2011–0325, FMCSA–2011–0380, FMCSA–2013–0025, FMCSA–2013–0029, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2013–0170, FMCSA–2013–0174, FMCSA–2014–0300, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2015–0048, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0344, FMCSA–2015–0345, FMCSA–2015–0347, FMCSA–2016–0208, FMCSA–2016–0212, FMCSA–2016–0377, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2017–0026, FMCSA–2018–0014, FMCSA–2019–0005, FMCSA–2019–0009, FMCSA–2019–0011, FMCSA–2019–0013, FMCSA–2019–0014, FMCSA–2019–0015, or FMCSA–2020–0018 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' 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 20590–0001, 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.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 91 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 91 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 40404; 64 FR 66962; 65 FR 33406; 65 FR 57234; 66 FR 53826; 66 FR 63289; 66 FR 66966; 68 FR 13360; 68 FR 52811; 68 FR 61860; 68 FR 64944; 68 FR 69434; 70 FR 12265; 70 FR 17504; 70 FR 30997; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 67776; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 4632; 72 FR 8417; 72 FR 27624; 72 FR 36099; 72 FR 39879; 72 FR 40362; 72 FR 52419; 72 FR 62897; 72 FR 64273; 73 FR 5259; 73 FR 15567; 73 FR 27015; 74 FR 19270; 74 FR 34394; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 60022; 74 FR 62632; 75 FR 1451; 75 FR 4623; 75 FR 19674; 75 FR 72863; 75 FR 77492; 76 FR 2190; 76 FR 5425; 76 FR 7894; 76 FR 9856; 76 FR 17481; 76 FR 20076; 76 FR 20078; 76 FR 25762; 76 FR 25766; 76 FR 28125; 76 FR 37885; 76 FR 53708; 76 FR 54530; 76 FR 62143; 76 FR 64164; 76 FR 64171; 76 FR 66123; 76 FR 70210; 76 FR 70215; 76 FR 73769; 76 FR 75940; 76 FR 75942; 77 FR 539; 77 FR 545; 77 FR 3547; 77 FR 3554; 77 FR 10608; 77 FR 17109; 77 FR 23797; 77 FR 27845; 77 FR 74273; 78 FR 800; 78 FR 12813; 78 FR 16762; 78 FR 20376; 78 FR 24300; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 47818; 78 FR 52602; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 64280; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 67460; 78 FR 68137; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 1908; 79 FR 2247; 79 FR 2248; 79 FR 3919; 79 FR 4803; 79 FR 6993; 79 FR 14333; 79 FR 23797; 79 FR 53708; 79 FR 73687; 80 FR 2473; 80 FR 3723; 80 FR 12248; 80 FR 14223; 80 FR 15863; 80 FR 18693; 80 FR 18696; 80 FR 26139; 80 FR 29149; 80 FR 29152; 80 FR 31635; 80 FR 31640; 80 FR 33011; 80 FR 37718; 80 FR 44188; 80 FR 48402; 80 FR 48409; 80 FR 49302; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 11642; 81 FR 15401; 81 FR 16265; 81 FR 20435; 81 FR 44680; 81 FR 48493; 81 FR 60117; 81 FR 70253; 81 FR 81230; 81 FR 86063; 81 FR 96165; 81 FR 96180; 81 FR 96191; 82 FR 12683; 82 FR 13045; 82 FR 13048; 82 FR 15277; 82 FR 18949; 82 FR 18956; 82 FR 20962; 82 FR 22379; 82 FR 24430; 82 FR 32919; 82 FR 33542; 82 FR 35050; 82 FR 37499; 82 FR 37504; 82 FR 43647; 82 FR 47309; 82 FR 47312; 83 FR 2289; 83 FR 2306; 83 FR 2311; 83 FR 3861; 83 FR 4537; 83 FR 6922; 83 FR 6925; 83 FR 18648; 83 FR 28325; 83 FR 33292; 83 FR 53724; 83 FR 54644; 84 FR 2326; 84 FR 10389; 84 FR 12665; 84 FR 16320; 84 FR 21393; 84 FR 21397; 84 FR 21401; 84 FR 23629; 84 FR 33801; 84 FR 46088; 84 FR 47045; 84 FR 47047; 84 FR 47050; 84 FR 47057; 84 FR 52160; 84 FR 52166; 84 FR 58437; 84 FR 58448; 84 FR 58450; 84 FR 58453; 84 FR 66442; 84 FR 66444; 84 FR 68288; 84 FR 69814; 85 FR 4764; 85 FR 4769; 85 FR 8334). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of February and are discussed below. As of February 9, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 85 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 65 FR 33406; 65 FR 57234; 66 FR 53826; 66 FR 63289; 66 FR 66966; 68 FR 13360; 68 FR 52811; 68 FR 61860; 68 FR 64944; 68 FR 69434; 70 FR 12265; 70 FR 17504; 70 FR 30997; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 67776; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 4632; 72 FR 8417; 72 FR 27624; 72 FR 36099; 72 FR 39879; 72 FR 40362; 72 FR 52419; 72 FR 62897; 72 FR 64273; 73 FR 5259; 73 FR 15567; 73 FR 27015; 74 FR 19270; 74 FR 34394; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 60022; 74 FR 62632; 75 FR 1451; 75 FR 4623; 75 FR 19674; 75 FR 72863; 75 FR 77492; 76 FR 2190; 76 FR 5425; 76 FR 7894; 76 FR 9856; 76 FR 17481; 76 FR 20076; 76 FR 20078; 76 FR 25762; 76 FR 25766; 76 FR 28125; 76 FR 37885; 76 FR 53708; 76 FR 54530; 76 FR 62143; 76 FR 64164; 76 FR 64171; 76 FR 66123; 76 FR 70210; 76 FR 70215; 76 FR 73769; 76 FR 75940; 76 FR 75942; 77 FR 545; 77 FR 3547; 77 FR 3554; 77 FR 17109; 77 FR 23797; 77 FR 27845; 77 FR 74273; 78 FR 800; 78 FR 12813; 78 FR 16762; 78 FR 20376; 78 FR 24300; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 47818; 78 FR 52602; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 64280; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 67460; 78 FR 68137; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 2247; 79 FR 2248; 79 FR 3919; 79 FR 4803; 79 FR 23797; 79 FR 53708; 79 FR 73687; 80 FR 2473; 80 FR 3723; 80 FR 12248; 80 FR 14223; 80 FR 15863; 80 FR 18693; 80 FR 18696; 80 FR 26139; 80 FR 29149; 80 FR 29152; 80 FR 31635; 80 FR 31640; 80 FR 33011; 80 FR 37718; 80 FR 44188; 80 FR 48402; 80 FR 48409; 80 FR 49302; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 16265; 81 FR 20435; 81 FR 44680; 81 FR 60117; 81 FR 70253; 81 FR 81230; 81 FR 86063; 81 FR 96165; 81 FR 96180; 81 FR 96191; 82 FR 12683; 82 FR 13045; 82 FR 13048; 82 FR 15277; 82 FR 18949; 82 FR 18956; 82 FR 20962; 82 FR 22379; 82 FR 24430; 82 FR 32919; 82 FR 33542; 82 FR 35050; 82 FR 37499; 82 FR 37504; 82 FR 43647; 82 FR 47309; 82 FR 47312; 83 FR 2289; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922; 83 FR 6925; 83 FR 28325; 83 FR 33292; 83 FR 53724; 83 FR 54644; 84 FR 2326; 84 FR 10389; 84 FR 12665; 84 FR 16320; 84 FR 21393; 84 FR 21397; 84 FR 21401; 84 FR 23629; 84 FR 33801; 84 FR 46088; 84 FR 47045; 84 FR 47047; 84 FR 47050; 84 FR 47057; 84 FR 52160; 84 FR 52166; 84 FR 58437; 84 FR 58448; 84 FR 58450; 84 FR 58453; 84 FR 66442; 84 FR 66444; 84 FR 68288; 84 FR 69814; 85 FR 4764; 85 FR 4769; 85 FR 8334):

Dakota A. Albrecht (MN)
Cesar Avila (PA)
Ernest J. Bachman (PA)
Alex T. Balk (AZ)
Wayne Barker (OK)
Herbert R. Benner (ME)
Gary L. Best (MI)
Therron K. Billings (VA)
Kenneth L. Bowers, Jr. (MN)
Charles W. Bradley (SC)
Jerry D. Bridges (TX)
Brian E. Burrows (TX)
Michael D. Champion (VT)
Charles C. Chapman (NC)
Shawn T. Cobbs (MD)
William J. Corder (NC)
Aubrey R. Cordrey, Jr. (DE)
George R. Cornell (OH)
Roderick Croft (FL)
James W. Day (VA)
Sean J. Dornin (PA)
Cecil A. Evey (ID)
Elhadji M. Faye (CA)
Dan J. Feik (IL)
Mark A. Ferris (IA)
James E. Fix (SC)
Richard L. Gandee (OH)
Willie George (NY)
Jayme L. Gilbert (NY)
Mark T. Gileau (CT)
Jeffrey J. Graham (MI)
Christopher L. Granby (MI)
Britt A. Green (ND)
James A. Green (IL)
Donald A. Hall (NC)
Johnnie L. Hall (MD)
Keith N. Hall (UT)
Vashion E. Hammond (FL)
Louis M. Hankins (IL)
Robert D. Hattabaugh (AR)
Carl E. Hess (PA)
Frank E. Johnson, Jr. (FL)
David J. Kibble (PA)
John E. Kimmet, Jr. (WA)
Mark L. LeBlanc (MN)
David F. LeClerc (MN)
Ronnie R. Lockamy (NC)
John T. Mabry (FL)
Timothy R. McCullough (FL)
Cameron S. McMillen (NM)
Mark Meacham (NC)
David L. Menken (NY)
Molu H. Mohamed (OH)
Kenneth H. Morris (NC)
James Muldoon (NY)
James R. Murphy (NY)
Robert M. Murphy (NJ)
Al V. Nowviock (IL)
Robert M. Pickett II (MI)
Thomas Pizzurro (NY)
Christopher W. Proeschel (OH)
Andres Regalado (CA)
Kevin C. Rich (NC)
Thenon D. Ridley (TX)
Chris A. Ritenour (MI)
Steven L. Roberts (AR)
Berry A. Rodrigue (LA)
Angelo D. Rogers (AL)
Leo D. Roy (NH)
Ronald L. Roy (IL)
Ricky J. Sanderson (UT)
Bobby Sawyers (PA)
Jerry L. Schroder (IL)
Brandon L. Siebe (KY)
David A. Simpson (OH)
Roye T. Skelton (MS)
John B. Stiltner (KY)
Greg W. Story (NC)
Kolby W. Strickland (WA)
Scott C. Teich (MN)
Kendle F. Waggle, Jr. (IN)
Andrew L. Walker (MN)
James J. Walsh (NH)
Dennis E. White (PA)
Willie R. White (NV)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2000–7165; FMCSA–2001–10578; FMCSA–2003–15892; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0275; FMCSA–2011–0299; FMCSA–2011–0380; FMCSA–2013–0025; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2016–0208; FMCSA–2016–0212; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2018–0014; FMCSA–2019–0005; FMCSA–2019–0009; FMCSA–2019–0011; FMCSA–2019–0013; FMCSA–2019–0014; FMCSA–2019–0015; FMCSA–2020–0018. Their exemptions are applicable as of February 9, 2022 and will expire on February 9, 2024.

As of February 12, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 1474; 81 FR 48493; 83 FR 6925; 85 FR 4769):

Aaron D. Tillman (DE)

The driver was included in docket number FMCSA–2015–0347. The exemption is applicable as of February 12, 2022 and will expire on February 12, 2024.

As of February 16, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 2311; 83 FR 18648; 85 FR 4769):

Ryan J. Plank (PA)
Aaron R. Rupe (IL)
Juan D. Zertuche (TX)

The drivers were included in docket number FMCSA–2017–0026. Their exemptions are applicable as of February 16, 2022 and will expire on February 16, 2024.

As of February 22, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 539; 77 FR 10608; 79 FR 6993; 81 FR 15401; 83 FR 6925; 85 FR 4769):

Brian K. Cline (NC)

The driver was included in docket number FMCSA–2011–0325. The exemption is applicable as of February 22, 2022 and will expire on February 22, 2024.

As of February 27, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 1908; 79 FR 14333; 81 FR 15401; 83 FR 6925; 85 FR 4769):

Danielle Wilkins (CA)

The driver was included in docket number FMCSA–2013–0174. The exemption is applicable as of February 27, 2022 and will expire on February 27, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when

driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 91 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–00148 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0001]

Establishment of an Emergency Relief Docket for Calendar Year 2022

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2022. The designated ERD for calendar year 2022 is docket number FRA–2022–0001.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to docket number FRA–2022–0001.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule establishing ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to 49 CFR 211.45 in FRA's Rules of Practice in 49 CFR part 211. Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available at *www.regulations.gov*). Section 211.45(b) further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. FRA established the ERD and emergency waiver procedures to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces the designated ERD for calendar year 2022 is docket number FRA–2022–0001.

As detailed in § 211.45, if the FRA Administrator determines an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect.[1] In such an event, the FRA Administrator will issue a statement in the ERD indicating the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its website at *railroads.dot.gov.* Any party desiring relief from FRA regulatory requirements as a result of the emergency should submit a petition for emergency waiver under 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers under 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are at 49 CFR 211.45(h).

Privacy

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–00166 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–06–P

[1] Given the ongoing nature of the coronavirus disease 2019 (COVID–19) pandemic, FRA considers the FRA Administrator's March 13, 2020, emergency declaration in docket number FRA–2020–0002 to be in effect until it is specifically rescinded by the Administrator. See *https://www.regulations.gov/document?D=FRA-2020-0002-0002.* However, any new requests for relief related to COVID–19 should be submitted to the 2022 ERD (FRA–2022–0001).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2021–0167]

Agency Information Collection Activities: Renewed Approval of Information Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments on our intention to request Office of Management and Budget (OMB) approval for an information collection in accordance with the requirements of the Paperwork Reduction Act of 1995. The collection is necessary for administration of the ''Discretionary Grants for Nationally Significant Multimodal Freight and Highway Projects (INFRA) Program''. INFRA grants support surface transportation infrastructure projects that have a significant local or regional impact.

DATES: Written comments should be submitted by March 11, 2022.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W–12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: To ensure proper docketing of your comment, please include the agency name and docket number [DOT–OST–2021–0167] at the beginning of your comments. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at *INFRAgrants@dot.gov,* or call Paul Baumer at (202) 366–1092.

SUPPLEMENTARY INFORMATION: New Collection. OMB number will be issued after the collection is approved.

Title: Discretionary Grants for Nationally Significant Multimodal Freight and Highway Projects (INFRA) Program.

Form Numbers: None.

Type of Review: New Information Collection Request (ICR).

Background: The Office of the Secretary (OST) within the Department of Transportation (DOT) provides financial assistance to State and local Governments, including U.S. territories, tribal Governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), and other political subdivisions of State or local Governments through the Nationally Significant Freight and Highway Projects Program, which was established in the Fixing American's Surface Transportation Act of 2015 (''FAST ACT''), Public Law 114–94 § 1105, and continued in the Infrastructure Investment and Jobs Act of 2021. The Office of the Secretary of Transportation (''OST'') is referring to these grants as ''FASTLANE'' or ''INFRA'' Discretionary Grants, depending on the year of award. The purpose of each program is to advance projects that will have a significant impact on the Nation, metropolitan area or a region.

This notice seeks comments on the proposed information collection, which will collect information necessary to support the ongoing oversight and administration of previous awards, the evaluation and selection of new applications, and the funding agreement negotiation stage for new awards.

The reporting requirements for the program is as follows:

To be considered to receive a INFRA grant, a project sponsor must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity. The project narrative should include the information necessary for the Department to determine that the project satisfies eligibility requirements as warranted by law.

Following the announcement of a funding award, the recipient and DOT will negotiate and sign a funding agreement. In the agreement, the recipient must describe the project that DOT agreed to fund, which is the project that was described in the INFRA application or a reduced-scope version of that project. The agreement also includes a project schedule, budget, and project-related climate change and equity planning and policies.

During the project monitoring stage, grantees will submit reports on the financial condition of the project and the project's progress. Grantees will submit progress and monitoring reports to the Government on a quarterly basis until completion of the project. The progress reports will include an SF–425, Federal Financial Report, and other information determined by the administering DOT Operating Administration. This information will be used to monitor grantees' use of Federal funds, ensuring accountability and financial transparency in the INFRA program.

For the purposes of estimating the information collection burden below for new applicants and awardees, the Department is assuming that for each year 2022–2024, the Department will review approximately 250 applications in Year 1, negotiate 35 funding agreements in Year 2, and begin quarterly project monitoring for 35 projects in Year 3. For a new applicant in 2022, their burden will be 100 hours in 2022, 6 hours in 2023, and 20 hours in 2024. See Table 1 below:

TABLE 1

Respondent	Year 1 (2022)		Year 2 (2023)		Year 3 (2024)		Total
	Hours	Frequency	Hours	Frequency	Hours	Frequency	
2022 Applicant (250)	100	1					25,000
2022 Awardee (35)			−6	1			210
2022 Recipient (35)					5	4	700
2023 Applicant (250)			100	1			25,000
2023 Awardee (35)					6	1	210
2023 Recipient (35).							
2024 Applicant (250)					100	1	25,000
2024 Awardee (35).							
2024 Recipient (35).							

This Notice is separately estimating the information collection burden for projects awarded from 2016–2021. Approximately 60 of these projects are in the project monitoring phase in Year 1, while 40 projects are still negotiating funding agreements. In Year 2, approximately 30 of these projects will begin project monitoring, while approximately 20 projects will cease reporting once their projects are completed. In Year 3, 10 projects will begin project monitoring while 20 projects will cease reporting. The individual burden for a project awarded from 2016–2021 will depend on when they were selected, when they completed negotiation of their funding agreement, and when their project reaches completion. See Table 2 below:

Respondent	Year 1			Year 2			Year 3			Total
	Number	Hrs	Freq	Number	Hrs	Freq	Number	Hrs	Freq	
2016–2021 Awardee	40	4	1	10	4	1	0	4	1	200
2016–2021 Recipient	60	5	4	70	5	4	60	5	4	3800

Respondent	Year 1			Year 2			Year 3			Total
	Number	Hrs	Freq	Number	Hrs	Freq	Number	Hrs	Freq	
2016–2021 Project Closed	0	0	0	20	0	0	40	0	0	

The Department's estimated burden for this information collection is the following:

For New Applications

Expected Number of Respondents: Approximately 250 per year.
Frequency: Once.
Estimated Average Burden per Response: 100 hours for each new Application.

For Funding Agreements

Expected Number of Respondents: Approximately 35 in Year 1, 2 and 3.
Frequency: Once.
Estimated Average Burden per Response: 6 hours for each new Funding Agreement.

For Project Monitoring

Expected Number of Respondents: Approximately 60 in Year 1, 70 in Year 2, 80 in Year 3.
Frequency: Quarterly.
Estimated Average Burden per Response: 5 hours for each request for Quarterly Progress and Monitoring Report.
Estimated Total 3-Year Burden on Respondents: 79,700 hours. (New Applicants [75,000 hrs], New Awardees/Recipients [700 hrs] + Prior Awardees/Recipients [4000 hrs]).

The following is detailed information and instructions regarding the specific reporting requirements for each report identified above:

Application Stage

To be considered to receive a INFRA grant, a project sponsor must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity. The project narrative should include the information necessary for the Department to determine that the project satisfies eligibility requirements.

Applications must be submitted through *www.Grants.gov.* Instructions for submitting applications can be found at *https://www.transportation.gov/buildamerica/infragrants.* The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424C (Budget Information for Construction Programs), cover page, and the Project Narrative.

The application should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. The Department recommends that the application be prepared with standard formatting preferences (*i.e.,* a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 25-page limit are documents supporting assertions or conclusions made in the 25-page project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different USDOT financial assistance program may be referenced and described as unchanged.

OST estimates that it takes approximately 100 person-hours to compile an application package for a INFRA application. Since OST expects to receive 250 applications per funding round, the total hours required are estimated to be 25,000 hours (100 hours × 250 applications = 25,000 hours) on a one-time basis, per funding round.

Funding Agreement Stage

DOT enters a funding agreement with each recipient. In the agreement, the recipient describes the project that DOT agreed to fund, which is typically the project that was described in the INFRA application or a reduced-scope version of that project. The agreement also includes a project schedule, budget, and project related climate change and equity planning and policies.

OST estimates that it takes approximately 6 person-hours to respond to provide the information necessary for funding agreements. Based on previous rounds of INFRA awards, OST estimates that there will likely be 35 agreements negotiated per additional funding round. The total hours required are estimated to be 120 (6 hours × 35 agreements = 210 hours) on a one-time basis, per funding round.

Project Monitoring Stage

OST requires each recipient to submit quarterly reports during the project to ensure the proper and timely expenditure of Federal funds under the grant.

The requirements comply with 2 CFR part 200 and are restated in the funding agreement. During the project monitoring stage, the grantee will complete Quarterly Progress Reports to allow DOT to monitor the project budget and schedule.

OST estimates that it takes approximately 5 person-hours to develop and submit a quarterly progress report. OST expects approximately 35 projects to be awarded per funding round, while grants awarded in prior years will reach completion during the year and would no longer need to submit these reports. OST expects recipients and awardees from 2016–2021 will require 3800 hours to submit project monitoring reports while new recipients and awardees will require 700 hours from 2022–2024.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC.

John Augustine,

Director of the Office of Infrastructure Finance and Innovation, Office of the Under Secretary for Transportation Policy.

[FR Doc. 2022–00135 Filed 1–7–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 8882

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is

soliciting comments concerning Form 8882, *Credit for Employer-Provided Child Care Facilities and Services.*

DATES: Written comments should be received on or before March 11, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–1809—Public Comment Request Notice'' in the Subject line. Requests for additional information or copies of this collection can be directed to Ronald J. Durbala, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer-Provided Child Care Facilities and Services.

OMB Number: 1545–1809.

Project Number: Form 8882.

Abstract: Employers use Form 8882 to claim the credit for qualified childcare facility and resource and referral expenditures. It is part of the general business credit.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and individuals.

Estimated Number of Respondents: 286.

Estimated Time per Respondent: 3 hrs. 41 min.

Estimated Total Annual Burden Hours: 1,053.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: January 4, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–00236 Filed 1–7–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 5495

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 5495, *Request for Discharge from Personal Liability Under Internal Revenue Code Section 2204 or 6905*.

DATES: Written comments should be received on or before March 11, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *omb.unit@irs.gov*. Please include, ''OMB Number: 1545–0432—Public Comment Request Notice'' in the Subject line. Requests for additional information or copies of this collection can be directed to Ronald J. Durbala, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request for Discharge from Personal Liability Under Internal Revenue Code Section 2204 or 6905.

OMB Number: 1545–0432.

Project Number: Form 5495.

Abstract: Form 5495 provides guidance under sections 2204 and 6905 for executors of estates and fiduciaries of decedent's trusts. The form, filed after regular filing of an Estate, Gift, or Income tax return for a decedent, is used by the executor or fiduciary to request discharge from personal liability for any deficiency for the tax and periods shown on the form.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 12 hrs. 16 min.

Estimated Total Annual Burden Hours: 306,500.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: January 4, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–00209 Filed 1–7–22; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 87 Monday,
No. 6 January 10, 2022

Part II

Consumer Product Safety Commission

16 CFR Parts 1112 and 1262
Safety Standard for Magnets; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1262

[Docket No. CPSC–2021–0037]

Safety Standard for Magnets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined preliminarily that there is an unreasonable risk of injury and death, particularly to children and teens, associated with ingestion of one or more high-powered magnets. To address this risk, the Commission proposes a rule, under the Consumer Product Safety Act, to apply to consumer products that are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets. Toys that are subject to CPSC's mandatory toy standard are exempt from the proposed rule. Each loose or separable magnet in a product that is subject to the proposed rule and that fits entirely within CPSC's small parts cylinder would be required to have a flux index of less than 50 kG^2 mm^2. The Commission requests comments about all aspects of this notice, including the risk of injury, the proposed scope and requirements, alternatives to the proposed rule, and the economic impacts of the proposed rule and alternatives.

DATES: Submit comments by March 28, 2022.

ADDRESSES: Submit written comments, identified by Docket No. CPSC–2021–0037, using the methods described below. CPSC encourages you to submit comments electronically, rather than in hard copy.

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov,* and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you can email such submissions to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To read background documents or comments regarding this proposed rulemaking, go to: *http://www.regulations.gov,* insert docket number CPSC–2021–0037 in the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Michelle Guice, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7723; email: *MGuice@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Proposed Rule

The Commission issues this notice of proposed rulemaking (NPR) under sections 7 and 9 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089).[1] Through this rulemaking, the Commission seeks to create a safety standard to address the unreasonable risk of injury and death associated with ingestion of loose or separable high-powered magnets. Incident data indicate that certain consumer products containing such magnets are ingested by children and teens. When ingested, these powerful magnets can interact internally with one another, or a ferromagnetic object (*i.e.,* material attracted to magnets), through body tissue, leading to acute and long-term adverse health consequences or death.

The proposed rule applies to consumer products that are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets. Toys that are subject to CPSC's mandatory toy standard in 16 CFR part 1250 are exempt from the proposed rule, because that standard already includes requirements to address the magnet ingestion hazard in children's toys (*i.e.,* products designed, manufactured, or marketed as playthings for children under 14 years old). In this notice, products that are subject to the proposed rule are referred to as ''subject magnet products.''

The proposed rule seeks to address the risk of injury or death associated with magnet ingestions, by requiring loose or separable magnets in subject magnet products to be either too large to swallow, or weak enough to reduce the risk of internal interaction injuries when swallowed. Under the proposed rule, each loose or separable magnet in a subject magnet product that fits entirely within CPSC's small parts cylinder must have a flux index of less than 50 kG^2 mm^2. CPSC's small parts cylinder is described and illustrated in 16 CFR 1501.4, which is intended to prevent children from ingesting of small objects. The proposed rule specifies the method for determining the flux index of a magnet, and this preamble discusses the basis for the flux index limit in the proposed rule. The term ''hazardous magnet'' refers to a magnet that fits entirely within the small parts cylinder and that has a flux index of 50 kG^2 mm^2 or more.

The information discussed in this preamble is derived from CPSC staff's briefing package for the NPR, which is available on CPSC's website at: *https://www.cpsc.gov/s3fs-public/Proposed-Rule-Safety-Standard-for-Magnets.pdf?VersionId=2Xizl5izY1OvQRVazWpkqdJHXg5vzRY.* This preamble provides key information to explain and support the rule; however, for a more comprehensive and detailed discussion, see the NPR briefing package.

B. History of CPSC Work on the Magnet Ingestion Hazard

CPSC has taken several actions to address the magnet ingestion hazard, including issuing mandatory standards, working with voluntary standards organizations, initiating recalls and compliance actions, engaging in staff assessments of the hazard and potential ways to address it, and creating information campaigns.

1. Mandatory Standards

On August 14, 2008, Congress enacted section 106 of the Consumer Product Safety Improvement Act (CPSIA; Pub. L. 110–314, 122 Stat. 3016 (Aug. 14, 2008)), codified at 15 U.S.C. 2056b.

[1] The Commission voted 4–0 to approve this notice and commence rulemaking.

Section 106 of the CPSIA provides that, beginning 180 days after its enactment, ASTM F963–07, *Consumer Safety Specification for Toy Safety,* is considered a consumer product safety standard issued by the Commission under section 9 of the CPSA.[2] 15 U.S.C. 2056b(a). Section 106 further provides for updates to the mandatory standard when ASTM F963 is revised or to improve safety. *Id.* 2056b(b)(2), (c), (d), (g). Section 106 specifically refers to ''internal harm or injury hazards caused by the ingestion or inhalation of magnets in children's products,'' among other hazards, in its directive to review and assess ASTM F963. *Id.* 2056b(b)(1)(A).

Consistent with the mandate in section 106 of the CPSIA, the Commission adopted 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys* (toy standard), which currently incorporates by reference ASTM F963–17, the most recent revision to the standard.[3] 82 FR 57119 (Dec. 4, 2017). ASTM F963–17 applies to ''toys,'' which are objects ''designed, manufactured, or marketed as a plaything for children under 14 years of age.'' The standard includes requirements to address the hazard associated with ingestion of loose, as-received magnets that are small enough to fit in the small parts cylinder and have a flux index of 50 kG^2 mm^2 or more. Section V. Relevant Existing Standards, below, further describes the requirements in ASTM F963–17.

In 2012, the Commission initiated rulemaking to address the magnet ingestion hazard for products that do not fall under 16 CFR part 1250. The rule focused on magnet sets, which were involved in internal interaction injuries in children and teens, when ingested. 77 FR 53781 (Sep. 4, 2012) (notice of proposed rulemaking); 79 FR 59962 (Oct. 3, 2014) (final rule). The rule defined ''magnet sets'' as ''any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.'' The rule required each magnet in a magnet set, and each individual magnetic object intended or marketed for use with or as a magnet set, that fit completely within CPSC's small parts cylinder, to have a flux index of 50 kG^2 mm^2 or less. The final rule was published in October 2014, and it took effect on April 1, 2015. On November 22, 2016, the U.S. Court of Appeals for the Tenth Circuit overturned the rule on magnet sets, vacating and remanding the rule to the Commission. *Zen Magnets, LLC* v. *Consumer Prod. Safety Comm'n.,* 841 F.3d 1141 (10th Cir. 2016).[4]

2. Voluntary Standards Work

CPSC staff has actively participated in the development and revision of voluntary standards intended to address the magnet ingestion hazard. Since the development of ASTM F963 in 2007, CPSC staff has worked with ASTM to address hazardous magnets in children's toys, including working on multiple revisions to that standard. In addition, staff has participated actively in the ASTM Subcommittee F15.77 on Magnets, which published a voluntary standard on magnet sets in March 2021—ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index ≥50 kG^2 mm^2).*

3. Recalls and Compliance Actions[5]

CPSC's Office of Compliance has investigated and recalled numerous magnet products involving the magnet ingestion hazard. From January 1, 2010 through August 17, 2021, CPSC conducted 18 such recalls, involving 23 firms/retailers, and totaling approximately 13,832,899 recalled units, including craft kits, desk toys, magnet sets, pencil cases, games, bicycle helmets, and maps, among others. Of these 18 recalls, 5 involved products that would not be subject to the proposed rule; specifically, 4 involved children's toys that are subject to the mandatory toy standard, and 1 involved trivets sold with cookware sets. Although these 5 recalls did not apply to products that would be subject to the rule, they also illustrate the magnet ingestion hazard. In addition to recalls, CPSC has addressed the products that present a magnet ingestion hazard through manufacturers' voluntary cessation of sales.

4. Staff Assessment

In addition to staff's assessments of the magnet ingestion hazard for previous rulemakings and compliance efforts, staff also assessed the hazard and potential ways to address it in response to a petition for rulemaking. On August 17, 2017, CPSC received a petition requesting that the Commission initiate rulemaking to address the hazard associated with magnet sets when ''ingested, aspirated, or otherwise inserted into'' the body.[6] On April 22, 2020, the petitioner withdrew the petition. Nevertheless, staff provided the Commission with an informational briefing package on June 30, 2020, discussing the hazard and staff's work in response to the petition.[7] In the informational briefing package, staff recommended that CPSC continue to consider performance requirements for magnets, to address the ingestion hazard to children and teens.

5. Information Campaigns

In addition to raising awareness of the magnet ingestion hazard through publicized recalls, CPSC has drawn attention to the hazard through safety alerts and public safety bulletins. CPSC maintains a ''Magnets Information Center'' website,[8] which provides an informational video, a description of the hazard, steps to take when magnets are swallowed, and links to recalls, relevant CPSC materials, applicable regulations, and informational posters. CPSC also issued a safety alert about the magnet ingestion hazard, which describes the hazard and steps to take when magnets are swallowed. In addition to CPSC's information campaigns, health

[2] Section 106 excluded from this mandate the following provisions in ASTM F963–07: Section 4.2 and Annex 4 (which address flammability), and ''any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administrated by the Food and Drug Administration.''

[3] Part 1250 excepts from the mandatory standard, section 4.2 and Annex 5 (which address flammability) of ASTM F963–17, as well as ''any provision of ASTM F963 that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administrated by the Food and Drug Administration.'' 16 CFR 1250.2(b). In addition, part 1250 replaces section 8.20.1.5(5) of ASTM F963 regarding floor and tabletop toys that move, where a sound is caused as a result of the movement imparted on the toy. *Id.* 1250.2(c).

[4] The court decision had legal effect immediately upon its filing on November 22, 2016. However, in accordance with the court's decision, the Commission removed the mandatory standard for magnets sets (16 CFR part 1240) from the Code of Federal Regulations on March 7, 2017. 82 FR 12716 (Mar. 7, 2017).

[5] Tab G of the NPR briefing package provides details about the recall dates, hazards, approximate number of units affected, number of reported incidents and injuries, and links to the recall press releases.

[6] The Commission published a **Federal Register** notice on October 6, 2017, seeking comments on the petition. 82 FR 46740.

[7] The informational briefing package, ''Staff Briefing Package In Response to Petition CP 17–1, Requesting Rulemaking Regarding Magnet Sets,'' is available at: *https://www.cpsc.gov/s3fs-public/Informational%20Briefing%20Package%20Regarding%20Magnet%20Sets.pdf.*

[8] Available at: *https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Magnets.*

organizations and other consumer advocacy groups have made numerous public outreach efforts to warn consumers about the magnet ingestion hazard.[9]

C. How Other Countries Have Addressed the Magnet Ingestion Hazard

Like CPSC, other countries have recognized the internal interaction hazard associated with magnet ingestions. Several of these countries have issued mandatory requirements to address the hazard. To understand how other countries have addressed magnet ingestions, staff reviewed the mandatory requirements for Canada, Australia, New Zealand, and the European Commission.

Canada's Requirements Regarding Magnet Ingestion. Since 2006, Health Canada has issued several advisories to warn Canadians of the dangers associated with ingesting magnets.[10] In addition, some manufacturers took steps to keep these products from children (*e.g.,* through package warnings, instructions on safe use, and guidance to retailers on safe sales practices). Despite these efforts, children continued to access and use magnets, and ingestion incidents continued. Consequently, Canada adopted mandatory standards for toys and non-toys, to address the magnet ingestion hazard.

Canada's regulation for toys, SOR/2018–138, includes requirements for magnetic toys intended for children under 14 years old.[11] The standard requires each magnet toy, and each magnetic component in a toy, that can fit entirely within a small parts cylinder, to have a flux index below a specified limit, which is equivalent to 50 kG^2 mm^2. The standard includes toys with only one magnet, to account for attraction to ferromagnetic objects. The requirements are consistent with ASTM F963.

Canada has also specified[12] that its general requirements, under the Canada Consumer Product Safety Act (CCPSA), prohibit the manufacture, import, advertising, and sale of products that contain small, powerful magnets, regardless of the intended user age. The general provision in the CCPSA prohibits the manufacture, import, advertisement, and sale of any consumer product that ''is a danger to human health or safety.'' Sections 7(a), 8(a).[13] Canada specifically highlighted products intended for entertainment that consist of numerous small, powerful magnets.

Australia's Requirements Regarding Magnet Ingestion. Australia has also issued mandatory requirements for both children's toys, and non-children's products, to address the magnet ingestion hazard. For toys intended for children up to, and including, 36 months, Australia requires compliance with Australia New Zealand Standard AS/NZS ISO 8124.1, which aligns with the magnet requirements in ASTM F963.[14]

In addition, in November 2012, Australia adopted a permanent ban of consumer goods containing 2 or more separable or loose magnetic objects, where at least 2 of the magnetic objects each separately fit entirely within a small parts cylinder (specified in AS/NZS ISO 8124.1) and each have a flux index greater than 50 kG^2 mm^2 (using methods described in AS/NZS ISO 8124.1). The ban applies to magnetic objects marketed or supplied for use as a toy, game, puzzle, construction or modelling kit, or jewelry to be worn in or around the mouth or nose. This includes adult desk toys, educational toys or games, and toys, games, and puzzles for mental stimulation or stress relief.[15]

New Zealand's Requirements Regarding Magnet Ingestion. As indicated above, New Zealand also uses AS/NZS ISO 8124.1, which aligns with the magnet requirements in ASTM F963, to address the magnet ingestion hazard in children's toys.[16]

In addition, in January 2013, New Zealand issued a temporary ban[17] on the sale of certain high-powered magnets, which it extended indefinitely in July 2014.[18] The ban applies to magnetic objects for personal, domestic, or household use that are supplied, offered, or advertised as a toy, game, puzzle, novelty, construction or modelling kit, or jewelry that may be warn in or around the mouth or nose. This includes adult desk toys, educational toys and games, and toys, games, and puzzles for mental stimulation or stress relief. The ban does not apply to hardware magnets, magnets used for teaching purposes by schools and universities, or magnets intended to become part of another product. The ban applies to the specified products if they contain 2 or more separable or loose magnetic objects, at least 2 of the magnetic objects each separately fit entirely within a small parts cylinder (specified in AS/NZS ISO 8124.1), and at least 2 of those magnets have a flux index greater than 50 kG^2 mm^2 (using methods described in AS/NZS ISO 8124.1).

The European Commission's Requirements Regarding Magnet Ingestion. The European Commission requires children's toys to comply with EN 71–1, *Safety of Toys,* discussed further in section V. Relevant Existing Standards, below. The requirements in EN 71–1 relating to magnet ingestion are essentially the same as the requirements in ASTM F963–17. There is no safety standard regarding magnet ingestions for products other than children's toys. However, member states generally apply EN 71–1 when assessing the risk posed by products that are not marketed as children's toys, but are intended for children, including magnet sets intended for adults because they are often bought for and used by children.

II. Statutory Authority

Subject magnet products are ''consumer products'' that the Commission has authority to regulate

[9] Examples include the American Academy of Pediatrics (*https://services.aap.org/en/search/?k=magnets*); the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (*https://www.naspghan.org/content/72/en/Foreign-Body-Ingestion*); Consumer Reports (*https://www.consumerreports.org/product-safety/magnets-marketed-as-toys-could-be-dangerous-to-kids/*); Consumer Federation of America (*https://consumerfed.org/testimonial/cfa-comments-cpscs-notice-proposed-rulemaking-safety-standard-magnet-sets/*); and Kids In Danger (*https://kidsindanger.org/2011/11/cpsc-warns-about-high-powered-magnets/*).

[10] For example, see: *https://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2013/31619a-eng.php; https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/letters-notices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-small-powerful-magnets.html.*

[11] See *https://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-17/page-3.html#h-1109670.*

[12] See *https://www.canada.ca/en/health-canada/services/consumer-product-safety/advisories-warnings-recalls/letters-notices-information-industry/information-manufacturers-importers-distributors-retailers-products-containing-small-powerful-magnets.html.*

[13] See *https://laws-lois.justice.gc.ca/eng/acts/c-1.68/page-1.html.*

[14] See *https://www.legislation.gov.au/Details/F2008C00607.*

[15] See *https://www.legislation.gov.au/Details/F2012L02171; https://www.productsafety.gov.au/bans/small-high-powered-magnets.*

[16] See *https://www.standards.govt.nz/shop/asnzs-iso-8124-12019/.*

[17] See *https://www.beehive.govt.nz/release/ban-sale-high-powered-magnet-sets#:~:text=Consumer%20Affairs%20Minister%20Simon%20Bridges,stores%20and%20over%20the%20internet.*

[18] Unsafe Goods (Small High Powered Magnets) Indefinite Prohibition Notice 2014, available at: *https://gazette.govt.nz/notice/id/2014-go4501;* see also, *https://productsafety.tradingstandards.govt.nz/for-business/regulated-products/small-high-powered-magnets-unsafe-goods-notice/; https://productsafety.tradingstandards.govt.nz/for-consumers/safety-with-specific-products/high-powered-magnets/.*

under the CPSA. *See* 15 U.S.C. 2052(a)(5). Section 7 of the CPSA authorizes the Commission to issue a mandatory consumer product safety standard that consists of performance requirements or requirements that the product be marked with, or accompanied by, warnings or instructions. *Id.* 2056(a). Any requirement in the standard must be ''reasonably necessary to prevent or reduce an unreasonable risk of injury'' associated with the product. *Id.* Section 7 requires the Commission to issue such a standard in accordance with section 9 of the CPSA. *Id.*

Section 9 of the CPSA specifies the procedure the Commission must follow to issue a consumer product safety standard under section 7. *Id.* 2058. Under section 9, the Commission may initiate rulemaking by issuing an advance notice of proposed rulemaking (ANPR) or NPR. *Id.* 2058(a). When issuing an NPR, the Commission must comply with section 553 of Administrative Procedure Act (5 U.S.C. 551–559), which requires the Commission to provide notice of a rule and the opportunity to submit written comments on it. 5 U.S.C. 553; 15 U.S.C. 2058(d)(2). In addition, the Commission must provide interested parties with an opportunity to make oral presentations of data, views, or arguments. *Id.* 2058(d)(2).

Under section 9 of the CPSA, an NPR must include the text of the proposed rule, any alternatives the Commission proposes, and a preliminary regulatory analysis. *Id.* 2058(c). The preliminary regulatory analysis must include:

- A preliminary description of the potential benefits and costs of the rule, including benefits and costs that cannot be quantified, and the analysis must identify who is likely to receive the benefits and bear the costs;
- a discussion of the reasons any standard or portion of a standard submitted to the Commission in response to an ANPR was not published by the Commission as the proposed rule or part of the proposed rule;
- a discussion of the reasons for the Commission's preliminary determination that efforts submitted to the Commission in response to an ANPR to develop or modify a voluntary standard would not be likely, within a reasonable period of time, to result in a voluntary standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and
- a description of alternatives to the proposed rule that the Commission considered and a brief explanation of the reasons the alternatives were not chosen.

Id.

In addition, to issue a final rule, the Commission must make certain findings and include them in the rule. *Id.* 2058(f)(1), (f)(3). Under section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, concerning the following issues:

- The degree and nature of the risk of injury the rule is designed to eliminate or reduce;
- the approximate number of consumer products subject to the rule;
- the need of the public for the products subject to the rule and the probable effect the rule will have on the cost, availability, and utility of such products; and
- the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.

Id. 2058(f)(1). Under section 9(f)(3) of the CPSA, the Commission may not issue a consumer product safety rule unless it makes the following findings and includes them in the rule:

- That the rule, including the effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;
- that issuing the rule is in the public interest;
- if a voluntary standard addressing the risk of injury has been adopted and implemented, that either compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or there is unlikely to be substantial compliance with the voluntary standard;
- that the benefits expected from the rule bear a reasonable relationship to its costs; and
- that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury.

Id. 2058(f)(3). At the NPR stage, the Commission is making these findings on a preliminary basis to allow the public to comment on them.

III. The Product and Market

A. Description of the Product

The proposed rule applies to ''subject magnet products,'' which are consumer products that are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets (subject magnet products). Toys that are subject to 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys,* are exempt from this proposed rule.

Subject magnet products include a wide variety of consumer products. Magnets in subject magnet products typically are small, powerful, magnetic balls, cubes, cylinders, and other shapes that can be used to create jewelry (such as necklaces, bracelets, and simulated piercings), and can be aggregated to make sculptures, for use as desk toys, and as other building sets. One common example of a subject magnet product is magnet sets intended for users 14 years and older. Consistent with the Commission's 2014 rule, magnet sets are aggregations of separable magnetic objects that are marketed or commonly used as a manipulative or construction items for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Magnet sets often contain hundreds to thousands of loose, small, high-powered magnets. Another example of a subject magnet product is jewelry with separable magnets, such as jewelry-making sets and faux magnetic piercings/studs. Additional examples include products commonly referred to as ''executive toys,'' ''desk toys,'' and ''rock magnets'' (rock-shaped magnets), intended for amusement of users 14 years and older.

Subject magnet products are available in a variety of shapes (*e.g.,* balls, cubes, cylinders), sizes (*e.g.,* 2.5 mm, 3 mm, 5 mm), and number of magnets (*e.g.,* 1 to thousands). Subject magnet products often consist of numerous identical magnets, although some products include non-identical magnets, such as two or more different shapes. Subject magnet products commonly include magnets between 3 mm and 6 mm in size, and consist of several hundred magnets. One example of a common subject magnet product that staff identified is magnet sets containing approximately 200 magnetic spheres with 5 mm diameters.

Magnets in subject magnet products have a variety of compositions, such as alloys of neodymium, iron, boron (NIB); ferrite/hematite; aluminum, nickel, cobalt (AlNiCo); and samarium and cobalt (SmCo). NIB and SmCo magnets are often referred to as ''rare earth'' magnets because neodymium and samarium are ''rare earth'' elements found on the periodic table. Most subject magnet products that staff identified were made from NIB. NIB is typically used in smaller magnets used for magnet sets and magnetic jewelry sets, and ferrite/hematite is typically used in larger magnets, such as rock-shaped magnet toys. The magnetized cores of subject magnet products are

coated with a variety of metals and other materials to make them more attractive to consumers and to protect the brittle magnetic alloy materials from breaking, chipping, and corroding.

Staff found that 5 mm diameter NIB magnets (the most common size identified in magnet ingestion incidents) typically have strong magnetic properties, ranging between 300 and 400 kG^2 mm^2, and ferrite rock magnets measured upwards of 700 kG^2 mm^2. Staff also identified products close to the proposed limit of 50 kG^2 mm^2, ranging from approximately 30 kG^2 mm^2 to 70 kG^2 mm^2. Some subject magnet products advertise having flux indexes lower than 50 kG^2 mm^2, which is more common for smaller magnets (*e.g.,* 2.5 mm magnets).

Some subject magnet products are ''children's products.'' The definition of ''children's products,'' and the requirements applicable to them, are described in section XII. Testing, Certification, and Notice of Requirements, below. To summarize, a ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). Most subject magnet products are not children's products because the proposed rule excepts from the standard products that fall under the mandatory toy standard, which applies to playthings intended for users under 14 years old. However, some subject magnet products are children's products because, although they are intended for users 12 years old and younger, they do not fall under the toy standard because they are not playthings. One example of a subject magnet product that could be a children's product and not a toy is children's jewelry.

B. The Market

Magnet products intended for the purposes covered in the proposed rule largely entered the market in 2008, with significant sales beginning in 2009. Of the various products covered by the proposed rule, magnet sets have been particularly concerning to CPSC, given their popularity, uses for amusement and jewelry, their involvement in ingestion incidents, and the large number of loose, small, high-powered magnets in the sets. For this reason, CPSC's previous efforts to address the magnet ingestion hazard largely have focused on magnet sets. Accordingly, much of the information staff has about the market for subject magnet products focuses on magnet sets,[19] which are the largest category of identified products involved in magnet ingestions.

From 2009 through mid-2012, most magnet set sellers were retailers with physical stores, such as bookstores, gift shops, and other outlets. In contrast, nearly all current marketers (firms or individuals) of magnet sets sell through internet sites, rather than physical stores. Some of these internet sites are operated by importers, but most sellers (in terms of distinct firms or individuals, if not unit sales) sell through their stores operated on the sites of other internet retailer platforms.

In 2018, CPSC contracted with Industrial Economics, Incorporated (IEc) to examine the market for magnet sets. IEc found a total of 69 sellers of magnet sets on internet platforms in late 2018. IEc also identified 10 manufacturers and 2 retailers.[20] CPSC staff had previously identified at least 121 sellers of magnet sets on internet retailer platforms. However, IEc found that most sellers CPSC had previously identified were no longer selling relevant magnet set products, indicating a high turnover rate for magnet set products and sellers. In 2020, CPSC staff reviewed the status of previously identified sellers of magnet sets on leading internet marketplaces and found further evidence of the high turnover rates for these platforms. Only 9 of the 69 sellers IEc identified in late 2018 were still selling magnet sets; the remainder either no longer offered magnet sets, or no longer operated on the platforms. In addition, CPSC staff identified 29 new sellers that had not been identified in late 2018.

In both 2018 and 2020, staff found that many magnet-set sellers were located domestically, or in China or Hong Kong. In 2018, approximately 57 percent of magnet set sellers on one internet platform fulfilled orders domestically, whereas, in 2020, this declined to 25 percent. In 2018, approximately 25 percent of magnet set sellers on another internet platform were domestic, whereas, in 2020, this increased to 87 percent. Non-domestic sellers were primarily in China and Hong Kong. In addition to internet retailers based in the United States, consumers can also purchase a wide variety of magnet sets using online retailers based in China. Magnet sets purchased from foreign internet retailers may be shipped to consumers directly from China, or from warehouse facilities located domestically.

Retail prices of subject magnet products are about $20 per unit, on average. Magnet sets comprised of spheres or cubes with smaller dimensions (2.5 mm to 3 mm) typically retail at lower prices.

As indicated above, CPSC staff primarily has information about magnet sets, however, additional products are also subject to the proposed rule. CPSC staff is aware of magnets marketed online as jewelry, jewelry-making sets, and faux studs/piercings, as well as entertainment products, such as ''desk toys'' and ''executive toys.'' CPSC requests comments about unit sales and other market information about subject magnet products, particularly for products other than magnet sets.

IV. Risk of Injury

CPSC staff analyzed reported fatalities, reported nonfatal incidents and injuries, and calculated national estimates of injuries treated in U.S. hospital emergency departments (EDs) that were associated with ingestion of subject magnet products. Staff also assessed the health outcomes associated with these incidents, as well as various characteristics of the incidents.

A. Incident Data[21]

To evaluate magnet ingestion incidents, staff reviewed reports in the National Electronic Injury Surveillance System[22] (NEISS), which includes reports of injuries treated in U.S. EDs, and reports in the Consumer Product Safety Risk Management System[23] (CPSRMS). The data presented here represent the minimum number of incidents during the periods described.

1. National Estimates of ED-Treated Injuries

To evaluate magnet ingestion incidents in NEISS, staff started by identifying magnet ingestion cases in the NEISS database with treatment dates

[19] Staff's analysis for the 2014 rule and 2020 informational briefing package focused on magnet sets.

[20] IEc classified manufacturers as firms producing and selling their own magnet set products, and retailers as firms that typically sell magnets from multiple manufacturers.

[21] For more details about incident data, see Tab B and Tab C of the NPR briefing package.

[22] Data from NEISS are based on a nationally representative probability sample of about 100 hospitals in the United States and its territories. NEISS data can be accessed from the CPSC website under the ''Access NEISS'' link at: *https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data.*

[23] CPSRMS is the epidemiological database that houses all anecdotal reports of incidents CPSC receives, ''external cause''-based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. Examples of documents in CPSRMS include: Hotline reports, internet reports, news reports, medical examiner reports, death certificates, retailer/manufacturer reports, and documents sent by state/local authorities, among others.

from January 1, 2010 through December 31, 2020. Staff then excluded from this data set incidents that staff could not determine involved magnets (*e.g.,* ''acc swallowed dog toy vs magnet''); incidents that did not involve ingestion, or where it was uncertain whether ingestion occurred (*e.g.,* ''possible ingestion,'' ''may have ingested''); and incidents that provided ambiguous information about whether the item ingested was a magnet (*e.g.,* the report refers to a magnet and ingestion, but it is not clear that the magnet was the object ingested). This may have resulted in underestimating the number of incidents.

From the remaining data set, staff categorized incidents by magnet type. Based on the products identified in NEISS reports, or the description of the products, staff organized cases into the following categories: Magnet sets, magnet toys, jewelry, science kits, home/kitchen, ASTM F963 magnet toys, and unidentified. The criteria staff used to categorize incidents into these groups are as follows:

- *Magnet Sets:* Magnets from sets of loose, as-received magnets that are marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. These items met at least one of the following criteria: Referred to as a magnet set or identified as a magnet set through product name. This category excludes building sets with plastic and/or ferromagnetic components, unless otherwise identified as a magnet set. This category also excludes products reasonably identified as belonging to another product type described below (*e.g.,* a magnetic clasp from a necklace).
- *Magnet Toys:* Magnets from products referred to as toys or games. This category includes products for which the manufacturer-intended user of the toy was 14 years or older, or was unknown, and it excludes cases that positively identified toys subject to ASTM F963 (*i.e.,* excludes products confirmed to have been designed, manufactured, or marketed as playthings for children under 14 years of age).
- *Jewelry:* Magnets described as jewelry (*i.e.,* magnets that are jewelry, or that were being used as or like jewelry) and not definitively identified as a magnet set. Most of these cases involve magnets described as a bracelet, necklace, or piercing jewelry.
- *Science Kits:* Magnets from products identified as a science kit or magnetic/electrical experimental set.
- *Home/Kitchen:* Magnets from products such as non-toy magnet decorations, shower curtains, hardware, and kitchen products. Many of these incidents refer to the magnets as ''kitchen magnets.''
- *ASTM F963 Magnet Toys:* Magnets from toys subject to ASTM F963 (*i.e.,* products designed, manufactured, or marketed as playthings for children under 14 years old). Reports for these incidents included brand names or other information sufficient for staff to identify the involved products as toys subject to ASTM F963. Most of these cases involved the magnetic tip of a children's magnetic stylus toy.
- *Unidentified:* Unidentified magnet product type.

As the descriptions above indicate, ''magnet toys'' and ''ASTM F963 magnet toys'' refer to two different types of products. ''Magnet toys,'' as used throughout this preamble, refers to products described as toys, but that did not include indications that the product was marketed for users under 14 years old. In contrast, ''ASTM F963 magnet toys'' refers to products that staff identified as toys marketed for children under 14 years old; as such, these products are subject to ASTM F963, and they do not fall under the scope of the proposed rule.

With respect to the science kit category, staff identified only one case that involved a product described as a science kit. There was insufficient information about the product to determine whether it was a children's toy subject to ASTM F963, an educational product, or a subject magnet product. Because of this lack of information, and the possibility that it was a children's toy or educational product, staff considered this case outside the scope of the proposed rule.

Staff considered the following categories to be subject magnet products: Magnet sets, magnet toys, and jewelry; these are referred to collectively as ''amusement/jewelry.'' These categories include incidents in which the report identified a subject magnet product as being ingested, or the incident report provided information about the product, such as characteristics or use patterns, that were sufficient for staff to reasonably conclude that the product fell in a certain product type category. Staff considered cases in the following categories to be outside the scope of the proposed rule: Science kits, home/kitchen, and ASTM F963 magnet toys; these are referred to collectively as ''exclusions.'' Incidents in the unidentified category did not provide sufficient information to identify the magnet product category, however, they did indicate that a magnet was ingested, and the product had characteristics and use patterns that could be consistent with subject magnet products. Section *IV.A.5. Uncertainties in Incident Data,* below, explains several reasons why staff concludes that a substantial portion of unidentified product type incidents involved subject magnet products.

Table 1 provides the number of cases in each product type category, and the combined categories reported by NEISS participating hospitals.

TABLE 1—COUNT OF MAGNET INGESTION CASES TREATED IN NEISS HOSPITAL EDS, BY MAGNET CATEGORY, 2010–2020

Original magnet category	N (original)	Combined magnet category	N (combined)
Magnet Set	58	Amusement/Jewelry	221
Jewelry	53		
Magnet Toy	110		
Unidentified	793	Unidentified	793
Science Kit	1	Exclusions	58
F963 magnet toy	11		
Home/Kitchen	46		
Total	1,072		1,072

Source: NEISS, CPSC.

As Table 1 indicates, of the incidents for which staff could identify a product type category, most incidents involved magnet toys, followed by magnet sets, and jewelry. For 74 percent of incidents, staff could not identify the product type category.

Using the information from the sample of NEISS participating hospitals, staff derived estimates of the number of magnet ingestions treated in U.S. hospitals nationally from 2010 through 2020. For staff to generate national estimates using NEISS data, all of the following reporting criteria must be met: The coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases, and there must be at least 1,200 estimated injuries. Because of the large portion of NEISS incidents in the unidentified product type category, to meet these criteria, it was necessary to combine the amusement/jewelry and unidentified categories to generate national estimates, and it was not possible to generate national estimates for individual product categories. Thus, the national estimates provided in the rest of this section include incidents in both the amusement/jewelry and unidentified categories of NEISS data. Although the national estimates include magnet ingestion cases in the unidentified product type category, there are several reasons why staff concludes that most magnet ingestion incidents in the unidentified product type category involved subject magnet products, including incident data about known product types, trend data, and recall data. Section *IV.A.5. Uncertainties in Incident Data,* below, discusses, in detail, the reasons staff concludes that most unidentified product type incidents involved subject magnet products.

Table 2 provides the estimated number of ED-treated magnet ingestions for the combined categories.

TABLE 2—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY MAGNET CATEGORY, 2010–2020

Magnet category	Estimate	CV	N
Amusement/Jewelry	4,400	0.17	221
Unidentified	18,100	0.14	793
Exclusions	1,300	0.20	58
Total	23,700	0.21	1,072

Source: NEISS, CPSC. Estimates rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

Table 3 provides the national estimates of ED-treated magnet ingestions, by year.

TABLE 3—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY YEAR

Year	Estimate	CV	N
2010	1,900	0.18	91
2011	2,500	0.18	101
2012	2,700	0.26	115
2013	2,000	0.21	88
2014	**	**	62
2015	1,200	0.24	61
2016	1,400	0.24	77
2017	2,900	0.25	112
2018	2,400	0.18	120
2019	1,800	0.22	91
2020	2,200	0.21	96
Total	22,500	0.14	1,014

** This estimate does not meet NEISS reporting criteria.
Source: NEISS, CPSC. Estimates rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

There were significantly fewer ED-treated magnet ingestions in 2015 than in any of the following years: 2010, 2011, 2012, 2017, and 2018. Likewise, there were significantly fewer ED-treated magnet ingestions in 2016 than in any of the following years: 2011, 2017, and 2018. Overall, 2014 through 2016 had the lowest number of estimated ED-treated magnet ingestions. Table 4 compares these middle 3 years (*i.e.,* 2014–2016) with the earliest 4 years (*i.e.,* 2010–2013), and the most recent 4 years (*i.e.,* 2017–2020). Because these periods are not of equivalent duration, staff estimated annual averages to support fair comparisons.

TABLE 4—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY PERIOD

Period	Annual average estimate	CV	N (not an average)	Years in period
2010–2013	2,300	0.16	395	4
2014–2016	1,300	0.20	200	3

TABLE 4—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY PERIOD—Continued

Period	Annual average estimate	CV	N (not an average)	Years in period
2017–2020	2,300	0.15	419	4
2010–2020	2,000	0.14	1,014	11

Source: NEISS, CPSC. Estimates are rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

Table 5 provides estimated ED-treated magnet ingestions, by age group.

TABLE 5—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY AGE GROUP, 2010–2020

Age group	Estimate	CV	N
Under 2 years	2,700	0.19	120
2 years	2,300	0.27	89
3–4 years	4,700	0.16	196
5–7 years	4,300	0.14	207
8–10 years	3,900	0.19	179
11–13 years	3,400	0.17	182
14 or More years	**	**	41
Total	22,500	0.14	1,014

** This estimate does not meet NEISS reporting criteria.
Source: NEISS, CPSC. Estimates are rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

Table 6 provides the estimated number of ED-treated magnet ingestions, by sex.

TABLE 6—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY SEX, 2010–2020

Sex	Estimate	CV	N
Female	9,100	0.15	421
Male	13,300	0.14	593
Total	22,500	0.14	1,014

Source: NEISS, CPSC. Estimates are rounded to the nearest 100.

Table 7 provides the estimated number of ED-treated magnet ingestions, by sex and age group. Staff used 8 years old to delineate older and younger children because, as discussed in section V. Relevant Existing Standards, several voluntary standards provide less stringent requirements for magnet products intended for users 8 years and older.

TABLE 7—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY SEX AND AGE GROUP, 2010–2020

Sex	Age group		Total
	Under 8 years	8 or more years	
Female	5,600	3,500	9,100
Male	8,400	4,900	13,300
Total	14,000	8,500	22,500

Source: NEISS, CPSC. Estimates are rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

Table 8 provides the estimated number of ED-treated magnet ingestions, by disposition.

TABLE 8—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN U.S. HOSPITAL EDS, BY DISPOSITION, 2010–2020

Disposition	Estimate	CV	N
Hospitalized/Transferred	4,200	0.19	264
Treated and Released	18,000	0.14	735
Other *	**	**	15
Total	22,500	0.14	1,014

* Dispositions in the ''other'' category include cases in which the victim was ''held for observation (includes admitted for observation)'' and ''left without being seen/left against medical advice.''

** This estimate does not meet reporting criteria.

Source: NEISS, CPSC. Estimates are rounded to the nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

As Table 8 indicates, approximately 80 percent of estimated ED-treated magnet ingestions are treated and released, and approximately 19 percent are hospitalized or treated and transferred to another hospital. Some portion of cases that report the victim being treated and released may have resulted in later hospitalization because magnet ingestion patients are often sent home initially to monitor for natural passage, and the NEISS data typically capture only one part of the treatment process—the ED visit—and do not typically provide information about treatment after the initial ED visit.

2. Reported Incidents

CPSC staff also reviewed CPSRMS data for magnet ingestion incidents. CPSRMS reports commonly contain more information about the incident, product, and victims than NEISS reports because CPSRMS reports may provide photos and websites with detailed narratives and medical documents, whereas, NEISS reports contain only brief narratives from the ED visit. However, CPSRMS data do not provide a complete count of all incidents that occurred during a period, and unlike NEISS data, CPSRMS cannot be used for statistical estimates or to draw conclusions about trends. Rather, CPSRMS data provide a minimum number of incidents that occurred during a period and provide details about incidents.

CPSC staff identified 284 magnet ingestion incidents in CPSRMS that were reported to have occurred between January 1, 2010 and December 31, 2020. Data collection is ongoing for CPSRMS, and is considered incomplete for 2019 and after, so CPSC may receive additional reports for those years in the future. Staff categorized these cases similarly to the NEISS incidents, however, there are some minor differences in the criteria because CPSRMS reports typically contained more product-specific information than NEISS reports. Based on the products identified in the CPSRMS reports or the descriptions of the products, staff organized cases into the following categories: Magnet sets, magnet toys, jewelry, science kits, home/kitchen, ASTM F963 magnet toys, and unidentified. The criteria staff used to categorize incidents into these groups are as follows:

- Magnet Sets: Magnets from sets of loose, as-received magnets that are marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. These items met at least one of the following criteria:
  - Referred to as a magnet set;
  - identified as a magnet set through product name;
  - included photos identifying the product; or
  - other available information provided reasonable certainty that the product was a magnet set (*e.g.,* products described identically to known magnet sets, such as desk toys consisting of 216 loose, magnetic balls).

Brand was indicated for most of these incidents. Incidents were excluded from this grouping if a medical professional identified the product as a magnet set, but the investigator and victim indicated that they were unable to identify the product as a magnet set.

- Magnet Toys: Magnets from products referred to as toys or games. This category includes products for which the manufacturer-intended user of the toy was 14 years or older, or was unknown, and excludes cases that positively identified toys subject to ASTM F963 (*i.e.,* excludes products confirmed to have been designed, manufactured, or marketed as playthings for children under 14 years of age).
- Jewelry: Magnets described as jewelry and not definitively identified as a magnet set. Most of these cases involve magnets described as a bracelet, necklace, or piercing jewelry.
- Science Kits: Magnets from products identified as a science kit or magnetic/electrical experimental set. (No reported incidents fit in this category.)
- Home/Kitchen: Magnets from products such as non-toy magnet decorations, shower curtains, hardware, and kitchen products.
- ASTM F963 Magnet Toys: Magnets from toys subject to ASTM F963 (*i.e.,* products designed, manufactured, or marketed as playthings for children under 14 years old). Reports for these incidents included brand names or other information sufficient for staff to identify the products involved as toys subject to ASTM F963. Most of these cases involved magnetic building sets with magnets encased in plastic.
- Unidentified: Unidentified magnet product type.

Like NEISS product type categories, ''magnet toys'' and ''ASTM F963 magnet toys'' refer to two different types of products. Staff categorized as ''magnet toys'' products described as toys, which did not have evidence of having been marketed for users under 14 years old. In contrast, ''ASTM F963 magnet toys'' are toys staff identified as marketed for children under 14 years old, making them subject to ASTM F963, and outside the scope of the proposed rule.

Consistent with the NEISS data analysis, staff considered the following categories to be subject magnet products: Magnet sets, magnet toys, and jewelry; these are referred to collectively as ''amusement/jewelry.'' These categories include incidents in which the report identified a subject magnet product as being ingested, or the incident report provided information about the product, such as

characteristics or use patterns, which were sufficient for staff to reasonably conclude that the product fell in a certain product type category. Staff considered incidents in the following categories to be outside the scope of the proposed rule: Science kits, home/kitchen, and ASTM F963 magnet toys; these are referred to collectively as ''exclusions.'' Incidents in the unidentified category did not provide sufficient information to identify the magnet product category, however, they did indicate that a magnet was ingested, and the product had characteristics and use patterns that could be consistent with subject magnet products. As with the NEISS cases, staff concludes that a substantial proportion of the unidentified category involved subject magnet products (see section *IV.A.5. Uncertainties in Incident Data,* below).

Table 9 provides the number of reported magnet ingestions in each category.

TABLE 9—REPORTED MAGNET INGESTIONS, BY MAGNET CATEGORY, 2010–2020

Magnet category	Incidents	Proportion (%)	Scope	Incidents	Proportion (%)
Magnet Set	134	47.2	Amusement/Jewelry	214	75.4
Magnet toy	49	17.3			
Jewelry	31	10.9			
Unidentified	43	15.1	Unidentified	43	15.1
Science Kit	0	0	Exclusions	27	9.5
F963 Magnet Toy	21	7.4			
Home/Kitchen	6	2.1			
Total	284	100.0%	Total	284	100.0%

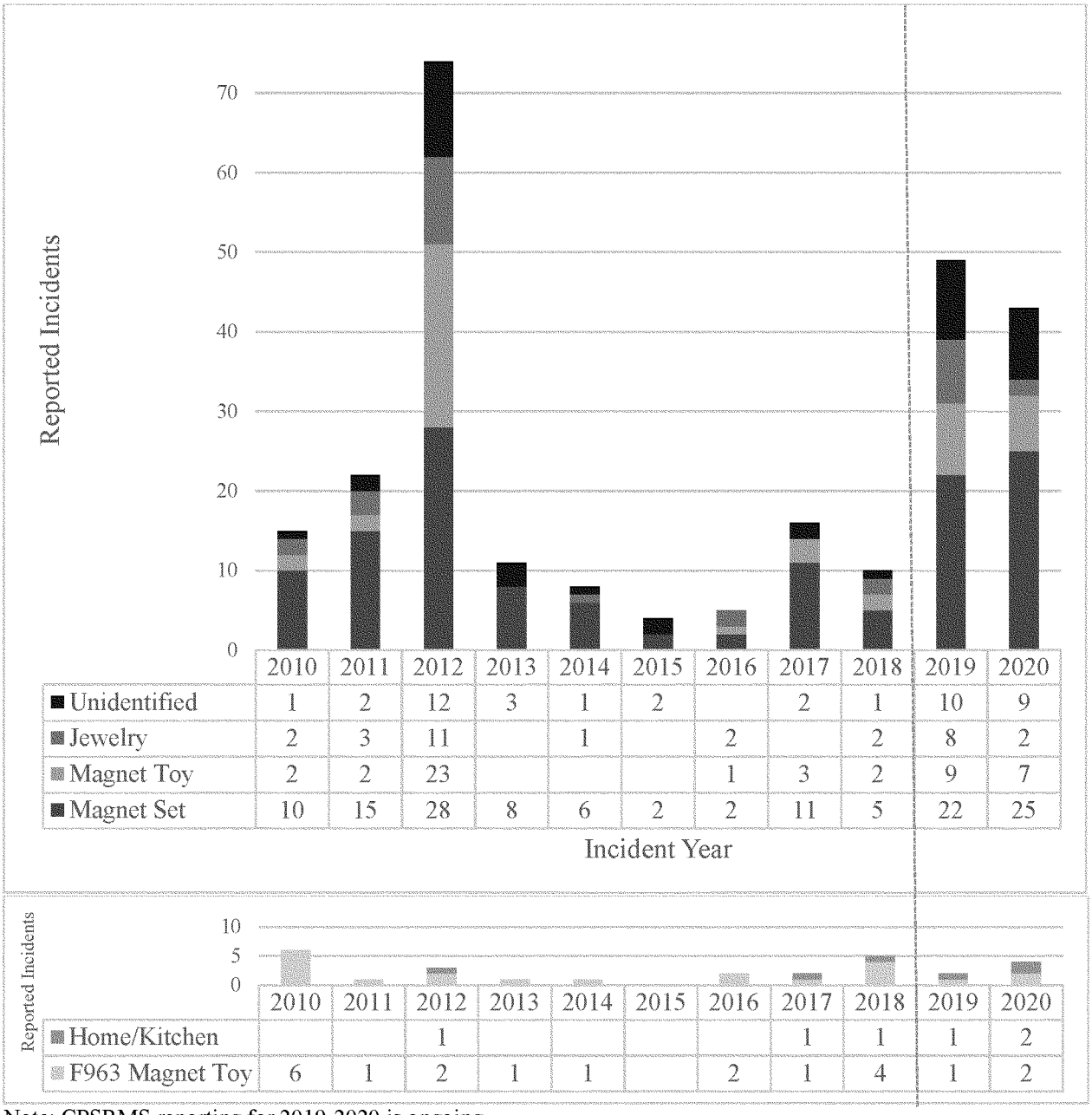
Note: CPSRMS reporting for 2019–2020 is ongoing.

As Table 9 shows, of the incidents for which staff could identify a product type category, most involved magnet sets, followed by magnet toys, and jewelry. Fewer cases involved products that are not subject magnet products (*i.e.,* science kits, ASTM F963 magnet toys, and home/kitchen). Compared to NEISS data, far fewer incidents involved unidentified product types.

To further analyze CPSRMS data, staff combined the following categories—magnet sets, magnet toys, jewelry, and unidentified. Staff included the unidentified product type category in this analysis because, as noted for NEISS data, there are several reasons that staff concludes that most magnet ingestion incidents in the unidentified product type category involved subject magnet products, including incident data about known product types, trend data, and recall data. Section *IV.A.5. Uncertainties in Incident Data,* below, discusses, in detail, the reasons staff concludes that most unidentified product type incidents involved subject magnet products. Thus, the data provided in the rest of this section includes incidents in both the amusement/jewelry and unidentified categories of CPSRMS data.

Figure 1 shows the reported CPSRMS magnet ingestion incidents, by year of incident and product type category.

BILLING CODE 6355–01–P

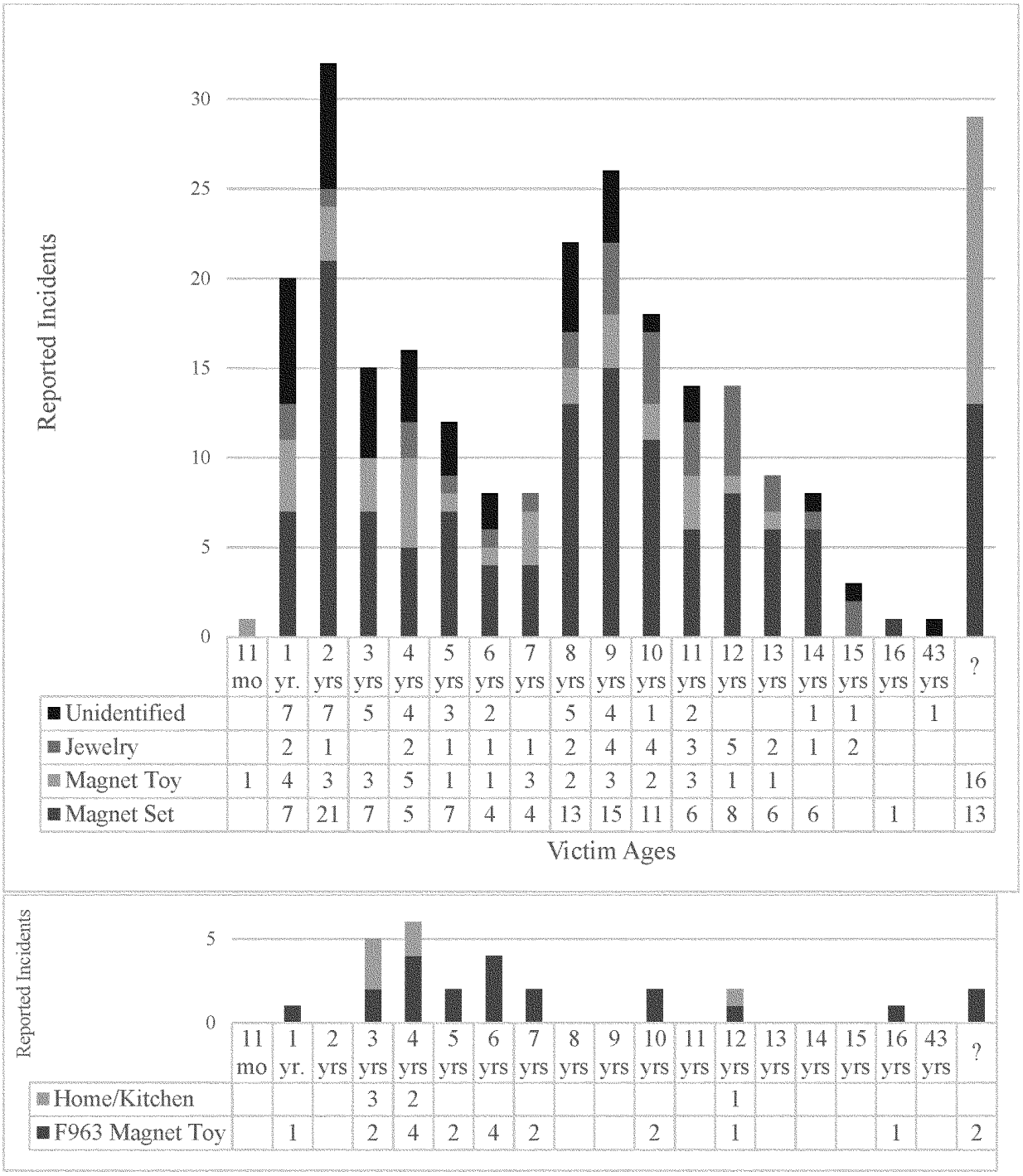


Note: CPSRMS reporting for 2019-2020 is ongoing.

Figure 1: Histogram of Reported Magnet Ingestion Incidents, by Incident Year and Magnet Category, 2010-2020

Although CPSRMS data cannot be used to draw statistical conclusions, this data suggests that magnet ingestion incidents increased in 2012, 2019, and 2020, and were lowest in 2015 and 2016, consistent with the results seen in the NEISS data.

Figure 2 shows reported magnet ingestions, by victim age and product type category.



	11 mo	1 yr.	2 yrs	3 yrs	4 yrs	5 yrs	6 yrs	7 yrs	8 yrs	9 yrs	10 yrs	11 yrs	12 yrs	13 yrs	14 yrs	15 yrs	16 yrs	43 yrs	?
Unidentified		7	7	5	4	3	2		5	4	1	2			1	1		1	
Jewelry		2	1		2	1	1	1	2	4	4	3	5	2	1	2			
Magnet Toy	1	4	3	3	5	1	1	3	2	3	2	3	1	1					16
Magnet Set		7	21	7	5	7	4	4	13	15	11	6	8	6	6		1		13

	11 mo	1 yr.	2 yrs	3 yrs	4 yrs	5 yrs	6 yrs	7 yrs	8 yrs	9 yrs	10 yrs	11 yrs	12 yrs	13 yrs	14 yrs	15 yrs	16 yrs	43 yrs	?
Home/Kitchen				3	2								1						
F963 Magnet Toy		1		2	4	2	4	2			2		1				1		2

Note: CPSRMS reporting for 2019-2020 is ongoing. Incidents for which the victim's age is unknown are indicated under "?" and are not graphed. For one victim in the "15 yrs" category, the report included conflicting information, and the victim may have been 16 years old.

Figure 2: Histogram of Reported Magnet Ingestion Incidents, by Victim Age and Magnet Category, 2010-2020

BILLING CODE 6355–01–C

Again, although CPSRMS data cannot be used to draw statistical conclusions, the data suggest that children and teens of all ages ingest magnets, and similar to the NEISS data, most magnet ingestions involve children 5 years or older, with almost half of the ingestions involving children 8 years or older.

Table 10 provides the disposition of reported magnet ingestion cases, by product type category.

TABLE 10—REPORTED MAGNET INGESTION INCIDENTS, BY DISPOSITION AND MAGNET CATEGORY, 2010–2020

Magnet category	Disposition			
	Death	Hospitalization	Other	Total
Magnet Sets		88	46	134
Magnet Toys		36	13	49
Jewelry		21	10	31
Unidentified	[24] 3	27	13	43
ASTM F963 Magnet Toys		10	11	21
Home/Kitchen		5	1	6
Total	3	187	94	284

Note: CPSRMS reporting for 2019–2020 is ongoing.

As Table 10 indicates, of the 284 ingestions reported to have occurred between January 1, 2010 and December 31, 2020, the vast majority resulted in hospitalization, and three resulted in death. The remaining ''other'' dispositions include all remaining reported incidents that did not report either hospitalization or death.

In analyzing CPSRMS magnet ingestion incidents, CPSC staff identified at least 124 cases that resulted in some form of surgery, including laparoscopy, laparotomy, appendectomy, cecostomy, enterotomy, colostomy, cecectomy, gastrotomy, jejunostomy, resection, and transplant. Numerous additional cases resulted in less-invasive procedures than surgery, such as endoscopies and colonoscopies, and could have resulted in surgery if the magnets had not been retrieved soon after ingestion. In 108 cases, the reports specifically described the magnets internally attracting through bodily tissue, and for other cases, there was insufficient information to determine if the surgeries were a result of the magnetic properties.

3. Fatalities

The CPSRMS data above indicate that staff identified three fatal magnet ingestion incidents that were reported to have occurred during the period staff used for incident data analysis—January 1, 2010 and December 31, 2020. However, in total, CPSC is aware of seven deaths involving the ingestion of hazardous magnets between November 24, 2005 and January 5, 2021.[25] Five of these deaths occurred in the United States. In 2005, a 20-month-old child's death involved ingestion of magnets from a children's toy building set with plastic-encased magnets; the product was later recalled. In 2013, a 19-month-old child's death involved multicolored, 5 mm diameter, spherical magnets from an unidentified product. In 2018, a 2-year-old child's death involved multicolored, 3–5 mm diameter, spherical magnets, with indications that the product likely was a magnet set. In 2020, a 43-year-old man's death involved magnets from an unknown product. In 2021, a 15-month-old-child's death involved a magnet set of an unknown brand. In addition, CPSC is aware of two deaths in other countries that involved ingestion of hazardous 5 mm diameter, spherical NIB magnets. In Australia in 2011, an 18-month-old child's death involved a product that included indications that it may have been a magnet set; and in Poland in 2014, an 8-year-old child's death involved a product that appeared likely to be a magnet set. One of these seven incidents involved a children's amusement product; one explicitly identified the product as a magnet set; and another four incidents described the products as having characteristics consistent with magnet sets.

4. Incident Data Surrounding the Vacated Magnet Sets Rule

In looking at annual magnet ingestion incidents, staff noted a considerable change in magnet ingestion rates before, during, and after the Commission's vacated rule on magnet sets. As discussed above, the Commission issued a final rule in October 2014 that applied to magnet sets, which are a subset of the subject magnet products addressed in this proposed rule. The magnet sets rule aimed to address the magnet ingestion hazard and consisted of size and strength limits consistent with the requirements in this proposed rule. The magnet sets rule took effect in April 2015 and remained in effect until it was vacated by the U.S. Court of Appeals for the Tenth Circuit Court in November 2016. CPSC's assessment of incident data, as well as other researchers' assessments of NEISS data, and national poison center data, indicate that magnet ingestion cases significantly declined during the years in which the magnet sets rule was announced and in effect, compared to the periods before and after the rule.

As Table 3,[26] above, shows, the number of estimated ED-treated magnet ingestion incidents was significantly lower in 2015—when the magnet sets rule was in effect—than in the years before the rule was announced (specifically, 2010, 2011, 2012) and the years after the rule was vacated (specifically, 2017 and 2018). Similarly, the number of estimated ED-treated magnet ingestion incidents was significantly lower in 2016—when the rule was in effect—than before the rule was announced (specifically, 2011) and the years after the rule was vacated (specifically, 2017 and 2018).[27]

[24] As discussed below, staff identified a total of 7 deaths resulting from magnet ingestions between November 24, 2005 and January 5, 2021. The 3 deaths reflected here include only the fatalities that occurred in the United States between January 1, 2010 and December 31, 2020.

[25] The additional deaths are not included in Table 10 because they occurred outside the timeframe of staff's data analysis or outside the United States.

[26] Table 3 provides national estimates of magnet ingestions per year for incidents categorized as amusement/jewelry and unidentified product types.

[27] Statistically significant differences are not reported for the year 2014, because the corresponding estimate does not meet reporting criteria.

To assess these trends further, staff grouped years in relation to the vacated magnet sets rule, using the following periods: 2010 through 2013 (prior to the announcement of the rule), 2014 through 2016 (when the final rule was announced and in effect [28]), and 2017 through 2020 (after the rule was vacated). Table 4, above, shows the estimated number of magnet ingestions treated in U.S. hospital EDs during these periods, using annual estimates for each period to account for the periods including different numbers of years (*i.e.,* 2014–2016 covers 3 years, whereas, 2010–2013 and 2017–2020 cover 4-year periods). For 2010–2013 and 2017–2020, there were an estimated 2,300 ED-treated magnet ingestion incidents per year; for 2014–2016, there were an estimated 1,300 ED-treated magnet ingestion incidents per year. Thus, during the period when the rule was announced and in effect (2014–2016), there were appreciably fewer magnet ingestions compared with the earlier and more recent periods, and there were nearly equivalent rates during the periods both before and after the rule.

Although CPSRMS data cannot be used to draw statistical conclusions, the data also suggest a similar decline in incidents for the period when the magnet sets rule was announced and in effect. Table 11 shows CPSRMS-reported magnet ingestions, by period, using incidents categorized as amusement/jewelry and unidentified product types, consistent with the NEISS analysis, above.

TABLE 11—NUMBER OF CPSRMS-REPORTED MAGNET INGESTIONS, BY PERIOD

Period	Percent of total	N	Years in period
2010–2013	47.5	122	4
2014–2016	6.6	17	3
2017–2020	45.9	118	4
2010–2020	100	257	11

Source: CPSRMS. Percentages are rounded to the nearest tenth. CPSRMS reporting for the years 2019–2020 is ongoing and counts for those years may increase as reporting continues.

Consistent with NEISS trends shown in Table 3, Table 11 shows that CPSRMS data also reflect an appreciable decline in magnet ingestion incidents during the period when the magnet sets rule was announced and in effect (2014–2016), compared with earlier and more recent periods, and nearly equivalent incident rates during the periods both before and after the rule.

Other researchers analyzing NEISS data made similar findings. One study [29] reviewed magnet ingestions for children under 18 years old using NEISS data from 2009 through 2019, focusing on three periods: 2009 through 2012 (before the Commission rule on magnet sets); 2013 [30] through 2016 (magnet sets rule announced and in effect); and 2017 through 2019 (after the rule was vacated). In 2009–2012, there was an aggregate mean ED-visit rate of 3.58 [31] per 100,000 people; in 2013–2016, this decreased to 2.83 [32] per 100,000 people; [33] and in 2017–2019, this increased to 5.16 [34] per 100,000 people.[35] Like CPSC's analysis, this illustrates an appreciable decline in magnet ingestions during the period the magnet sets rule was announced and in effect, with an even greater increase in incidents after the rule than before it.

Another study [36] found similar results when looking at suspected magnet ingestion (SMI) cases involving children under 18 years old using NEISS data. That study found that there were an estimated 23,756 [37] total SMI cases between 2009 and 2019, of which an estimated 3,709 [38] cases involved small/round magnets and 6,100 [39] involved multiple magnets. The average annual increase in total cases was 6.1 percent for 2009 to 2019,[40] and there was a statistically significant increase in small/round magnet ingestions [41] and multiple magnet ingestions [42] between 2009 and 2019. When stratified by period, there were 6,391 [43] estimated total magnet ingestion cases during 2013–2016,[44] or 1,598 [45] estimated cases per year. In contrast, there were an estimated 8,478 [46] cases from 2017–2019, or 2,826 [47] per year. This represents a 32 percent increase [48] in total magnet ingestions after 2016. There was also a statistically significant increase in the number of estimated small/round [49] and multiple magnet [50] ingestions across these two periods, with 164 [51] small/round and 350 [52] multiple magnet ingestions from 2013 through 2016, compared to 541 [53] small/

[28] Staff grouped 2014, 2015, and 2016 together for this analysis because these are the years firms were likely to comply with the size and strength limits in the magnet sets rule. Because the standard took effect in April 2015 and remained in effect until November 2016, firms were required to comply with the standard for nearly all of 2015 and 2016. Although the rule was not in effect in 2014, the proposed rule was published in 2012, and the final rule was published, with essentially the same requirements, in October 2014. Once an NPR is published, firms have notice to prepare for the requirements that may be finalized, and once a final rule is published, firms often take steps to comply with the rule even before it takes effect. Accordingly, it is reasonable to conclude that firms took steps to comply with the magnet sets standard in 2014.

[29] Flaherty, M.R., Buchmiller, T., Vangel, M., Lee, L.K. Pediatric Magnet Ingestions After Federal Rule Changes, 2009–2019. *JAMA*. Nov. 24, 2020. 324(20): 2102–2104. doi:10.1001/jama.2020.19153, available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7686864/*.

[30] For CPSC's analysis, staff considered 2014 to be the year the rule was announced because that is the year the final rule was published. In contrast, this study considered 2013 to be the year the rule was announced, likely because that is the first full year after the rule was initially announced in an NPR in September 2012.

[31] 95% confidence interval (CI), 2.20–4.96.

[32] 95% CI, 1.60–4.06.

[33] Slope change, 0.87 (95% CI, 0.71–1.03) ED visits per 100,000 annually.

[34] 95% CI, 3.22–7.11.

[35] Slope change, −0.58 (95% CI, −0.68 to −0.47) per 100,000 persons annually.

[36] Reeves, P.T., Rudolph, B., Nylund, C.M. Magnet Ingestions in Children Presenting to Emergency Departments in the United States 2009–2019: A Problem in Flux. *Journal of Pediatric Gastroenterology and Nutrition*. Dec. 2020. 71(6):699–703, 10.1097/MPG.0000000000002955, available through: *https://pubmed.ncbi.nlm.nih.gov/32969961/*.

[37] CI, 15,878–30,635.

[38] CI, 2,342–5,076.

[39] CI, 3,889–8,311.

[40] P = 0.01.

[41] P <0.001.

[42] P = 0.02.

[43] CI, 4,181–8,601.

[44] Like the previous study, these researchers considered 2013 to be part of the period during which magnet sets were likely to be off the market.

[45] CI, 1,045–2,150.

[46] CI, 5,472–11,485.

[47] CI, 1,824–3,828.

[48] P <0.001.

[49] P <0.01.

[50] P <0.001.

[51] CI, 66–263.

[52] CI, 200–500.

[53] CI, 261–822.

round and 797 [54] multiple magnet ingestion cases from 2017 through 2019.

Researchers [55] analyzing national poison center data also found an increase in magnet ingestions in recent years, particularly since the magnet sets rule was vacated. This study looked at magnet foreign body injuries in pediatric patients in the National Poison Data System (NPDS). For 2012–2017, there were 281 magnet exposure calls per year, compared to 1,249 calls per year for 2018–2019, representing a 444 percent increase. Considering cases dating back to 2008 (5,738 total), the cases from 2018 and 2019, alone, account for 39 percent of the magnet cases. Although these periods do not directly align with the magnet sets rule, they further illustrate the general increase in magnet ingestion incidents in recent years, particularly after the magnet sets rule was vacated.

These analyses raise relevant considerations for this proposed rule. For one, the marked decline in incidents during the period when the magnet sets rule was announced and in effect suggests that a large portion of magnet ingestion incidents involve magnet sets. Because that rule applied only to magnet sets, the fact that incidents significantly declined during the pendency of that rule indicates that magnet sets were involved in most of the incidents. This is useful information, given the lack of details regarding product types involved in many magnet ingestion incidents. In addition, these analyses indicate the current need to address the magnet ingestion hazard. Magnet ingestion incidents have significantly increased in recent years, showing a heightened need to address the hazard. Finally, these analyses suggest that a mandatory standard is necessary to effectively reduce the risk of injuries and death associated with magnet ingestions. Before, during, and after the magnet sets rule, CPSC and other groups have worked to raise awareness of the magnet ingestion hazard, and CPSC has taken steps to address the hazard though information campaigns, recalls, and voluntary standards work. However, the only appreciable decline in magnet ingestion incidents occurred during the period when the mandatory standard for magnet sets was announced and in effect.

[54] CI, 442–1152.

[55] Middelberg, L.K., Funk, A.R., Hays, H.L., McKenzie, L.B., Rudolph, B., Spiller, H.A. Magnet Injuries in Children: An Analysis of the National Poison Data System From 2008–2019. *The Journal of Pediatrics.* May 1, 2021. Volume 232, P251–256.E2, available at: doi: *https://doi.org/10.1016/j.jpeds.2021.01.052.*

5. Uncertainties in Incident Data

As explained above, magnet ingestion incident reports often include limited information for staff to identify the type of product involved in the magnet ingestion. Caregivers and medical providers may know that a magnet was ingested, but may not know from what type of product the magnet came. This differs from many consumer products that are readily identifiable when involved in an incident and report. NEISS data, in particular, tend to provide limited information with which to identify the product involved in magnet ingestions. This may be because NEISS data are collected through hospital EDs. At hospital EDs, medical professionals may not know what product was the source of the magnet ingestion, and are focused on information needed to treat the victim (*e.g.,* that a magnet was ingested), rather than the specific product involved in the incident (*e.g.,* that the magnet came from a magnet set). Because CPSRMS data usually come from manufacturers and consumers, these data often contain more information to identify the product.

As Table 1, above, shows, of the 1,072 magnet ingestion incidents identified in NEISS, 74 percent (793 incidents) did not provide sufficient information for staff to identify the type of product involved. As Table 9, above, shows, of the 284 magnet ingestion incidents identified in CPSRMS, 15 percent (43 incidents) did not provide sufficient information for staff to identify the type of product involved. However, staff does have some information about the incidents in the unidentified product type category—specifically, these incidents involved ingestion of one or more magnets, and included product characteristics and use patterns that could be consistent with subject magnet products.

To account for the lack of product identification in many magnet ingestion incidents, staff analyzed magnet ingestion incident data in several ways. For one, staff provided information about all magnet ingestion cases. Aggregated information for all of the in-scope, out-of-scope, and unidentified product categories indicates that magnet ingestions, in general, are an issue, and have increased in recent years. This indicates the propensity for children and teens to ingest magnets, and it demonstrates the increasing risk of injury and death as magnet ingestion cases increase.

Staff also categorized incidents into specific product groups, based on information that was available in incident reports. For incidents that provided information to help identify the product type, the data revealed that six categories of products were involved in magnet ingestions—magnet sets, jewelry, magnet toys, science kits, ASTM F963 magnet toys, and home/kitchen magnets. For some of the incidents in these categories, there was specific information about the product—such as brand names—that allowed staff to determine the product involved in the incident. For other incidents in these categories, the product was referred to as a specific type (*e.g.,* magnet sets, desk toy, science kit, kitchen magnet, bracelet).[56] These categories provide information about the products involved in magnet ingestions, and the relative frequency of their involvement, to help determine which products the proposed rule should address.

Staff also aggregated these categories into in-scope and out-of-scope groupings. Staff combined incidents from the magnets sets, magnet toys, and jewelry categories as ''amusement/jewelry'' and combined incidents from the home/kitchen, ASTM F963 magnet toys, and science kit categories as ''exclusions.'' Grouping several product type categories together allowed staff to generate national estimates of ED-treated magnet ingestions, to provide an idea of the number of ingestions nationally, and the relative involvement of in-scope and out-of-scope products, which helps identify the magnitude of the risk and the potential benefits of the rule to reduce that risk.

In addition, staff combined the amusement/jewelry and unidentified categories to conduct more detailed analyses. Because the proposed rule applies to amusement and jewelry products, the amusement/jewelry category of incidents is informative.

[56] Staff categorized incidents based on all of the information available in the reports, including descriptions, names, and uses of the product. However, for some of the incidents in which the report provided a product type, but not a specific product brand/name, it is possible that the product was actually from another category. For example, the jewelry category includes cases in which the report indicates that the magnets were described as jewelry at the time of the incident, such as magnetic earrings. It is possible that the magnets in such cases were actually from a non-jewelry product. Similarly, products categorized as magnet toys could actually be another product type; for example, a product described as an ''executive desk toy,'' which did not meet the parameters for the magnet set category, and did not indicate marketing to children under 14 years old, was included in the magnet toy group, although it is possible that the product actually was a magnet set or other product type, and the report lacked information to indicate this. However, even if incidents in these categories were miscategorized, they likely would still fall within the scope of the proposed rule because they meet the description of an in-scope product.

Staff also included in these analyses, incidents in the unidentified product type category because there are several factors that indicate that many of the incidents in the unidentified product type category likely fall within the scope of the proposed rule. The following is a discussion of these factors.

First, the incident data discussed in this preamble supports the conclusion that many of the magnet ingestion incidents in the unidentified product type category actually involved subject magnet products. Of the NEISS magnet ingestion incidents for which staff could identify a product category, the primary products involved were magnet sets, magnet toys, and jewelry; far fewer incidents involved ASTM F963 magnet toys, home/kitchen magnets, or science kits (see Table 1, above). The same was true for CPSRMS incidents (see Table 9, above), for which far fewer incidents were in the ''unidentified'' category. Given this consistency across data sets, it is reasonable to conclude that the relative involvement of magnet product types in magnet ingestions applied to the incidents that lacked product identification as well.

Second, magnet ingestion rates before, during, and after the vacated rule on magnet sets suggest that a significant portion of magnet ingestion cases involve magnet sets. As discussed above, CPSC's assessment of incident data, as well as other researchers' assessments of NEISS data, and national poison center data, indicate that magnet ingestion cases significantly declined during the years the magnet sets rule was announced and in effect, compared to the periods before and after the rule. Magnet sets were the only products subject to that rule. As such, the significant decline in incidents during that rule, and the significant increase in incidents after that rule was vacated, strongly suggest that many magnet ingestion incidents involve magnet sets. Thus, it is reasonable to assume that many of the incidents in the unidentified product category involved magnet sets. Moreover, the definition of ''magnet sets'' in the vacated rule was largely equivalent to the description of amusement products in the present proposed rule (*i.e.,* magnet sets and magnet toys), suggesting that many magnet ingestion incidents, including those with unidentified product types, involve amusement products.

Third, incident data and recalls regarding magnets in children's toys further support the conclusion that magnet ingestions categorized as ''unidentified'' products are largely subject magnet products. As discussed above, ASTM F963 magnet toys make up only a small portion of magnet ingestion incidents where the product can be identified. It is reasonable to assume that this holds true for unidentified products in magnet ingestions, as well. Recall information further supports this conclusion. Recalls of children's toys involving the magnet ingestion hazard have declined substantially since the toy standard took effect. As explained above, ASTM F963 was announced as the mandatory standard for toys in 2008, and it took effect in 2009. From 2006 through 2009, CPSC issued more than a dozen recalls of children's toys, due to the ingestion hazard associated with loose or separable, small, powerful magnets.[57] In contrast, from January 2010 through August 2021—a period approximately three times as long—there were a total of 18 recalls related to the magnet ingestion hazard, only four of which involved children's toys. Of those four recalls, only two involved confirmed violations of the magnet provisions in the toy standard. Recalls provide some indication of the products involved in magnet ingestions because products are recalled when they present a hazard. Thus, this marked decline in recalls of children's toys for magnet ingestion hazards suggests that children's toys largely comply with the toy standard and are not involved in hazardous incidents.

Taken together, these factors support the conclusion that most magnet ingestion incidents, including those in the unidentified product type category, involved products that fall within the magnet sets, magnet toys, and jewelry categories, and not the science kit, home/kitchen, or ASTM F963 magnet toys categories. For these reasons, staff included magnet ingestion incidents in the unidentified product type category in many of its analyses; to exclude such incidents likely would vastly underrepresent ingestions of subject magnet products.

B. Details Concerning Health Outcomes [58]

Magnets are unique among ingested foreign bodies because of their intrinsic ability to attract to one another or to ferromagnetic objects. Assuming the same elemental composition, a magnet with large physical dimensions and mass can exhibit stronger attractive forces than a magnet with small physical dimensions and mass. Similarly, magnets coupled together can exhibit greater attractive strengths than individual magnets. One mechanism of injury following magnet ingestion involves separate magnets in adjacent tissue walls (*e.g.,* from distinct loops of bowel) attracting to each other and trapping tissue between the magnets. The mechanism of injury is the same for a single hazardous magnet and a ferromagnetic object that might interact internally. As such, individual magnets pose the same health risk.

Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. The normal functions of the gastrointestinal (GI) tract, including peristalsis, are not likely to dislodge magnets that are attracted to each other through component tissues.

The time between magnet ingestion and injury varies and depends on several factors, such as the number of ingested magnets; awareness of the magnet ingestion by caregivers; awareness that magnet ingestion is hazardous; whether multiple ingested magnets interact with each other inside of the body through tissue structures; and the configuration of coupled magnets, relative to involved tissue structures. Incident reports describe injuries from internal magnet interaction through tissue taking anywhere from days to months to progress to a stage at which caregivers seek medical attention. There have been several efforts to develop medical devices using magnets to deliberately compress and necrose [59] target tissue and create healthy anastomoses (openings/passages) that connect or reconnect distinct channels in the body. In these controlled cases, tissue necrosis typically took multiple days to weeks.[60]

[57] *https://www.cpsc.gov/s3fs-public/pdfs/recall/lawsuits/abc/163--2017-10-26%20Final%20Decision%20and%20Order.pdf?Tme8u5fRF2.29_B.i4Ix7pPwb_whKng2.*

[58] For more details about injuries and health outcomes, see Tab A of the NPR briefing package. In addition, health outcomes associated with magnet ingestions are discussed in the Final Rule briefing package for the 2014 rule on magnet sets, available at: *https://www.cpsc.gov/s3fs-public/pdfs/foia_SafetyStandardforMagnetSets-FinalRule.pdf,* and the 2020 informational briefing package, available at: *https://www.cpsc.gov/s3fs-public/Informational%20Briefing%20Package%20Regarding%20Magnet%20Sets.pdf.* Even though the previous analyses focused on magnet sets, the internal magnet interaction hazard is the same for the subject magnet products covered in this proposed rule.

[59] Necrosis is a process of cell death.

[60] These efforts are still in early stages, but may ultimately provide some examples of the time it takes for tissue necrosis to occur from magnetic compression. Although not pathological examples, the length of time required for successful

Continued

Ambiguous symptomatology following magnet ingestion that results in an internal interaction injury may complicate the timely delivery of medical care. Symptoms related to magnet ingestion may appear flu-like and include vomiting, fever, and abdominal pain, among others. Symptoms following magnet ingestion have been mistaken for a virus, ear infection, and bronchitis, among others. Medical professionals who know of the magnet ingestion may be able to minimize or avoid injury by promptly removing the magnets.

Internal Magnet Interaction Injuries. As indicated above, one of the health threats presented by magnet ingestion is internal magnet interaction leading to pressure necrosis injuries that occur in the alimentary canal. Necrosis is a process of cell death, secondary to injury, which undermines cell membrane integrity and involves intricate cell signaling responses. In the case of internal magnet interactions, the injury leading to necrosis is the pressure on the involved biological tissues that exceeds local capillary pressure and leads to ischemia.

Volvulus is another internal interaction hazard associated with magnet ingestion. Volvulus is an obstructive twisting of the GI tract. Volvulus is often accompanied by abdominal pain, distended abdomen, vomiting, constipation, and bloody stools. If left untreated, volvulus may lead to bowel ischemia, perforation, peritonitis, and death. Volvulus following magnet ingestion has been linked to fatal outcomes. In the United States, CPSC is aware of one death of a 20-month-old child who ingested magnets from a toy construction set, which caused volvulus, and one death of a 2-year-old child who ingested multiple magnets, resulting in small intestine ischemia secondary to volvulus. In addition, CPSC is aware of one death of an 8-year-old child in Poland, due to small intestine ischemia secondary to volvulus, after the victim ingested magnets that resulted in necrosis, toxemia (blood poisoning), hypovolemic shock, and eventually cardiopulmonary failure.

Like outcomes related to volvulus, small bowel ischemia can lead to local tissue necrosis, perforation, and subsequent peritonitis. Small intestine ischemia was implicated in the death of a 19-month-old child following ingestion of multiple magnets. Bowel obstruction, often a consequence of volvulus, is associated with abdominal cramps, vomiting, constipation, and distention. With respect to the relationships among local capillary and intraluminal pressures and magnet ingestions, subsequent outcomes include possible blockage of local blood and nutrient supply; progressive pressure necrosis of the involved tissues; and local inflammation, ulceration, and tissue death, with putative outcomes such as perforation (hole) or fistula in the GI tract. If left untreated, or otherwise unnoticed, such events can progress into infection, sepsis, and death. The obstruction from the trapped tissue can elicit vomiting, and the local mucosa irritation may stimulate diarrhea. Advancing pressure necrosis of the involved tissues can lead to necrosis and subsequent leakage of the bowel contents into the peritoneal cavity.

Another example of the potential health outcomes associated with magnet ingestion is a case in which an asymptomatic 4-year-old child sustained several fistulae in the intestines that required surgical repair after ingesting magnets. Fistulae are abnormal passages between channels in the body that are associated with increased mortality. Fistulae may enable the leakage of gut contents into adjacent tissue structures or abdominal cavities, which can lead to infection, inflammation, perforation, sepsis, and possibly death. Fistulae may also bypass portions of the GI tract, thus undermining normal GI function.

Another potential health outcome of magnet ingestions is ulcerations. For example, one case involved a 28-month-old child who experienced stomach ulcerations after ingesting 10 magnets and receiving treatment with medication after the endoscopic removal and natural passage of the magnets. Untreated ulcers may require surgical intervention if they progress to perforation, and a perforated bowel may lead to leakage from the GI tract. Several magnet ingestion incident reports highlight the threat of perforation with possible outcomes such as peritonitis. Peritonitis is an inflammation of the peritoneum, a membrane lining of the abdominal cavity, which may be associated with leakage from the GI tract that can lead to sepsis. Sepsis is the body's response to severe infection, and it is associated with elevated rates of morbidity and mortality that can be mitigated with prompt treatment. Treatment of abdominal sepsis may require repair of a leaky GI tract.

Another potential health risk from ingested magnets is an aspiration threat. For example, in one reported case, a 3-year-old child ingested multiple magnets, two of which were found attracting to each other on opposing surfaces of the pharyngoepiglottic fold in the throat, presenting an immediate aspiration threat given the proximity to the airway. Aspiration of magnets has also been reported elsewhere in medical literature. Foreign body aspiration presents a risk of airway obstruction, ventilatory difficulty, choking, hypoxic-ischemic brain injury, pulmonary hemorrhage, and death, among other health outcomes.

Other Health Outcomes and Injuries. In addition to internal interaction hazards, ingested magnets present additional health risks. Ingested magnets that are not attracting to each other through tissue walls may cause harm, such as irritation of the GI mucosa in the form of erythematous, mucosal inflammation, and minor tears. Ingested magnets embedded in the bowel may be associated with multiple days of hospitalization. A foreign body lodged in the GI tract can also cause mucosal wall deterioration, migration, and perforation. Comorbidities, such as eosinophilic esophagitis, gastroesophageal reflux disease, GI anomalies, and neuromuscular disorders can exacerbate the potential outcomes. The wall of the esophagus is susceptible to edema and weakening that increase the risk of bleeding and perforation in the presence of foreign bodies. Foreign body irritation of the GI tract may also prompt local mucosal irritation that can stimulate diarrhea.

Medical Care for Magnet Ingestions. Several approaches to medical care are available when assessing and treating magnet ingestions, however, many of these approaches pose health risks, themselves. Medical providers routinely use medical imaging during treatment of magnet ingestions. Current imaging diagnostic capabilities may be able to identify ingested foreign bodies, but they do not allow for the definitive identification of magnets in the body. The usefulness of metal detectors to locate ingested metallic objects, including magnets, has decreased as the size of ingested magnets decreases. This presents challenges when a caregiver and medical professional do not know the victim ingested a magnet.

When ingested magnets are identified, x-ray radiography, fluoroscopy, computed tomography (CT) scans, or ultrasound [61] can be used to monitor the

anastomoses in preclinical medical device development settings ranged from multiple days to weeks, as evaluated by necropsy and passage of the magnet after anastomosis formation. In a human trial, magnets passed naturally multiple weeks after placement to create healthy anastomoses.

[61] These imaging tools present some health risks themselves. The ionizing radiation associated with

ingested magnets. If the magnets' passage through the GI tract is arrested or symptoms manifest, then endoscopic or surgical intervention may be necessary. Bowel cleanout or bowel preparation procedures that use laxatives,[62] such as polyethylene glycol, may be used to try to flush ingested magnets out of the GI tract, or to prepare patients for endoscopy or other medical procedures.

Endoscopy may be used to retrieve ingested magnets from the stomach, duodenum, esophagus, pylorus and cecum (via colonoscopy), or other areas. Endoscopy may also be used to treat bowel obstruction secondary to magnet ingestion. Endoscopy is associated with a risk of bleeding from mucosal shearing or tearing that is elevated in the presence of anemia. There is also risk of adverse cardiopulmonary events (*e.g.,* oxygen desaturation, aspiration, respiratory arrest, shock, myocardial infarction) as a result of sedation and anesthesia; perforation from procedure instruments; infection from contaminated equipment, or from a perturbed endogenous source; and procedural risks largely associated with comorbidities (*e.g.,* cardiac disease, diabetes).

Colonoscopy is a common endoscopic procedure performed via the anus and shares many of the same risks as endoscopy. Laryngoscopy—a medical procedure to evaluate the upper aerodigestive tract—is used to investigate suspected magnets lodged in the throat. Associated risks of laryngoscopy include esophageal perforation, airway compromise, bleeding, dysphagia, and fever, among others. Nasal endoscopy may be useful to treat magnets embedded in the nose. Nasal endoscopy is associated with risks of mucosal irritation, minor hemorrhage, and overt hemorrhage.

Surgical interventions may be necessary to treat magnet ingestions when less invasive procedures, such as endoscopy or bowel cleanout, are clinically inappropriate or unsuccessful. In one example, in which a 5-year-old child ingested magnets, endoscopy failed to retrieve all of the magnets, and the remaining magnets were recovered via laparotomy with appendectomy. Abdominal surgeries, such as laparotomy (abdominal incision) and laparoscopy (fiber-optic visualization of the viscera via abdominal incision), that involve abdominal incisions and manipulation of abdominal organs are associated with the risk of adhesions that can cause pain, bowel obstructions that may require additional surgical intervention, female infertility, and bowel injury. For example, 6 months after a 2-year-old child underwent enterotomy and gastrostomy to remove 26 magnets from her jejunum and stomach, the child developed bowel adhesions that caused obstructions and required treatment with surgical adhesiolysis to cut the adhesions. Possible complications associated with laparotomy include pneumonia, cardiac complications, surgical site infection, wound dehiscence (rupture), urinary tract infection, respiratory tract infection, venous thromboembolism, kidney failure, heart and GI tract complications, septicemia, and death. Emergency laparotomies may be more prone to complications than elective laparotomies. For example, a 6-year-old child who ingested 20 magnets underwent a 20-day hospital stay to treat surgical wound infections following exploratory laparotomy with small bowel resection and appendectomy to retrieve the magnets.

Appendectomy may also result from magnet ingestions, and is commonly achieved via laparotomy or laparoscopy. Pain, wound infections, and intra-abdominal abscesses are possible following both laparoscopic and open appendectomies. Laparotomy may be accompanied by incisions of the stomach (gastrotomy) or intestines (enterotomy) to retrieve ingested magnets. Complications from surgical enterotomies, or incisions into the intestine, may be similar to those of inadvertent enterotomies, which can occur during anastomosis procedures and include leakage, intra-abdominal abscesses, and death.

Surgical resection of the bowel may be performed to remove necrotic portions of the bowel, secondary to magnet ingestion. Small bowel resection is associated with risks of infection, fistulae, peritonitis, abscess, sepsis, and wound dehiscence secondary to leaky anastomoses. There is also the possibility of impairment to the intrinsic nutrient absorption functions of the bowel, depending on the resection location. End-to-end surgical anastomoses used to restore bowel continuity following resection are associated with the risk of leakage, intra-abdominal abscess, and death.

Complications associated with surgery to treat magnet ingestion have also included pancreatitis and additional hospitalization, additional surgery to treat incisional hernia, and the need for a lifelong feeding tube, among others. Endotracheal general anesthesia may be required for surgical treatments of magnet ingestion. Possible complications associated with general anesthesia include nausea, vomiting, sore throat, dental damage, myocardial ischemia or infarction, heart failure, cardiac arrest, arrhythmia, atelectasis (lung collapse), aspiration, bronchospasm, neurological effects, and renal effects, among others.

In addition to the medical procedures necessary to treat magnet ingestions, and the risks associated with those procedures, ingested magnets present unique challenges for medical professionals. For example, technical precision is reduced, and technical difficulty increases when ingested magnets attract to the metallic instruments used to retrieve them. In one example case, ingested magnets in the throat of a 3-year-old child suddenly attracted to the optic graspers inserted to retrieve the foreign bodies.

C. Incident Characteristics[63]

Staff conducted a detailed analysis of incident data to identify hazard patterns and characteristics associated with magnet ingestion incidents, and staff also considered developmental and behavioral factors relevant to the hazard. These considerations helped inform the scope of products that need to be addressed in the proposed rule and the types of requirements that would be effective at reducing the magnet ingestion hazard.

1. Victim Age

Table 12 provides the ages of victims involved in magnet ingestion incidents, from both the NEISS and CPSRMS data sets. The table includes incidents in the

x-ray radiography has the potential to damage DNA and may contribute to the development of cancer later in life. The risks from CT scans are similar. Prolonged fluoroscopy, which is often used during surgery or medical procedures such as endoscopy, may contribute to the development of cataracts, skin reddening, or hair loss. Ultrasound is relatively safe, but it may heat tissue or produce pockets of gas in body fluids or tissues.

[62] Bowel cleanout is not often associated with risk in the pediatric population; dehydration is the most common adverse event that occurs. However, in certain instances, bowel cleanout laxatives may be delivered via nasogastric tube; there are rare reports of life-threatening aspiration of laxative solutions delivered via nasogastric tubes, especially in older populations with certain comorbidities.

[63] For additional information about hazard patterns and incident characteristics, see Tab C of the NPR briefing package.

magnet sets, magnet toys, and jewelry categories, as well as incidents in the unidentified product type category.[64]

TABLE 12—MAGNET INGESTION INCIDENTS, BY AGE

Victim age	NEISS (#)	NEISS (%)	CPSRMS (#)	CPSRMS (%)
<2 yrs	120	11.8	21	8.2
2 yrs	89	8.8	32	12.5
3 yrs thru 4 yrs	196	19.3	31	12.1
5 yrs thru 7 yrs	207	20.4	28	10.9
8 yrs thru 10 yrs	179	17.7	66	25.7
11 yrs thru 13 yrs	182	18	37	14.4
14 yrs thru 16 yrs	30	3	12	4.7
>16 yrs	11	1.1	1	0.4
Unknown	0	0	29	11.3
Totals	1,014	.....	257	.....

Source: NEISS, CPSRMS. Percentages are rounded to the nearest tenth.

The youngest victim for which an age was reported was 6 months old; the oldest age reported was 54 years old. Approximately 20 percent of the NEISS incidents and CPSRMS incidents involved victims under 3 years old. This is consistent with developmental and behavioral factors—typically, foreign body ingestions peak for children between 6 months and 3 years old, and 2-year-old children generally are mobile and unlikely to be supervised directly at all times. Children of these ages are commonly cited in reports involving ingestion of inedible objects, given their likelihood of orally exploring their environment and their limited ability to comprehend hazards. For these and other reasons, toys with small parts must have a choking hazard warning for children under 3 years old.[65]

As Table 12 indicates, approximately 60 percent of NEISS incidents and 56 percent of CPSRMS incidents involved victims 5 years old and older. This age group is important because one option CPSC and voluntary standards groups have considered to address the magnet ingestion hazard is child-resistant (CR) packaging, which is packaging that is designed or constructed to be significantly difficult for children under 5 years old to open.[66] Because the majority of incidents involve victims who would not be protected by CR packaging, these data suggest that CR packaging would be unlikely to adequately reduce the magnet ingestion hazard.

Table 12 also shows that approximately 40 percent of NEISS incidents and 45 percent of CPSRMS incidents involved victims 8 years old and older. This is noteworthy because several voluntary standards exempt magnet products intended for users 8 years and older from size and strength requirements, instead requiring only warnings on such products. These standards seemingly assume that users 8 years old and older are less likely to ingest magnets or are able to understand and heed warnings about the magnet ingestion hazard better than younger children. However, the frequency of incidents involving users 8 years and older suggests that this is not the case.

As indicated above, Table 12 includes incidents in the magnet sets, magnet toys, jewelry, and unidentified product categories, indicating that these incidents did not involve products that are intended for children under 14 years old.[67] Despite this, most magnet ingestion incidents involved children under 14 years old, indicating that subject magnet products appeal to and are accessible to children and teens. This demonstrates that a standard for children's toys, alone, is not sufficient to address the magnet ingestion hazard. Subject magnet products appeal to children and teens for various reasons. Magnets, particularly smooth magnets, have tactile appeal for fidgeting, stress relief, and other amusement. Some magnets capture attention because they are shiny, colorful, or both. They make soft snapping/clicking sounds when manipulated, which children and teens may find appealing. The magnets have properties of novelty, which arouse curiosity; incongruity, which tends to surprise and amuse; and complexity, which tends to challenge and maintain interest. Their strong magnetic properties cause them to behave in unexpected ways, with pieces suddenly snapping together, and moving apart. Such behavior is likely to seem magical to younger children, and evoke a degree of awe and amusement among older children and teens.

2. Use Patterns

In reviewing incident data, staff identified the following patterns in how the magnets were being used at the time of ingestion:

- Playing—These cases involved ingestion of magnets while users were playing, fidgeting, orally exploring the magnets (*e.g.,* testing the attraction through teeth or on braces), or performing a combination of these actions. If playing involved use of the product as jewelry, the case was categorized as jewelry, rather than playing. This category excludes cases involving intentional ingestion.
- Jewelry—These cases involved magnets victims were using as jewelry at the time of the incident, such as bracelets, necklaces, and simulated piercings (*e.g.,* magnets used around the tongue, lip, and cheek to look like piercings).
- Intentionally ate—In these cases, victims reportedly swallowed magnets on purpose (*e.g.,* curiosity, mistaking the magnets as edible).
- Other—These cases involved identified actions that did not fit the

[64] As explained above, several factors indicate that many of the incidents in the unidentified product type category likely involved subject magnet products, and these incidents indicate the age of children and teens involved in magnet ingestion incidents, generally. The table excludes out-of-scope products (*i.e.,* home/kitchen and ASTM F963 magnet toys).

[65] 16 CFR part 1501.

[66] See 16 CFR part 1700, issued under the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471–1477.

[67] As discussed above, incidents in the unidentified product category likely involve subject magnet products, and not ASTM F963 magnet toys.

categories above (*e.g.,* transporting magnets orally, magnets thrown into a victim's mouth when not playing, and magnets placed in a victim's drink).

- Unknown—In these cases, it was unclear what led to the magnet ingestion.

Table 13 provides the use patterns involved in magnet ingestion incidents, from both the NEISS and CPSRMS data sets. The table includes incidents in the magnet sets, magnet toys, and jewelry categories, as well as incidents in the unidentified product type category.[68]

TABLE 13—MAGNET INGESTION INCIDENTS, BY USE PATTERN

Use category	NEISS (#)	NEISS (%)	CPSRMS (#)	CPSRMS (%)
Playing	143	14.1	61	23.7
Jewelry	31	3.1	43	16.7
Intentionally Ate	19	1.9	21	8.2
Other	10	1	4	1.6
Unknown	811	80	128	49.8
Totals	1,014	.....	257	.....

Source: NEISS, CPSRMS. The percentages are rounded to the nearest tenth.

As Table 13 shows, in both data sets, for incidents in which the use pattern could be identified, magnets were commonly used as playthings at the time of ingestion, followed by magnets used as jewelry. This supports the need to address amusement and jewelry products in the proposed rule. In addition, these data indicate that the use pattern is unknown for many magnet ingestions, suggesting that victims are too young to report the use pattern and ingest magnets while outside caregiver supervision.

Figure 3 [69] shows the use patterns during magnet ingestion incidents, by victim age, for the NEISS data set. Figure 4 [70] shows the use patterns during magnet ingestion incidents, by victim age, for the CPSRMS data set. Both figures include incidents in the magnet sets, magnet toys, and jewelry categories, as well as incidents in the unidentified product type category.[71]

BILLING CODE 6355–01–P

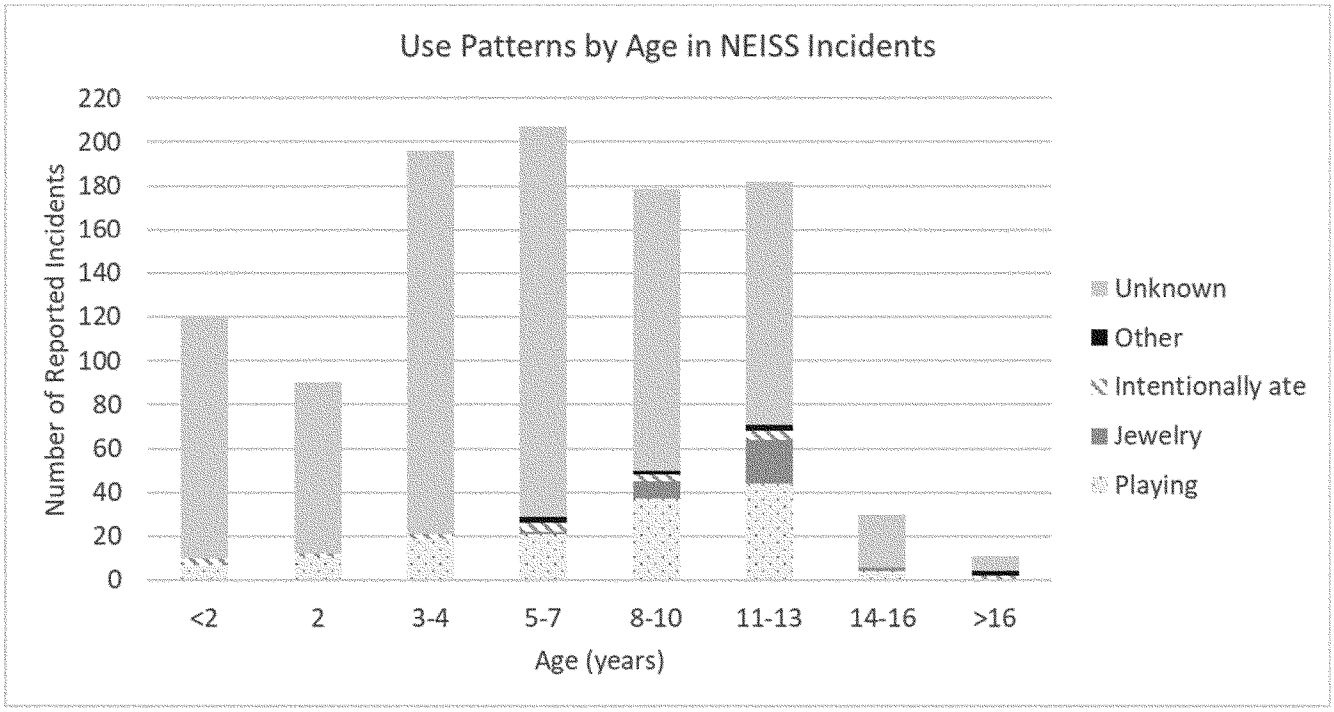


Figure 3: Magnet ingestion incidents, by use pattern and victim age, for NEISS incidents.

[68] As explained above, several factors indicate that many of the incidents in the unidentified product type category likely involved subject magnet products, and these incidents indicate the use patterns involved in magnet ingestion incidents, generally. The table excludes out-of-scope products (*i.e.,* home/kitchen and ASTM F963 magnet toys).

[69] To see Figure 3 in color, see Figure 2 in Tab C of the NPR briefing package.

[70] To see Figure 4 in color, see Figure 3 in Tab C of the NPR briefing package.

[71] As explained above, several factors indicate that many of the incidents in the unidentified product type category likely involved subject magnet products, and these incidents indicate the use patterns and ages involved in magnet ingestion incidents, generally. The table excludes out-of-scope products (*i.e.,* home/kitchen and ASTM F963 magnet toys).

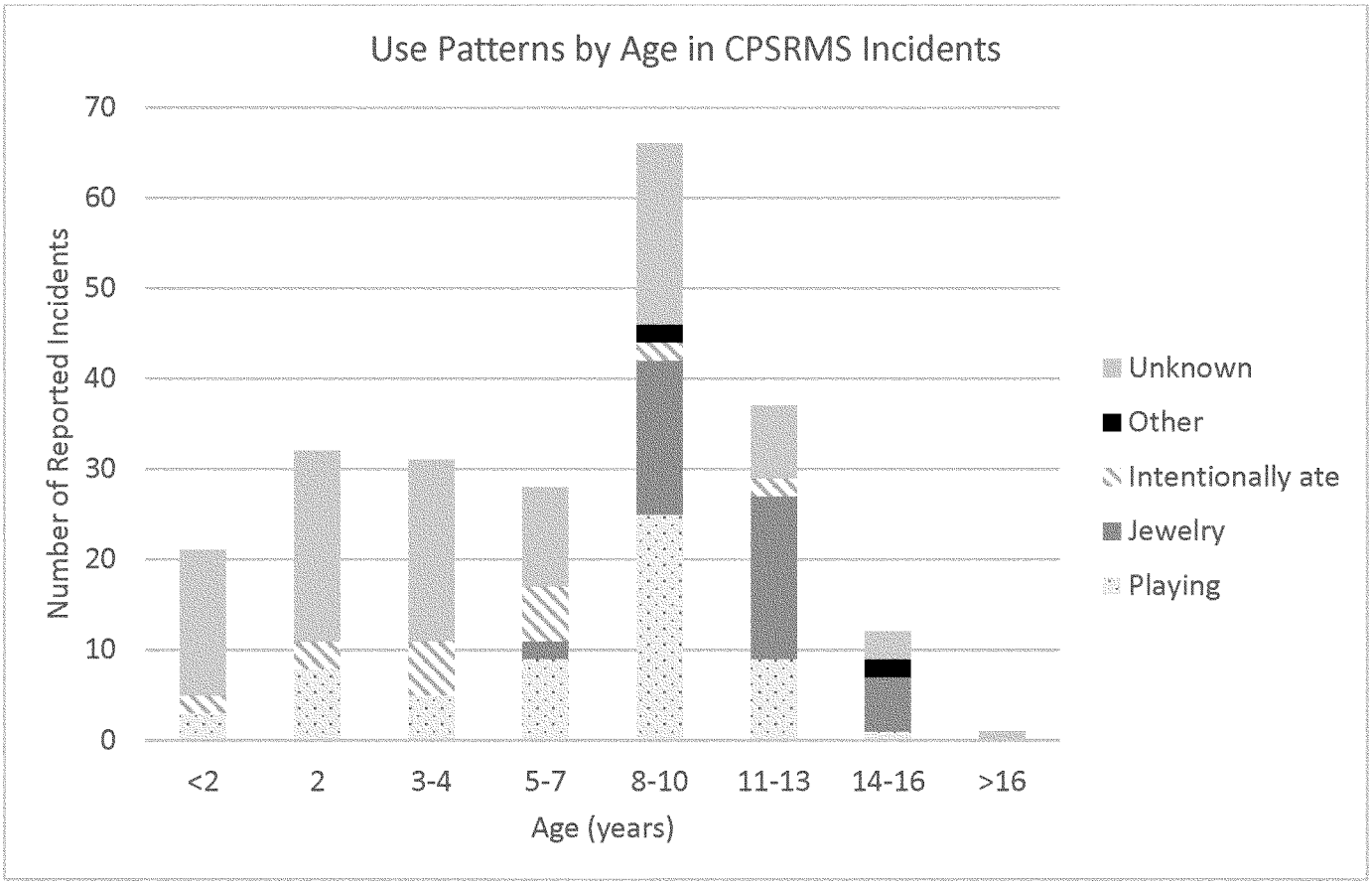


Figure 4: Magnet ingestion incidents, by use pattern and age, for CPSRMS incidents.

BILLING CODE 6355–01–C

As Figures 3 and 4 show, for incidents in which the use pattern was identified, the majority of victims accidentally ingested the magnets. A common example of these accidental ingestions is children using the magnets in or around their mouths when the magnets unexpectedly rolled to the back of their throats and were ingested, in some cases by swallow reflex. This is consistent with normal child development, including exploration and the likelihood that children will be drawn to magnets aesthetically, and to their invisible attraction and repulsion properties. Consistent with developmental factors, younger children, particularly those under 8 years old, were more likely than older children to be involved in reports of intentional magnet ingestion (only 4 reports of intentional ingestion involved children 8 years old and older). The frequency of accidental ingestions suggests that safety messaging may have limited effectiveness in addressing magnet ingestions, because children and caregivers are unlikely to anticipate and appreciate the likelihood of accidental ingestion of magnets.

Victims 8 years old and older were more likely than younger ages to swallow magnets while simulating piercings. It is foreseeable for this age group to use magnets as jewelry in or around their mouths, because experimentation and peer influence are common determinants of behavior for this age group. Older children and teens often value acceptance by peers more than obeying parental guidelines, and social influences and peer pressure can drive adolescent behavior more strongly than their own independent thought processes. The subject magnet products offer a seemingly safe and reversible way to try out lip, tongue, cheek, and nose piercings. If these children see their peers performing this activity, they may feel compelled to act similarly, even if they are aware of the risks. Furthermore, older children and early adolescents are at a developmental stage in which they test limits and bend rules.

3. Post-Ingestion Response

Staff also assessed incident data for information about how victims and caregivers behaved after a magnet ingestion event, including whether caregivers became aware of the ingestion, and the time between ingestion and treatment. Staff found that the invasiveness of medical interventions was often associated with the length of delay between the ingestion event and correct medical treatment. At least 56 of the 257 CPSRMS incidents (22 percent) involved a delay of several days between ingestion and correct treatment, with some delays spanning months. At least 16 additional incidents (6 percent) involved a delay of 1 day.

One common cause of delays was caregivers being unaware of the ingestion, resulting in delayed hospital visits and subsequent misdiagnoses. In many cases, particularly those involving children under 8 years old, caregivers were not aware that magnets were ingested. These cases often involved ingestions that were not witnessed by caregivers, and where the children were unable or unwilling to communicate what happened.

Another common cause of delays was caregivers misunderstanding the hazard, such as expecting the magnets to pass naturally. Whether ingested magnets

will pass naturally depends on several factors, including the number of magnets ingested, whether the magnets interact through tissue, and whether the interaction is strong enough to resist natural bodily forces. Similarly, delays in care often result when caregivers and children fail to make the connection between the magnet ingestion and symptoms, because there is frequently a time delay between magnet ingestion and symptoms, and because preliminary symptoms typically are similar to common illnesses. Many cases detail victims receiving treatment only after experiencing significant discomfort, at which point substantial internal damage had occurred. For example, one report indicates that in 2017, a 3-year-old child was found playing with an older sibling's magnet set, but stated that she had not swallowed any magnets. Days after the incident, the child became ill and was misdiagnosed with a stomach virus. Eventually, x-rays were taken, revealing three magnets in her small intestine. The victim lost a portion of her digestive tract and was hospitalized for approximately 2 weeks to recover after the surgery.

4. Sources of Access

Staff also examined incident data to determine how and from whom victims acquired magnets they ingested. Because most NEISS reports (97 percent) did not include sufficient information to determine the source of access, staff focused on CPSRMS incidents.

Table 14 shows the source of access for the 257 CPSRMS magnet ingestion incidents. The table includes incidents in the magnet sets, magnet toys, and jewelry categories, as well as incidents in the unidentified product type category.[72]

TABLE 14—MAGNET INGESTION INCIDENTS, BY SOURCE OF ACCESS, FOR CPSRMS DATA

Sources of access	CPSRMS (#)	CPSRMS (%)	Description
Family Owned	59	23%	Magnets belonged to the victim's family. Includes cases of siblings finding magnets and bringing them home.
Friend/Classmate/School/Neighbor	41	16	Magnets belonged to friends, classmates, or neighbors, or the victim found them at daycare or school.
Purchased for Victim	26	10.1	Magnets purchased for the victim.
Purchased by Victim	5	1.9	Magnets purchased by the victim.
Found Outside	4	1.6	Victim found the magnets outside, such as on a playground. Excludes cases of siblings finding magnets and bringing them home.
Unknown	122	47.5	Unclear where the magnet was acquired, by whom, or for whom. Includes cases of magnets found in the home but where the product owner was unknown.
Totals	257		

Percentages are rounded to the nearest tenth.

As Table 14 shows, of the 135 cases with a known source of access, most cases involved magnets that belonged to family members of the victim (44 percent), followed by magnets that victims acquired from friends, classmates, daycares, or schools (30 percent), and magnets purchased for the victim (19 percent). A small number of incidents involved magnets purchased by the victim (4 percent), or that the victim found outside (3 percent).

Victims under 8 years old typically gained access to magnets that belonged to family members, such as siblings, parents, and relatives. Magnets from family members were usually found on floors, in or on furniture, in bags, and affixed to surfaces (*e.g.,* refrigerators, wallboards); and in some cases, family members intentionally shared the magnets with victims. In contrast, victims 8 years old and older typically obtained magnets from friends, classmates, or at school, or the magnets were purchased for them. Most cases involved children and teens acquiring loose magnets, as opposed to accessing the full set or product at the time of ingestion.

Staff also reviewed incident reports for information about product warnings and age labels on the ingested products, to determine if such warnings were present and considered by the victims and caregivers.[73] Of the 57 cases that reported whether there were product warnings, at least 45 (79 percent) involved products with a magnet ingestion warning. Similarly, of the 60 cases that reported whether there were age labels on the product, at least 49 (82 percent) involved products with a warning to keep the product away from children. At least 44 cases involved products with both magnet ingestion warnings and warnings to keep the product away from children. Recent magnet ingestion incidents, in 2021, which are not included in the above analysis, also indicate that there are numerous incidents in which involved magnet sets had clear and repeated warnings about the magnet ingestion hazard and warnings to keep the product away from children.

Staff further assessed incident data to determine the age of victims in incidents where the ingested magnets were purchased for or by the victims. Of the 133 cases with a known source of access and known victim age, about 23 percent involved magnets purchased for or by victims under 14 years old, including 9 cases in which the magnets were purchased for victims under 8 years old. Despite the ages of these victims, these cases involved products that were not marketed for children under 14 years old, and were not subject to the toy standard. For example, in one case, a parent purchased a magnet set for a 9-year-old child, despite there being clear and repeated warnings about the magnet ingestion hazard and warnings to keep the product away from children. In another case, a caregiver gave the same product to a 5-year-old child, believing the product to be harmless, and believing that swallowed magnets would pass naturally. The

[72] As explained above, several factors indicate that many of the incidents in the unidentified product type category likely involved subject magnet products, and these incidents indicate sources of access in magnet ingestion incidents, generally. The table excludes out-of-scope products (*i.e.,* home/kitchen and ASTM F963 magnet toys).

[73] In most cases, there was insufficient information to determine if the involved products had warnings, age labels, or both.

child swallowed the magnets, and required surgery, including an appendectomy, because the magnets attracted internally through tissue.

Based on technical analysis and examination of incident reports, online and on-package marketing, and consumer reviews for subject magnet products, staff identified the following factors that likely contribute to children accessing magnet products that are intended for older users: Caregivers and victims underestimate the potential severity of the hazard; social pressures from children, other family members, and friends; consumers see subject magnet products or similar products marketed to children; consumers see other children handling subject magnet products or similar products without incident; consumers read product reviews about other children handling subject magnet products or similar products without incident; and caregivers underestimate the likelihood that children or teens would ingest a magnet.

This information has implications for the types of requirements that are likely to effectively reduce the magnet ingestion hazard. For one, it indicates that requirements that rely on caregiver intervention, such as safety messaging and packaging requirements, are unlikely to adequately address the hazard. As the data suggest, caregivers cannot easily manage children's and teen's access to magnet products, since children and teens often access them outside the home. There are additional reasons why these requirements are unlikely to adequately address the hazard. As these data suggest, many incidents involve children and teens accessing ingested magnets without their packaging, making safety messaging and packaging ineffective. In addition, many incidents involve products that included safety messaging and age recommendations that consumers did not follow. Similarly, these data suggest that the toy standard, alone, cannot adequately address the magnet ingestion hazard because children and teens purchase, receive, and access magnets from products that are not intended for their ages.

V. Relevant Existing Standards [74]

CPSC identified six existing safety standards that address the magnet ingestion hazard. Each of these standards applies to certain products, and none of the standards apply to all subject magnet products. Four of the standards are domestic voluntary standards:

- ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety;*
- ASTM F2923–20, *Standard Specification for Consumer Product Safety for Children's Jewelry;*
- ASTM F2999–19, *Standard Consumer Safety Specification for Adult Jewelry;* and
- ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index ≥50 kG2 mm2).*

In addition, two are international safety standards:

- EN 71–1: 2014, *Safety of Toys; Part 1: Mechanical and Physical Properties;* and
- ISO 8124–1: 2018, *Safety of Toys — Part 1: Safety Aspects Related to Mechanical and Physical Properties.*

This section describes these standards and provides CPSC staff's assessment of their adequacy to address injuries and deaths associated with magnet ingestions. Several of the standards include requirements that do not relate to magnets, however, this analysis focuses on those provisions that are relevant to the magnet ingestion hazard.

A. ASTM F963–17

ASTM F963 was originally approved in 1986, and has been revised numerous times since then. In 2007, ASTM updated the standard to include requirements to address the magnet ingestion hazard in children's toys. In subsequent revisions, ASTM added further requirements for toys containing magnets. As explained above, in 2008, section 106 of the CPSIA made ASTM F963 a mandatory consumer product safety standard; in accordance with that mandate, the Commission adopted 16 CFR part 1250, which currently incorporates by reference ASTM F963–17, which is the most recent version of the standard. ASTM approved ASTM F963–17 on May 1, 2017 and published it in August 2017. CPSC staff participates in the ASTM F15.22 subcommittee that is responsible for this standard.

1. Scope

ASTM F963–17 applies to ''toys,'' which the standard defines as objects designed, manufactured, or marketed as playthings for children under 14 years old. As such, the standard does not apply to products that are intended for users 14 years or older, or products that would not be considered playthings. When ASTM adopted the provisions regarding magnets, it explained that the purpose of the requirements was to address magnet ingestion incidents resulting in serious injury or death by identifying magnets and magnetic components that can be readily swallowed (section A9.4).

2. Performance Requirements for Magnets

The standard specifies that toys may not contain a loose as-received ''hazardous magnet'' or a loose as-received ''hazardous magnetic component.'' In addition, toys may not liberate a ''hazardous magnet'' or ''hazardous magnetic component'' after specified use-and-abuse testing, which consists of soaking under water, cycling attachment and detachment, drop testing, torque testing, tension testing, impact testing, and compression testing. The standard excepts from the requirements ''magnetic/electrical experimental sets'' intended for children 8 years and older—such products need only comply with warning requirements, discussed below.

The standard defines a ''hazardous magnet'' as a magnet that is a small object (*i.e.,* fits entirely within a small parts cylinder specified in the standard) and has a flux index of 50 kG^2 mm^2 or more (as measured in accordance with the method specified in the standard). Thus, a magnet must be both small and strong, according to the criteria in the standard, to be ''hazardous.'' A ''hazardous magnetic component'' is any part of a toy that is a small object and contains an attached or imbedded magnet with a flux index of 50 kG^2 mm^2 or more.

ASTM F963–17 describes the small parts cylinder in section 4.6 and illustrates it in Figure 3; to be a small object, the magnet must fit entirely within the cylinder. The small parts cylinder depicted in ASTM F963–17 is the same as the small parts cylinder in CPSC's regulations, at 16 CFR 1501.4. Sections 8.25.1 through 8.25.3 describe the test methodology to measure the maximum absolute flux of a magnet and to calculate the flux index. A flux index is a calculated value of magnetic density and size. The flux index of a magnet is calculated by multiplying the square of the magnet's maximum surface flux density (in KGauss (kG)) by its cross-sectional area (in mm^2).

3. Warning Requirements

ASTM F963–17 does not include specific labeling requirements for toys containing loose as-received hazardous magnets or hazardous magnetic components, except for ''magnetic/electrical experimental sets'' intended

[74] For additional information about relevant existing standards, see Tab C and Tab D of the NPR briefing package.

for children 8 years and older, which are exempt from the performance requirements and need only meet labeling requirements. The standard defines a ''magnetic/electrical experimental set'' as a ''toy containing one or more magnets intended for carrying out educational experiments that involve both magnetism and electricity.'' Section A12.4 in the standard explains that this definition is intended to cover only products that combine magnetism and electricity. The packaging and instructions for magnetic/electrical experimental sets intended for children 8 years and older must be labeled with a warning that addresses the magnet ingestion hazard.

4. Assessment of Adequacy

CPSC staff does not consider ASTM F963–17 capable of adequately reducing the risk of injury and death associated with magnet ingestions because of the scope of products it covers.

The size and strength requirements in ASTM F963–17 are consistent with the requirements proposed in this rule for subject magnet products. Section VI. Description of and Basis for the Proposed Rule, below, discusses these size and strength requirements and their ability to address the hazard. Staff considers the size and strength requirements adequate to address the hazard. However, ASTM F963–17 only applies to products designed, manufactured, or marketed as playthings for children under 14 years old; it does not apply to products intended for older users or products that would not be considered playthings. Accordingly, staff does not believe that compliance with the standard is likely to adequately reduce the magnet ingestion hazard.[75]

As the incident data indicate, children and teens commonly access and ingest magnets from products intended for older users. Both NEISS and CPSRMS data indicate that the most common products identified in magnet ingestions were magnet sets and magnet toys, which are products that are intended for users 14 years or older, or where the intended user age was unknown, but there were no indications that the product was intended for users under 14 years. Despite the involvement of products intended for users 14 years and older, the vast majority of magnet ingestion incidents involved children under 14 years old. For example, among CPSRMS incidents for which the victim's age was known, the most common ages that ingested magnet sets were 2, 8, 9, and 10 years old.

The sources from which children access ingested magnets further illustrates the need to address magnets in products intended for older users. For example, according to CPSRMS data, children and teens commonly access ingested magnets that belong to other family members, in the home, from friends, or loose in the environment, suggesting their access is not limited to toys intended for them.

In addition, ASTM F963–17 does not apply to products that are not intended to be playthings. Both NEISS and CPSRMS data indicate that many products involved in magnet ingestion incidents are described as jewelry, and that children of various ages ingest magnet jewelry (*e.g.,* accidentally ingesting magnets while simulating lip, tongue, and cheek piercings). Because ASTM F963–17 only applies to playthings, it does not apply to jewelry, regardless of the intended user age.

As such, ASTM F963–17, alone, is not sufficient to address the magnet ingestion hazard, because it does not impose any requirements on products intended for users 14 years or older or jewelry, which are known to be involved in many magnet ingestion incidents.

B. ASTM F2923–20

ASTM first issued ASTM F2923 in 2011. The current version of the standard is ASTM F2923–20, which was approved on February 1, 2020, and published in March 2020.

1. Scope

ASTM F2923–20 applies to ''children's jewelry,'' which is jewelry designed or intended primarily for use by children 12 years old or younger. The standard defines ''jewelry'' as a product that is primarily designed and intended as an ornament worn by a person. The standard does not apply to toy jewelry or products intended for a child when playing. The standard includes requirements that are intended to address ingestion, inhalation, and attachment hazards associated with children's jewelry that contains a hazardous magnet or hazardous magnetic component. The standard defines a ''hazardous magnet'' and ''hazardous magnetic component'' be referencing the definition in ASTM F963, except that the standard exempts chains that are longer than 6 inches from the definition of ''hazardous magnetic component.''

2. Performance Requirements for Magnets

ASTM F2923–20 prohibits children's jewelry from having an as-received hazardous magnet or hazardous magnetic component. The standard excepts from this requirement children's jewelry intended for children 8 years and older consisting of earrings, brooches, necklaces, or bracelets—such products need only comply with warning requirements, discussed below. In addition, the standard prohibits children's jewelry from liberating a hazardous magnet or hazardous magnetic component after the use-and-abuse testing specified in ASTM F963.

3. Warning Requirements

ASTM F2923–20 does not include specific labeling requirements for children's jewelry containing hazardous magnets or hazardous magnetic components, except for children's jewelry intended for children 8 years and older that consists of earrings, brooches, necklaces, or bracelets. These products are exempt from the performance requirements and need to include a warning that addresses the magnet ingestion hazard. Instructions that accompany the product must also include these warnings.

4. Assessment of Adequacy

CPSC staff does not consider ASTM F2923–20 capable of adequately reducing the risk of injury and death associated with magnet ingestions. Although staff considers the size and strength requirements in the standard adequate to address the magnet ingestion hazard, the standard excepts certain children's jewelry from these performance requirements, and the scope of products covered by the rule makes the standard insufficient to address the magnet ingestions, generally.

The first issue with the standard is that it excludes from the size and strength requirements for magnets children's jewelry that is intended for children 8 years and older that consists of earrings, brooches, necklaces, and bracelets. Applying only warning requirements to these products is not adequate to reduce the magnet ingestion hazard. As the incident data indicate, almost half of magnet ingestion incidents involve children 8 years and older, and children and teens, particularly in this age group, commonly used magnets as jewelry at the time of ingestion. Warning requirements, alone, are not adequate to

[75] Based on incident data, staff believes that the exception in ASTM F963–17 for magnetic/electrical experimental sets intended for children 8 years and older is likely not problematic for adequately addressing the magnet ingestion hazard. Staff identified only one magnet ingestion incident that involved a ''science kit,'' which potentially could be a magnetic/electrical experimental set.

address these incidents. As the discussion of ASTM F3458–21, below, covers in detail, caregivers and children commonly do not heed warnings, and children and teens commonly access magnets that are separated from their packaging, where warnings are provided.

The second issue with the standard is that it applies only to jewelry that is designed or intended primarily for use by children 12 years old or younger. As such, it does not impose requirements on magnet sets or magnet toys intended for users 14 years and older, which are the most common product types identified in magnet ingestion incidents. The standard also does not apply to jewelry intended for users over 12 years old. Although incident data do not indicate the intended user age of jewelry products involved in ingestions, the data indicate that children and teens of various ages ingested magnets intended for users 14 years and older when using the magnets as jewelry, making it is reasonable to conclude that jewelry intended for users over 12 years old poses an ingestion hazard for children and teens.

For these reasons, ASTM F2923–20, on its own, is not sufficient to address the magnet ingestion hazard because it does not impose requirements on magnet sets, magnet toys, or certain jewelry, which are shown to be involved in many magnet ingestion incidents.

C. ASTM F2999–19

ASTM first issued ASTM F2999 in 2013; the current version of the standard is ASTM F2999–19, which ASTM approved on November 1, 2019, and published in November 2019.

1. Scope

ASTM F2999–19 establishes requirements and test methods for certain hazards associated with adult jewelry, including magnets. The standard defines ''adult jewelry'' as jewelry designed or intended primarily for use by consumers over 12 years old. It defines ''jewelry'' as a product primarily designed and intended as an ornament worn by a person, and provides several examples, such as bracelets, necklaces, earrings, and jewelry craft kits where the final assembled product meets the definition of ''jewelry.'' The standard defines a ''hazardous magnet'' as ''a magnet with a flux index >50 as measured by the method described in Consumer Safety Specification F963 and which is swallowable or a small object.''

2. Performance Requirements for Magnets

ASTM F2999–19 does not include any performance requirements for adult jewelry that contains magnets; it specifies only labeling requirements, discussed below.

3. Labeling Requirements

ASTM F2999–19 states that ''adult jewelry that contains hazardous magnets as received should include a warnings statement which contains the following text or substantial equivalent text which clearly conveys the same warning.'' Thus, rather than the mandatory language ASTM standards typically use (*i.e.,* shall), the standard merely recommends (*i.e.,* should) that warnings regarding hazardous magnets be provided with adult jewelry. The warning statement provided in the standard warns of the internal interaction hazard if magnets are swallowed or inhaled, and recommends seeking immediate medical attention.

4. Assessment of Adequacy

CPSC staff does not consider ASTM F2999–19 capable of adequately reducing the risk of injury and death associated with magnet ingestions. For one, the standard does not include any requirements for adult jewelry containing magnets—rather, it suggests complying with the magnet provisions. As incident data indicate, many magnet ingestion incidents involve products used as jewelry, and children and teens accessing products intended for older users. This demonstrates the need for a mandatory requirement for adult jewelry.

In addition, the only provisions in the standard that address magnet ingestions are warnings. As the discussion of ASTM F3458–21, below, covers in detail, warning requirements, alone, are not adequate to address the magnet ingestion hazard because caregivers and children commonly do not heed warnings, and children and teens commonly access magnets that are separated from their packaging, where warnings are provided.

The scope of the standard also makes it insufficient to adequately address the magnet ingestion hazard. Because it applies only to jewelry designed or intended primarily for use by consumers over 12 years old, the standard does not impose requirements on magnet sets or magnet toys intended for users 14 years and older, which are the most common products identified in magnet ingestion incidents. It also does not impose requirements on jewelry intended for users 12 years old and younger. Although the incident data do not indicate the intended user age of jewelry involved in magnet ingestions, because many incidents involve children 12 years old and younger, it is reasonable to conclude that jewelry intended for such users pose the magnet ingestion hazard for children and teens.

Another potential issue with ASTM F2999–19 is that it defines a hazardous magnet, for purposes of determining whether the warning provisions apply, as having a flux index greater than 50 kG^2 mm^2. In contrast, ASTM F963–17, ASTM F2923–20, and this proposed rule, define a hazardous magnet as having a flux index greater than or equal to 50 kG^2 mm^2, thereby, addressing magnets with a flux index of precisely 50 kG^2 mm^2. This makes ASTM F2999–19 inconsistent with the toy standard, which has been in effect for many years and has been effective at addressing the magnet ingestion hazard for toys.

For these reasons, ASTM F2999–19, alone, is not sufficient to address the magnet ingestion hazard because it does not impose performance requirements on magnet sets, magnet toys, or certain jewelry, which are involved in many magnet ingestion incidents.

D. ASTM F3458–21

In 2019, ASTM Subcommittee F15.77 on Magnets began work to develop a standard for magnet sets intended for users 14 years and older. On February 15, 2021, ASTM approved ASTM F3458–21, and published the standard in March 2021. ASTM F3458–21 consists of marketing, packaging, labeling, and instructional requirements for magnet sets intended for users 14 years and older.

Since March 2019, CPSC staff has participated actively in Subcommittee F15.77 on Magnets. During the development of ASTM F3458–21, CPSC staff raised several concerns to the subcommittee about the developing standard, including the reliance on marketing, packaging, labeling, and warnings requirements, rather than performance requirements to limit the size and strength of magnets. The assessment of the standard, below, and Tab C of the NPR briefing package, detail these concerns; Tab C also includes a letter CPSC staff sent the subcommittee, expressing these concerns. Based on these issues, CPSC considered the standard inadequate to address the magnet ingestion hazard and voted against the final version of the standard that was ultimately adopted.

In May 2021, after ASTM F3458–21 was adopted, Subcommittee F15.77 on Magnets voted to form a task group to

consider revising the standard to include performance requirements for magnet sets intended for users 14 years and older. CPSC staff will continue to work with the subcommittee, however, whether the standard will be revised, and what requirements may be added to it, are, as yet, undetermined.

1. Scope

ASTM F3458–21 aims to minimize the hazards to children and teens associated with ingesting small, powerful magnets in magnet sets that are intended for users 14 years and older. The standard defines a ''magnet set'' as ''an aggregation of separable magnetic objects that are marketed or commonly used as a manipulative or construction item for puzzle working, sculpture building, mental stimulation, education, or stress relief.'' It also defines a ''small, powerful magnet'' as an ''individual magnet of a magnet set that is a small object'' and has a flux index of 50 kG^2 mm^2 or more. The criteria for identifying a small object and the flux index are the same as in ASTM F963–17.

2. Performance Requirements for Magnets

The standard does not include size and strength limits for magnet sets themselves. The standard includes performance criteria in the form of test methods to determine if a product is a ''small, powerful magnet,'' and test methods for assessing label permanence; however, the standard does not include performance requirements preventing small, powerful magnets from being used in magnet sets. Instead, ASTM F3458–21 includes requirements for instructional literature, sales/marketing, labeling, and packaging, discussed below. These requirements seek to inform and encourage consumers to keep magnets away from children.

3. Instructional Literature Requirements

ASTM F3458–21 requires magnet sets intended for users 14 years and older to come with instructions that address assembly, maintenance, cleaning, storage, and use. The instructions must include warnings (as specified below), the manufacturer's suggested strategy for counting and storing magnets, a description of typical hazard patterns (*e.g.,* young children finding loose magnets), an illustration of the hazard, a description of typical symptoms associated with magnet ingestion, and statements regarding medical attention when magnets are ingested.

4. Sales/Marketing Requirements

The standard prohibits manufacturers from knowingly marketing or selling magnet sets intended for users 14 years and older to children under 14 years old, and requires them to ''undertake reasonable efforts'' (with examples) to ensure the product is not marketed or displayed as a children's toy. For online sales, manufacturers must ''undertake reasonable efforts'' (with examples) to ensure that online sellers do not sell magnet sets intended for users 14 years and older to children under 14 years. When selling directly to consumers online, manufacturers must include warnings (as specified below) and instructional literature about the hazard pattern.

5. Labeling Requirements

ASTM F3458–21 requires magnet sets intended for users 14 years and older to bear warnings on the retail packaging and ''permanent storage container,'' which the standard defines as a container designed to hold the magnet set when it is not in use. At a minimum, the warnings must address the hazard associated with magnet ingestions, direct users to keep the product away from children, and provide information about medical attention. The standard includes an example warning label, and specifies design and style requirements for the warning label. In addition, the standard requires the label to be permanent and provides a test method for assessing label permanence.

6. Packaging Requirements

The standard requires magnet sets intended for users 14 years and older to be sold with or in a permanent storage container. The permanent storage container must include a way to verify that all the magnets have been returned to the container. In addition, the standard requires the permanent storage container to be re-closeable and include one of the following means of restricting the ability to the open the container: (1) The container requires two consecutive actions, the first of which must be maintained while the second is carried out, or requires two separate and independent simultaneous actions to fully release, withstanding specified testing; (2) the container requires one action that requires at least 15 lbf to open or requires at least 4 inches lbf of torque to open, withstanding specified testing; or (3) the container meets the performance requirements in 16 CFR 1700.15 and the testing requirements of 16 CFR 1700.20 (which are poison preventing packaging standards, adopted under the Poison Prevention Packaging Act [76] and specify packaging that is significantly difficult for children under 5 years old to open within a reasonable time).

7. Assessment of Adequacy

CPSC staff does not consider ASTM F3458–21 capable of adequately reducing the risk of injury and death associated with magnet ingestions. For one, the limited scope of products subject to the standard is inadequate to address the hazard. The standard only applies to magnet sets intended for users 14 years and older. As such, it imposes no requirements on other products intended for users 14 years and older, or on jewelry (both children's and adult), which are shown to be involved in magnet ingestion incidents.

In addition, the types of requirements in the standard make it inadequate to address the magnet ingestion hazard. For a detailed discussion of the weaknesses of warnings, instructional, sales/marketing, and packaging requirements to address the magnet ingestion hazard, see Tab C of the NPR briefing package. The following is an overview of these weaknesses.

Throughout the standard development process, CPSC staff emphasized that performance requirements for magnets are necessary to adequately address the magnet ingestion hazard. Such requirements typically include size and strength requirements for the magnets themselves, as in the toy standard and this proposed rule. However, ASTM F3458–21 does not include performance requirements to prevent magnet sets intended for users 14 years and older from containing small, powerful magnets, and instead, relies on requirements to inform and encourage consumers to keep magnets away from children. As incident data indicate, children and teens access magnet products, including magnet sets, that are intended for older users, making it important to address the magnet ingestion hazard for magnet sets intended for users 14 years and older. However, safety messaging (*e.g.,* warnings and instructions) and packaging requirements, without performance requirements for the magnets themselves, are not likely to adequately address the hazard.

Safety Messaging. Safety literature has shown that warnings are the least effective strategy for addressing a hazard, relative to designing out the hazard or designing guards against the hazard. This is because safety messaging relies on persuading consumers to avoid

[76] 15 U.S.C. 1471–1477.

hazards, but numerous factors can reduce the likelihood that consumers will read and follow safety messaging.

One factor that weighs against consumers heeding safety warnings is their perception that magnet products present a low safety risk. Magnets in products intended for amusement or jewelry are likely to appear simple, familiar, and non-threatening to children, teens, and caregivers. Incident data and consumer reviews demonstrate that consumers commonly recognize these types of magnetic products as suitable playthings for children, which undermines the perceived credibility of warnings that state the magnets are hazardous for children. The availability of children's toys that are similar to subject magnet products intended for users 14 years and older may also affect consumers' perception of the hazard because the products appear similar, and some are marketed for children. Once familiar with a product, consumers tend to generalize across similar products, and the more familiar consumers are with a product, the less likely they are to look for, or read, warnings and instructions. If caregivers observe their child, or their child's peers using a product or a similar product without incident, caregivers may conclude that their child can use the product safely, regardless of what the warnings state. This is also true for recommendations from others, including online reviews of products, which can influence the likelihood of consumers disregarding warnings. Staff reviewed numerous consumer reviews of subject magnet products, and found that many indicated that consumers purchased the product for a child, or that their children started playing with it, despite the product not being intended for users under 14 years old. Similarly, when a child or teen repeatedly uses the product in or around their mouth without ingesting a magnet or experiencing consequences from ingestion, they and their caregivers are likely to conclude that the hazard is not likely to occur, or is not relevant to them.

Another reason that safety messaging has limited effectiveness is that consumers misunderstand the hazard. For small, powerful magnets, the internal interaction hazard is a hidden hazard, so consumers are unlikely to anticipate and appreciate the risk to children, especially older children and teens who do not have a history of mouthing or ingesting inedible objects. However, of the magnet ingestion cases that identify whether the ingestions were intentional or accidental, the majority describe accidental ingestions, which is much more difficult for consumers to appreciate and prevent.

Similarly, there are developmental factors that predispose older children and teens to disregard warnings and use the small, powerful magnet products in and around their mouths and noses. As discussed above, older children and teens are at a developmental stage in which they test limits and bend rules. Experimentation and peer influence are common determinants of behavior for this age group. Small, powerful magnets offer a seemingly safe and reversible way to try out lip, tongue, cheek, and nose piercings; and if children and teens see their peers doing this, they may act similarly, despite being aware of the risks.

In addition, consumers misunderstand the progression of symptoms associated with magnet ingestions, which may lead them to disregard warnings. As incident reports show, many children, teens, and caregivers wrongly assume that, when ingested, magnets will pass through the body without causing harm. This contributes to delays between ingestion and correct treatment, increasing the risks associated with magnet ingestion.

Another factor that limits the potential effectiveness of safety messaging is how children and teens obtain magnets they ingest. As incident data show, children and teens commonly obtain ingested magnets loose in their environments, from friends, or at school, where the product is separated from any packaging or instructions that bear warnings. Because small, powerful magnets themselves are too small to bear warnings, these children and teens, and their caregivers, may not be made aware of the hazard.

Finally, safety messaging has been ineffective at reducing the magnet ingestion hazard, to date. As discussed above, and in Tab C of the NPR briefing package, staff has examined dozens of incident reports that indicate children and teens obtained and ingested small, powerful magnets even when the product was marketed and prominently labeled with warnings about the hazard and stated that the product was not appropriate for children. For example, of the CPSRMS incidents reported to have occurred between January 1, 2010 and December 31, 2020, staff examined at least 44 incidents in which a child ingested a magnet product that included warnings about the hazard and cautioned to keep the product away from children. Similarly, of 41 magnet sets for which staff assessed consumer reviews, 35 percent of the reviews mentioned use by children, despite 68 percent including a warning about the magnet ingestion hazard.

Another indication of the ineffectiveness of safety messaging to address the magnet ingestion hazard, to date, is the upward trend in magnet ingestion cases in recent years, despite many years of consumer awareness campaigns. As discussed above, for many years, CPSC has drawn attention to the magnet ingestion hazard through recalls, safety alerts, public safety bulletins, and rulemaking activity. In addition, there have been numerous public outreach efforts by health organizations and other consumer advocacy groups to warn consumers about the internal interaction hazard posed by small, powerful magnets. Despite these efforts, magnet ingestion incidents have increased in recent years.

Packaging. Similar to safety messaging, there are several reasons staff considers packaging requirements inadequate to address the magnet ingestion hazard. For one, incident data show that children and teens commonly access ingested magnets loose in their environment and from friends, in which case the product is likely to be separated from its packaging, rendering CR packaging or visual cues that all magnets are in the package ineffective.

In addition, the features provided for in ASTM F3458–21 to make the packaging difficult for children to open would not be effective at preventing older children and teens from accessing the magnets in the packaging. For example, the third packaging option provided in the standard allows the packaging to meet the requirements in 16 CFR 1700.15 and 1700.20. Those provisions are intended to make packaging significantly difficult for children under 5 years old to open within a reasonable time. Thus, such packaging does not prevent all children under 5 years old from opening it, particularly given ample time, and it is not intended to prevent any children 5 years and older from opening the packaging. As the incident data indicate, the majority of magnet ingestion incidents involved victims 5 years and older, making this packaging ineffective at restricting their access. Similarly, for the alternative packaging options in the standard, children and teens are likely to have cognitive and motor skills sufficient to access the products.

Even if CR packaging features did prevent children and teens from opening the packaging, the effectiveness of packaging to address the hazard would rely on consumers correctly repackaging all the magnets after every use, which is likely unrealistic. For one,

the products often are intended for purposes that make repackaging after each use unlikely. For example, products such as magnet sets are intended to assemble and display complex sculptures, and some jewelry may involve creating designs, making consumers unlikely to disassemble their designs to repackage all the magnets after every use. In addition, consumers are not likely to perceive the products as hazardous because they are intended for amusement or jewelry and are not hazardous in appearance, and therefore, would not consider it necessary to repackage all the magnets after every use. Even for products that are obviously hazardous and commonly use CR packaging, such as chemicals and pharmaceuticals, consumers have inconsistently used the packaging. Consumers may also consider CR packaging a nuisance, making them unlikely to store magnets in the packaging after every use.

In addition, the small size of the magnets and large number of magnets (particularly in some magnet sets and magnetic jewelry sets), make it unlikely that consumers would return all the magnets to the packaging after every use. The small size and often large quantity of magnets in a set make locating and counting the magnets after every use, to ensure they are all returned to the package, not feasible or realistic. For example, staff has identified products that were involved in magnet ingestion incidents that consisted of thousands of 2.5 mm diameter magnets. Staff has found that it is common for magnets to be flicked away from one another when they are being handled, such as when separating magnets, resulting in magnets being dropped. These actions are foreseeable, particularly for magnets intended for fidgeting and building. In examining magnet sets, staff found that many sets are sold with extra pieces, in part, because losing magnets is expected. In addition, many incident reports and consumer reviews of magnet sets mention lost magnets. Given the large number of magnets often included in a set, their small size, and their tendency to be separated and lost, it is unlikely that consumers will use CR packaging effectively. The time and effort necessary to locate, assemble, and repackage such small and numerous magnets is likely to be beyond what consumers are willing to spend.

For these reasons, ASTM F3458–21, alone, is not sufficient to address the magnet ingestion hazard because it does not impose performance requirements on magnets themselves, and it does not apply to several products that are involved in magnet ingestion incidents.

E. EN 71–1: 2014

The European standard applies to children's toys, which are products intended for use in play by children younger than 14 years old. The requirements regarding magnets in EN 71–1: 2014 are essentially the same as in ASTM F963–17—any loose as-received magnet and magnetic component must either have a flux index less than 50 kG^2 mm^2, or not fit entirely in a small parts cylinder. The flux index is determined using the same method as in ASTM F963–17, and the small parts cylinder is the same as in ASTM F963–17. EN 71–1: 2014 also requires use-and-abuse testing similar to ASTM F963–17, to ensure that toys do not liberate a hazardous magnet or hazardous magnetic component. The standard includes a similar exemption to ASTM F963–17 for magnetic/electrical experimental sets intended for children 8 years of age and older, which need only bear a warning regarding the magnet ingestion hazard.

Thus, the provisions addressing the magnet ingestion hazard in EN 71–1: 2014 are largely the same as in ASTM F963–17. As discussed above, for ASTM F963–17, CPSC staff does not consider these provisions capable of adequately reducing the risk of injury and death associated with magnet ingestions because of the limited scope of the standard. Because the standard only applies to toys intended for children under 14 years old, it does not impose any requirements on products intended for older users, or products that would not be considered playthings. As the incident data indicate, magnet ingestion incidents include children and teens ingesting products intended for older users, and ingesting jewelry, neither of which this standard addresses.

F. ISO 8124–1: 2018

This standard applies to toys, which are products intended for use in play by children under 14 years old. The standard requires any loose as-received magnet and magnetic component to either have a flux index less than 50 kG^2 mm^2 or not fit entirely within a small parts cylinder. The flux index is determined the same way as in ASTM F963–17, and the small parts cylinder is the same as in ASTM F963–17. ISO 8124–1 also requires similar use-and—abuse testing to ASTM F963–17, to ensure that a hazardous magnet or hazardous magnetic component does not liberate from a toy. Similar to ASTM F963–17, ISO 8124–1 also provides an exemption for magnetic/electrical experimental sets intended for children 8 years and older, which need only bear a warning regarding the magnet ingestion hazard.

Thus, the provisions addressing the magnet ingestion hazard in ISO 8124–1: 2018 are largely the same as in ASTM F963–17. As discussed above, for ASTM F963–17, CPSC staff does not consider these provisions capable of adequately reducing the risk of injury and death associated with magnet ingestions because of the limited scope of the standard. Because the standard only applies to toys intended for children under 14 years old, it does not impose any requirements on products intended for older users, or products that would not be considered playthings. As the incident data indicate, magnet ingestion incidents include children and teens ingesting products intended for older users, and ingesting jewelry, neither of which this standard addresses.

G. Compliance With Existing Standards

CPSC has limited information about the extent to which products comply with existing standards. Based on staff's analysis, only a small number of magnet ingestion incidents for which a product type could be identified involved children's toys subject to ASTM F963, which provides some indication that children's toys commonly comply with the standard. Of the magnet ingestion incidents that involved children's toys, staff identified six incidents that involved internal interaction of the magnets through body tissue, again suggesting there may be a high level of compliance with the standard. None of the products in these six incidents complied with the magnet requirements in ASTM F963.

CPSC staff does not have detailed information about the extent to which products comply with ASTM F2923, F2999, or F3458. Incident reports commonly do not provide enough detail for staff to identify the specific product (*e.g.,* brand) to obtain it and assess it for compliance. In addition, for ASTM F3458, the standard was adopted recently (March 2021), making it difficult to determine the level of compliance with it. CPSC seeks comments and data about the level of compliance with the existing standards that address the magnet ingestion hazard.

VI. Description of and Basis for the Proposed Rule

A. Scope and Definitions

1. Proposed Requirements

The proposed rule applies to ''subject magnet products,'' defined as ''a

consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets.'' The proposed rule exempts from its scope, toys that are subject to 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys.*

The proposed rule only applies to ''consumer products,'' as defined in the CPSA, which are ''article[s], or component part[s] thereof, produced or distributed (I) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.'' 15 U.S.C. 2052(a)(1). Consumer products do not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer. *Id.*

The proposed rule also defines ''hazardous magnets'' as ''a magnet that fits entirely within the cylinder described in 16 CFR 1501.4 and that has a flux index of 50 kG^2 mm^2 or more when tested in accordance with the method described in this part 1262.''

2. Basis for Proposed Requirements

To determine the appropriate scope of products to cover in the proposed rule to adequately reduce the risk of injury and death associated with magnet ingestions, CPSC staff considered magnet ingestion incident data, magnet use patterns, magnet ingestion rates when other mandatory standards took effect, recalls, child development and behavioral patterns, the uses of hazardous magnets in consumer products, consumer reviews for products with loose or separable hazardous magnets, existing standards, contributions from stakeholders in the ASTM Subcommittee F15.77 on Magnets, and relevant research literature. The definition of ''subject magnet products'' consists of several elements that include and exclude certain products from the scope of the proposed rule. This section discusses the reasons for the criteria in the definition. The basis for the elements of the proposed definition of ''hazardous magnets'' is discussed below, as part of the basis for the performance requirements in the proposed rule.

a. Consumer Products

Subject magnet products are limited to ''consumer products,'' as that term is defined in the CPSA. Accordingly, any product that is not customarily produced or distributed for sale to or use by a consumer, is not within the scope of the proposed rule. This could include professional, industrial, or commercial products that would not customarily be available to or used by consumers. This element of the definition is included because CPSC's authority under the CPSA is limited to consumer products, and because products that are not customarily available to consumers would not be likely to pose a magnet ingestion hazard to children and teens.

b. Loose or Separable Magnets

Subject magnet products are limited to products that contain ''loose or separable magnets.'' This is because magnets that are not loose or separable, such as non-removable magnets that are integrated into or attached to a product, would not pose an ingestion hazard. For example, a magnetic clasp attached to a necklace would not pose an ingestion hazard because it is connected to a larger object, making it unlikely to be swallowed.

In addition, the definition of ''subject magnet products'' specifically refers to magnets. Although not explicit in the definition, this refers to permanent magnets, which are magnets that maintain their magnetic field after being removed from the magnetizing source. Staff does not consider it necessary to specify that the standard applies to permanent magnets. For one, products that lose their magnetism when separated from their magnetizing source (*e.g.,* electromagnets that lose their magnetism when separated from the source of electricity) are unlikely to exceed the size criteria in the proposed rule when functioning as magnets because, to be magnetized, the product would have to be attached to its magnetizing source, which would render the product too large to fit entirely within the small parts cylinder. When separated from its magnetizing source, thereby making the item potentially small enough to fit entirely in the small parts cylinder, the item would lose its magnetism, and no longer be a ''magnet'' subject to the standard. In addition, for the magnet to be ''loose or separable'' it would need to be a magnet (*i.e.,* magnetized) when loose and separated from other components, including a magnetizing source. CPSC seeks comments on whether it is necessary for the proposed rule to specify that it applies only to permanent magnets, or whether the rule should apply to non-permanent magnets as well.

c. One or More Magnets

The definition also specifies that subject magnet products include ''one or more'' loose or separable magnets; thus, they include products with only a single loose or separable magnet. There are two reasons for including this in the definition of ''subject magnet products.'' First, an individual magnet can interact internally through body tissue with an unrelated magnet or a ferromagnetic object, resulting an internal interaction injury. Thus, even a product with a single loose or separable magnet poses the same internal interaction hazard as products with multiple magnets. Second, subject magnet products may be sold as individual magnets or with a choice of how many magnets to include in a set. Staff identified magnets sets on the market that are sold with extra pieces to serve as replacements for magnets lost from the set. Thus, magnets sold individually may be intended as, or may be used as, part of a set, posing the risk of children and teens ingesting more than one magnet. Limiting the proposed rule to products that include two or more loose or separable magnets would not address the hazard posed by a single magnet, and would leave a gap in the standard to allow firms to sell magnets individually, without having to comply with the proposed rule. Moreover, applying the proposed rule to products that include a single loose or separable magnet is consistent with the toy standard in 16 CFR part 1250 because ASTM F963–17 applies to products that contain one or more hazardous magnets.

d. Amusement or Jewelry

The definition of ''subject magnet products'' is limited to products that are designed, marketed, or intended to be used for entertainment, jewelry, mental stimulation, stress relief, or a combination of these purposes. Essentially, this means that the proposed rule applies to products that are designed, marketed, or intended for amusement or jewelry. This section discusses the reasons CPSC considers it appropriate to focus on magnet products intended for amusement and jewelry to reduce the risk of injury and death associated with magnet ingestions. The focus on amusement and jewelry products is also consistent with

international standards, which address these products, in particular.[77]

Description of Products. Magnets intended for amusement include a variety of products for consumer entertainment, mental stimulation, and stress relief. Whether a product is designed, marketed, or intended to be used for these purposes depends on multiple considerations, such as how the manufacturer describes the product, marketing and advertising for the product, product packaging and displays, and how consumers are reasonably likely to perceive or use the product. Common examples of products that contain loose or separable magnets intended for entertainment, mental stimulation, or stress relief (other than children's toys) include products commonly referred to as ''executive toys,'' ''desk toys,'' ''magnet sets,'' and ''rock magnets.'' Magnet sets generally are aggregations of separable magnets commonly used for manipulating or constructing sculptures. Rock magnets generally are loose magnets shaped like rocks and intended for entertainment or fidgeting. These are some examples, and additional products may be designed, marketed, or intended to be used for entertainment, mental stimulation, stress relief, or a combination of these purposes.

Subject magnet products that are jewelry also include a variety of products, such as jewelry intended for adults or for children, jewelry making sets, and magnetic piercings and studs. For example, staff has identified necklaces made of numerous small magnets, in multiple shapes, that consumers can rearrange in various configurations.

Incident Data. As the incident data indicate, magnet ingestion cases generally involve seven categories of magnet products (see section *IV.A. Incident Data,* above, for a detailed description of the categories): Magnet sets, magnet toys, jewelry, home/kitchen magnets, ASTM F963 magnet toys, science kits, and unidentified products. Products categorized as magnet sets, magnet toys, and ASTM F963 magnet toys are generally intended for amusement, however, ASTM F963 magnet toys are excluded from the scope of the proposed rule.

As the incident data show, products categorized as amusement and jewelry, by far, are the most common product categories identified in magnet ingestion incidents. Table 1 shows that magnet toys, by far, were the most common product type category identified[78] in NEISS magnet ingestion incidents (110 of 279, or 39 percent), followed by magnet sets (58 of 279, or 21 percent), and jewelry (53 of 279, or 19 percent). The remaining identified product categories made up fewer of the magnet ingestion cases: Home/kitchen magnets (46 of 279, or 16 percent), ASTM F963 magnet toys (11 of 279, or 4 percent), and science kits (1 of 279, or less than 1 percent). Thus, for NEISS magnet ingestion incidents in which the product category could be identified, 79 percent (221 of 279 incidents) involved products in the magnet sets, magnet toys, or jewelry categories.

CPSRMS data similarly show that magnet sets, magnet toys, and jewelry are the primary categories of products identified in magnet ingestions reports. As Table 9 shows, magnet sets, by far, were the most common product type identified[79] in CPSRMS magnet ingestion incidents, making up 56 percent (134 of 241) of the incidents for which product type categories could be identified, followed by magnet toys (49 of 241, or 20 percent), and jewelry (31 of 241, or 13 percent). The remaining identified product categories made up fewer of the magnet ingestion cases: ASTM F963 magnet toys (21 of 241, or 9 percent), home/kitchen magnets (6 of 241, or 2 percent), and 0 science kits. Thus, for CPSRMS magnet ingestion incidents in which the product category could be identified, 89 percent (214 of 241 incidents) involved products in the magnet sets, magnet toys, or jewelry categories.

The severity of health outcomes associated with magnet ingestions provides further support for focusing on amusement and jewelry products in the proposed rule. Fatalities are one indication of the severity of health outcomes. As discussed above, CPSC identified seven fatalities that involved the ingestion of hazardous magnets between November 24, 2005 and January 5, 2021, 5 of which occurred in the United States. CPSC was able to definitively identify one of the products involved in these incidents (a 2005 death in the United States), which was a children's toy building set, a product intended for amusement. In addition, the most recent incident (a 2021 death in the United States) involved a magnet set, which is also a product intended for amusement. Of the remaining five incidents, three incidents (a 2013 death in the United States and two deaths in other countries) involved magnets that matched the characteristics of magnets typically found in magnet sets, but did not identify the involved product with certainty; one incident (a 2018 death in the United States) involved magnets that matched the characteristics of magnets typically found in magnet sets, and the product was described consistently with magnet sets (*i.e.,* a magnet fidget toy building set); and one incident (a 2020 death in the United States) did not provide information about the product type. This suggests that amusement products, such as magnet sets, are involved in the most severe magnet ingestion cases.

Whether a victim was hospitalized after ingesting magnets provides another indication of the severity of injuries or the need for significant treatment. As Table 10 shows, using CPSRMS data, the most common product types identified[80] in magnet ingestion cases that resulted in hospitalization were magnet sets (88 of 160, or 55 percent), followed by magnet toys (36 of 160, or 23 percent), and jewelry (21 of 160, or 13 percent). Hospitalizations for the remaining identified magnet categories were much lower: ASTM F963 magnet toys (10 of 160, or 6 percent), and home/kitchen magnets (5 of 160, or 3 percent).[81] Thus, for CPSRMS magnet ingestion incidents in which the product category could be identified, 91 percent (145 of 160 incidents) of hospitalizations involved magnet sets, magnet toys, or jewelry. Moreover, as Table 10 shows, magnet ingestions from magnet toys, magnet sets, and jewelry, all resulted in hospitalization far more often than they resulted in other non-hospitalization dispositions.

Use patterns at the time magnets were ingested also show the need to address amusement and jewelry products. The most common identified use pattern at the time of a magnet ingestion was playing, meaning the victim was playing

[77] As discussed above, Canada's efforts to address the magnet ingestion hazard have focused on products intended for amusement, and New Zealand's and Australia's efforts have focused on products intended for amusement and jewelry.

[78] As explained above, for many NEISS incidents, there was insufficient information for staff to identify the category of magnet products involved. Of the 1,072 NEISS magnet ingestion incidents from 2010 through 2020, staff categorized 793 as ''unidentified'' magnet product types. For this reason, this analysis focuses on the remaining 279 incidents for which staff could categorize the product type.

[79] Like NEISS data, CPSRMS data also includes incidents for which there was insufficient information for staff to determine the category of magnet products involved. However, the proportion of incidents in the unidentified magnet product type category is much lower in CPSRMS than in NEISS data. Nevertheless, this analysis focuses on the 241 incidents for which staff could categorize the product type.

[80] To determine the type of products involved in magnet ingestion hospitalizations, this analysis excludes the 27 incidents for which there was insufficient information to categorize the type of magnet ingested.

[81] There were no incidents in CPSRMS that were identified as involving science kits.

with, fidgeting with, or orally exploring magnets at the time of ingestion. This use pattern would be expected for products intended for amusement, since they are intended for play. As Table 13 shows, in both NEISS and CPSRMS incidents, by far, playing was the most common use pattern identified,[82] making up 70 percent (143 of 203) of the NEISS incidents, and 47 percent (61 of 129) of the CPSRMS incidents with identified use patterns. The next most common use pattern, after playing, was jewelry, meaning the magnets were being used as jewelry at the time of the incident. These made up 15 percent (31 of 203) of the NEISS incidents, and 33 percent (43 of 129) of the CPSRMS incidents with identified use patterns. The remaining identified use patterns made up fewer of the incidents. As discussed in section *IV.A.5. Uncertainties in Incident Data,* above, it is reasonable to conclude that magnet ingestions in the unidentified product type category follow this same pattern, with most involving products intended for amusement or jewelry.

Together, these factors—the prevalence of magnet ingestion incidents that involve products categorized as magnet sets, magnet toys, or jewelry; the higher rate of hospitalizations and deaths for these product categories; and the fact that the primary uses of magnets at the time of ingestion were playing and jewelry—demonstrate that magnet sets, magnet toys, and jewelry are the primary products involved in magnet ingestion incidents and pose an increased risk of serious health implications when ingested. For these reasons, CPSC considers a rule addressing these specific product categories necessary to adequately reduce the risk of injury and death associated with magnet ingestions. The definition of ''subject magnets'' in the proposed rule, which is limited to amusement and jewelry products, focuses the proposed rule on these most problematic products.

Developmental and Behavioral Factors. Child and teen development and behavior also support the need to address magnets intended for amusement and jewelry in the proposed rule. Small, powerful magnets, in general, are likely to appeal to children and teens. The tactile appeal, shine, color, snapping/clicking sounds when manipulated, novelty, unpredictability, and complexity of magnets appeal to children and teens. For younger children, it is developmentally normal to explore and put objects in their mouths. Incident data demonstrate this, with younger children more likely to ingest magnets intentionally (see Figures 3 and 4). Teens are at a developmental stage that involves testing limits, experimentation, bending rules, and conforming to peer pressures. Consistent with this, teens commonly ingested magnets accidentally when experimenting with them to simulate jewelry or piercings (see Figures 3 and 4). Magnets offer children and teens a seemingly safe and reversible way to try lip, tongue, cheek, and nose piercings.

CPSC staff considers products that are intended for amusement and jewelry to be more likely to be accessible to and appealing to children and teens than other magnet products. Products that are intended for amusement and jewelry are likely to be perceived by children, teens, and caregivers as appropriate for use by children and teens; that perception is likely to make them accessible and appealing to children and teens. In contrast, magnets excluded from the scope of the proposed rule (*e.g.,* home/kitchen magnets, such as hardware magnets for fastening items together, or shower curtain magnets) are likely to be part of common household products, making them less conspicuous, accessible, and appealing to children and teens, since they are not intended for amusement or jewelry, and making caregivers less likely to give them to, purchase them for, or allow their use by children and teens.

Incident data and consumer reviews support this assessment. As the incident data indicate, for magnet ingestions in which staff could identify the product type involved, most products were magnet sets and magnet toys, neither of which are products intended for use by children under 14 years old (see Table 1 and Table 9). Despite this, the vast majority of magnet ingestion incidents involved children under 14 years old (see Table 5 and Table 12), which demonstrates that children and teens access these amusement products intended for older users. Similarly, incident data show that, where the use pattern at the time of ingestion is known, victims were, by far, most often playing with the magnet (see Table 13), suggesting that victims may be attracted to and access products that appear to be playthings. The second most common identified use pattern was jewelry (see Table 13), suggesting that children and teens are also particularly likely to interact with magnets that are part of jewelry.[83]

Of the magnet ingestion incidents for which the source of access could be identified, 19 percent (26 of 135) involved magnets that were purchased for the victim (see Table 14), despite most incidents involving children under 14 years old and products intended for users 14 years and older. This suggests that children, teens, and caregivers perceive products like magnet sets and magnet toys to be appealing to and appropriate for children and teens.

Another reason children and teens are particularly likely to be attracted by and access amusement products that include magnets is that these products often look the same as products intended as toys for children. Consumer reviews of products demonstrate this, with consumers commonly considering subject magnet products suitable playthings for children, and purchasing them for children, even when warnings state otherwise. Staff identified numerous incidents in which children ingested magnets from products that were marketed and labeled as not intended for children, and bore warnings regarding the magnet ingestion hazard. For example, staff identified 16 recent incidents in which children ingested magnets from a magnet set that included warnings and marketing indicating that the product was intended for adults. For older children, in particular, parents often do not expect that children would place magnets in their mouths.

Recalls. Recalls of magnet products further demonstrate the need to focus on magnets intended for amusement. Of the 18 recalls that involved the magnet ingestion hazard between January 1, 2010 and August 17, 2021, the vast majority involved products intended for amusement. The recalls primarily involved magnet sets and desk toys, rather than children's toys or other non-amusement products.

[82] For many NEISS and CPSRMS incidents, there was insufficient information for staff to determine the use pattern at the time magnets were ingested. To identify relevant use patterns, this analysis focuses on the 203 NEISS incidents and 129 CPSRMS incidents for which staff could determine the use pattern at the time of ingestion.

[83] Incidents categorized as involving jewelry included cases in which the magnet was from a jewelry product or was described as jewelry at the time of ingestion, but the specific product could not be identified. For some of these incidents, it is possible that the magnets did not actually come from jewelry, but rather, came from other magnet products that children and teens were using as jewelry. However, staff considers most cases categorized as jewelry to have involved either jewelry or amusement products, such as magnet sets, being used as jewelry. This is because, of the cases for which staff could determine the product being used as jewelry, only one case in both the NEISS and CPSRMS datasets reported that the magnet being used as jewelry was actually a home/kitchen magnet, and none indicated the magnet was from an ASTM F963 magnet toy.

e. Excluding Children's Toys

The scope of the proposed rule specifically excludes products that are subject to 16 CFR part 1250. Currently, 16 CFR part 1250 incorporates by reference ASTM F963–17, which defines a ''toy'' as ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' As discussed above, ASTM F963–17 includes requirements consistent with the proposed rule, including the same performance requirements regarding size and strength.

Recall information suggests that the toy standard is largely complied with and has been effective at addressing the magnet ingestion hazard in children's toys. As discussed in section *IV.A.5. Uncertainties in Incident Data,* since the toy standard became mandatory, there has been an appreciable decline in recalls of children's toys related to the magnet ingestion hazard. Of the 18 recalls between 2010 and 2021 that involved the magnet ingestion hazard, only 4 involved children's toys, and only 2 of those were confirmed to have been noncompliant with the magnet requirements in ASTM F963. Recalls generally occur when a company receives information about a product being hazardous and reports it to CPSC. As such, the low rate of recalls involving the magnet ingestion hazard in children's toys suggests that these products largely comply with ASTM F963, and that the toy standard has been effective at addressing the magnet ingestion hazard in children's toys.

In addition, as Table 10 suggests, when ASTM F963 magnet toys are ingested, they appear to result in severe injuries less commonly than other products. Magnet ingestions of ASTM F963 magnet toys resulted in hospitalization about as often as they resulted in other non-hospitalization dispositions; in contrast, magnet toys, magnet sets, and jewelry all resulted in hospitalization far more often than they resulted in other non-hospitalization dispositions. This suggests that when ASTM F963 magnet toys are ingested, they may be less likely to result in serious health outcomes requiring hospitalization. Of the 108 CPSRMS cases that had evidence of internal interaction through body tissue, only 6 cases involved products identified as ASTM F963 magnet toys. Of the 124 CPSRMS cases that indicated surgical procedures were necessary as a result of magnet ingestion, only 9 cases involved products identified as ASTM F963 magnet toys. Most, if not all, of the ingestions of ASTM F963 magnet toys that resulted in surgical intervention did not meet the requirements of ASTM F963.

For these reasons, CPSC does not consider it necessary to further address children's toys in this proposed rule. Nevertheless, there are two elements of the definition of ''toys'' that are noteworthy for this proposed rule.

First, ''toys'' are products that are intended as ''playthings.'' Thus, toys do not include products that are not playthings, even when they are intended for children under 14 years old. For example, children's jewelry, when not intended as a plaything, would not fall under the definition of a ''toy'' and, therefore, would not be subject to the toy standard.[84] As such, children's non-toy jewelry is subject to the proposed rule. Additional products may also fall under the scope of the proposed rule, although intended for users under 14 years old, if they do not constitute ''playthings,'' but otherwise meet the definition of subject magnet products.

Second, the definition of ''toys'' limits them to products intended for users under 14 years old. However, as magnet ingestion incident data show, products that are intended for users 14 years and older are commonly ingested by children and teens, indicating that the toy standard, on its own, cannot adequately address the magnet ingestion hazard. As discussed above, incidents categorized as involving magnet sets or magnet toys exclude products that staff confirmed were intended as playthings for children under 14 years old. These two categories were the most common categories of identified products involved in magnet ingestion incidents, despite the fact that most incidents involved children and teens under 14 years old. As Figure 2 shows, children as young as 11 months, and many children between 1 and 13 years old ingest products in the magnet toys and magnet sets categories. Staff identified many incidents in which the product ingested was clearly marketed and labeled as intended for adults, with warnings regarding the magnet ingestion hazard, but the product was, nevertheless, ingested by children under the intended user age. In many cases, caregivers even provided these products to children, despite the warnings. This demonstrates why it is necessary to adopt a standard for products intended for users 14 years and older, in addition to the toy standard, to adequately address the magnet ingestion hazard.

f. Products Not Covered by the Proposed Rule

Based on the definition of ''subject magnet products'' and the scope of the proposed rule, certain products that contain loose or separable magnets are not subject to the proposed rule. Home and kitchen magnets are one such product, if they do not otherwise meet the definition of subject magnet products. Common examples of home and kitchen magnets are refrigerator magnets, magnetic decorations, hardware for kitchen cabinets, and shower curtain accessories. If such products are not loose or separable or are not designed, marketed, or intended to be used for entertainment, jewelry, mental stimulation, or stress relief, they would not fall under the scope of the proposed rule.

CPSC considers it reasonable to exclude home/kitchen products from the scope of the proposed rule for several reasons. For one, incident data indicate that home/kitchen magnets are far less commonly involved in magnet ingestion incidents than amusement and jewelry products. As Table 1 indicates, 16 percent (46 of 279) of NEISS magnet ingestion incidents for which the product category could be determined involved home/kitchen magnets; as Table 9 indicates, only 2 percent (6 of 241) of CPSRMS magnet ingestion incidents for which the product category could be determined involved home/kitchen magnets. Home/kitchen magnets also make up a very small portion of incidents that resulted in hospitalization. Table 10 shows that, only 3 percent (5 of 160) of the CSPRMS magnet ingestion incidents with identified product types that resulted in hospitalization, involved home/kitchen magnets. Of the 108 CPSRMS cases that had evidence of internal interaction through body tissue, only 1 case involved products identified by staff as home/kitchen products. Of the 124 CPSRMS cases that indicated surgical procedures were necessary as a result of magnet ingestion, only 2 cases involved products identified by staff as home/kitchen products.

In addition, as discussed above, CPSC considers it less likely that children and teens will interact with, play with, or experiment with home/kitchen magnets,

[84] Section 1.3 of ASTM F963–17 states that the standard applies to ''toys intended for use by children under 14 years of age'' and section 3.1.91 defines a ''toy'' as ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' Section 1.3.1 of ASTM F2923–20 specifies that the standard, which applies to children's jewelry, does not apply to ''toy jewelry or any other products that are intended for use by a child when the child plays (that is, a necklace worn by a doll or stuffed animal; novelty jewelry with play value)'' and further states that ''any product which is predominately used for play value is a toy'' and ''toys are subject to the requirements of Consumer Safety Specification F963.''

particularly in ways that may lead to ingestion. Home/kitchen products excluded from the proposed rule have intended uses that do not include amusement or jewelry, and are often part of common household products, making them less conspicuous, accessible, and appealing to children and teens, since they are not intended for amusement or jewelry, and making caregivers less likely to give them to, purchase them for, or allow their use by children and teens. In contrast, the intended uses of amusement and jewelry products make them appear less hazardous, and more likely to be appealing and accessible to children and teens.

Other products that would fall outside the scope of the proposed rule include research and educational products, or those intended for commercial or industrial purposes, if they are not also intended for amusement or jewelry.[85] CPSC considers it appropriate to exclude these products for several reasons. As incident data indicate, almost no magnet ingestion incidents for which product types could be identified involved products intended for education, research, commercial, or industrial use. Among NEISS incidents, only one incident—involving a science kit—potentially involved such a product; no such incidents were identified in CPSRMS data. For that one incident, little information was available about the science kit, but staff considered it possible that the product was intended for educational purposes.

Staff also considers it less likely that children or teens would have access to such products. For example, magnets used for research or industrial applications are likely to be in settings that children do not frequent. Even if children could access such products, for the same reasons as home/kitchen magnets, staff considers it less likely that these products would appeal to children, appear to be playthings or jewelry to children or caregivers, or for children to interact with them in ways that would lead to ingestion.

In addition to the likely reduced hazard these out-of-scope products present to children and teens, CPSC also seeks to limit the scope of the proposed rule to the extent possible to reduce the impact on products, such as research, education, and industrial magnet products, that may have important uses and require magnets that are small and strong to serve their function. In contrast, amusement and jewelry products likely serve less critical functions and may still serve their purpose with slightly larger or slightly weaker magnets, or non-separable magnets.

g. Other Factors Not Used in the Proposed Rule

CPSC considered using additional criteria, such as magnet composition or shape, as part of the scope of the proposed rule. However, CPSC did not limit the scope of the proposed rule to specific magnet compositions because staff has found that various magnet compositions have been involved in internal interaction incidents. For example, NIB is commonly used for smaller magnets from magnet sets and magnetic jewelry sets, and ferrite/hematite is commonly used for larger magnets, such as rock-shaped magnet toys. Staff testing of magnets in consumer products indicates that magnets with various compositions often have very high flux indexes, far in excess of the proposed limit of less than 50 kG^2 mm^2, warranting a standard for various compositions. CPSC did not include specific shapes or sizes in the scope of the proposed rule because staff found that various shapes and sizes of magnets present the hazard, including rock-shaped magnets, and most incident reports lack information about the specific shapes and sizes of the magnets. As such, the performance requirements in the proposed rule address magnets that could be ingested, regardless of their shape.

B. Performance Requirements

1. Proposed Requirements

Under the proposed rule, each loose or separable magnet in a subject magnet product that fits entirely within the small parts cylinder described in 16 CFR 1501.4 must have a flux index of less than 50 kG^2 mm^2 when tested in accordance with a prescribed method. Thus, the first step is to determine whether each loose or separable magnet in a subject magnet product fits in the small parts cylinder and what its flux index is.

The small parts cylinder is described and illustrated in 16 CFR part 1501.4. Figure 5, below, shows the illustration, including the dimensions, of the cylinder, provided in the regulation.

BILLING CODE 6355–01–P

[85] It is also possible that products intended for purposes such as education, research, or industrial applications would not meet the definition of a ''consumer product,'' if they are not commonly sold to or used by consumers. If, for example, magnets for research purposes were sold through outlets primarily accessible to and used by laboratories or other research facilities, these may not be considered consumer products.

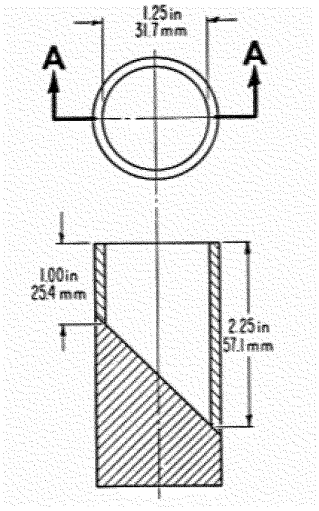


Figure 5: Small parts cylinder in 16 CFR 1501.4

If a magnet fits entirely within this cylinder, then its flux index must be less than 50 kG^2 mm^2.

To determine the flux index of a magnet, the proposed rule provides that at least one loose or separable magnet of each shape and size in the subject magnet product must have its flux index determined using the procedure in sections 8.25.1 through 8.25.3 of ASTM F963–17, which specify test equipment, measurements, the test method, and the calculation for determining flux index. The test requires a direct current field gauss meter with a resolution of 5 gauss (G) capable of determining the field with an accuracy of 1.5 percent or better and an axial probe with a specified active area diameter and a distance between the active area and probe tip. Using the meter, the probe tip is placed in contact with the pole surface of the magnet, the probe is kept perpendicular to the surface, and the probe is moved across the surface to find the maximum absolute flux density. The flux index, in kG^2 mm^2, is determined by multiplying the area of the pole surface (mm^2) of the magnet by the square of the maximum flux density (kG^2). The flux density must be less than 50 kG^2 mm^2 to comply with the proposed rule.

2. Basis for Proposed Requirements

a. Size Requirements

The first portion of the performance requirement in the proposed rule involves determining whether a magnet fits entirely within the small parts cylinder described in 16 CFR 1501.4. The purpose of this requirement is to determine whether a magnet is small enough to be swallowed. If so, then it is subject to strength requirements to reduce the risk of internal interaction injuries from strong magnets. However, if the magnet is too large to be swallowed, as determined by the small parts cylinder, then it is not subject to any strength requirements.

The small parts cylinder was developed to address choking, aspiration, and ingestion hazards for children, and was largely based on research and data regarding the size of objects children ingest. To address this hazard, since 1980, the Commission's regulations (at 16 CFR part 1501) have specified that certain toys and other articles intended for use by children must not contain choking, aspiration, or ingestion hazards for children. Whether these products present such hazards is determined by whether they fit within the small parts cylinder described in 16 CFR 1501.4.[86] Several ASTM standards for children's products reference these regulations as well, requiring that products have no small parts as determined by 16 CFR part 1501,[87] and the small parts cylinder specified in the ASTM standards that addresses magnet ingestions is the same as in 16 CFR 1501.4. Similarly, the small parts cylinders referenced in international standards that address magnet ingestions, including EN 71–1: 2014 and ISO 8124–1: 2018, are also the same as in 16 CFR 1501.4. These standards are developed by consensus of various groups, including consumer groups, children's product engineers and experts, and manufacturers of children's products. As such, the small parts cylinder in 16 CFR 1501.4 is consistent with consensus standards developed with cooperation and input from various experts, is widely recognized, and has long been used as a way to identify products that children can ingest.

Incident data further support the effectiveness of the small parts cylinder in 16 CFR part 1501.4 to address the magnet ingestion hazard. As discussed above, magnet ingestion incidents substantially declined during the years the magnet sets rule was announced and in effect, and substantially increased after the rule was vacated. The magnet sets rule included the same performance requirements regarding size and strength as this proposed rule, including the small parts cylinder. The marked decline in magnet ingestions during that rule suggests that the performance requirements in that rule were effective at reducing the risk of children ingesting magnets.

Similarly, there was a significant decline in recalls involving the magnet ingestion hazard after the toy standard became mandatory. The toy standard requires compliance with ASTM F963, which includes the same small parts cylinder as 16 CFR 1501.4. As such, this decline in recalled toys that present a magnet ingestion hazard after the toy standard became mandatory suggests that the requirements in that rule were effective at reducing the risk of children ingesting magnets. The low number of magnet ingestion incidents that identify ASTM F963 magnet toys as the involved product also indicates that the requirements in the standard have been effective at addressing the magnet ingestion hazard. Moreover, when magnet ingestions did occur with children's toys, they rarely resulted in

[86] *See* 43 FR 47684 (Oct. 16, 1978); 44 FR 34892 (June 15, 1979).

[87] For example, ASTM F2088–20, *Standard Consumer Safety Specification for Infant and Cradle Swings.*

the internal interaction hazard, and those that did result in internal interaction, did not comply with the toy standard.

For these reasons, the proposed rule uses 16 CFR 1501.4 as the means of determining whether a child could ingest a particular magnet, thereby subjecting it to performance requirements regarding strength, to reduce the risk of injury.

b. Strength Requirements

When a magnet is small enough to fit entirely within the small parts cylinder, the proposed rule requires that the magnet have a flux index less than 50 kG^2 mm^2. This provision consists of two elements—a method for determining flux index, and a flux index limit of less than 50 kG^2 mm^2. This requirement is intended to reduce the risk that a magnet is strong enough to cause internal interaction injuries, if ingested. This section discusses the rationale for both the flux index methodology and the flux index limit in the proposed rule.

Flux Index Methodology. The proposed rule incorporates by reference the provisions in ASTM F963 that specify the method for measuring and calculating flux index. The ASTM Subcommittee F15.22 on Toy Safety developed this methodology and ASTM first published it in ASTM F963–07. The magnetic flux index estimates the magnet attraction force of individual single-pole magnets.

A magnet's composition, mass, and shape determine its magnetic field. This field is aligned with its north and south magnetic poles (see Figure 6). Surface flux density is a measurement of the magnetic field intensity at a given perpendicular distance above an area (dimension ''x'' in Figure 6). The maximum flux density is measured perpendicular to the pole surface of a magnet.

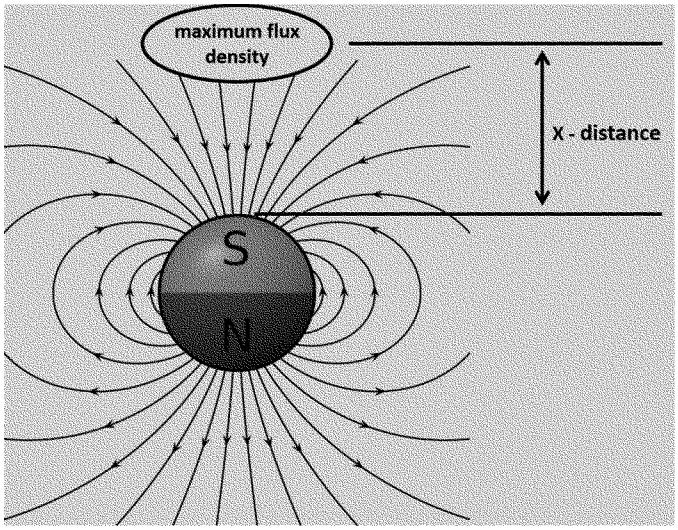


Figure 6: Magnetic field of spherical magnet.

BILLING CODE 6355–01–C

The ASTM F963 working group that developed the flux index methodology aimed to address injuries involving children ingesting small, powerful magnets. As such, it was designed to address the same hazard at issue in this proposed rule, and minimize the risk of internal injuries when magnets are ingested. As part of an ASTM standard, this methodology was developed by consensus, with input from various stakeholders, such as children's product manufacturers, consumer groups, and children's product engineers and experts. In addition, this methodology is used in multiple ASTM standards that address the magnet ingestion hazard, international standards (including EN 71–1: 2014 and ISO 8124–1: 2018), and the mandatory toy standard in 16 CFR part 1250. As part of these standards, the methodology is widely recognized and accepted, and has been used for many years.

CPSC staff considers this methodology effective for assessing the strength of subject magnet products. Incident data also support the effectiveness of the flux index methodology in ASTM F963 to address the magnet ingestion hazard. Magnet ingestion incidents appreciably declined during the years the magnet sets rule was announced and in effect, and appreciably increased after the rule was vacated. The magnet sets rule included the same size and strength limits as this proposed rule, and incorporated by reference the flux index methodology in ASTM F963. The decline in magnet ingestions during that rule suggests that the performance requirements in that rule were effective at reducing the risk of injury and death associated with magnet ingestions. Similarly, there was a significant decline in recalls involving the magnet ingestion hazard after the toy standard became mandatory. The toy standard requires compliance with ASTM F963 and, therefore, includes the same flux index methodology as this proposed rule. The decline in recalled toys that present a magnet ingestion hazard after the toy standard became mandatory suggests that the requirements in that rule were effective at reducing the risk of injury and death associated with magnet ingestions. The low number of magnet ingestion incidents that identify ASTM F963 magnet toys as the involved product also indicates that the requirements in the standard have been effective at reducing the magnet ingestion hazard. When magnet ingestions did occur with children's toys, they rarely resulted in the internal interaction hazard, and those that did result in internal interaction, did not comply with the toy standard.

For these reasons, the proposed rule uses the flux index methodology in

ASTM F963–17 as the means of measuring the strength of magnets for purposes of limiting the risk of internal interaction injuries when ingested.

There are two issues that the Commission seeks input on regarding the flux index methodology. The first issue involves how many magnets to test. The proposed rule and ASTM F963–17 do not explicitly state how many magnets from a product to test, or whether to use statistical sampling. The proposed rule requires at least one loose or separable magnet of each shape and size to be tested, and specifies that each loose or separable magnet in a subject magnet product that fits entirely within the small parts cylinder must have a flux index less than 50 kG^2 mm^2. Similarly, section 4.38.1 of ASTM F963–17 states that ''toys shall not contain a loose as-received hazardous magnet or a loose as-received hazardous magnetic component.'' These provisions indicate that each magnet may need to be tested to ensure that compliance with the size and strength provisions.

However, subject magnet products may consist of hundreds or thousands of individual magnets. As such, it may be reasonable to require that only a ''representative sample'' or ''at least one representative sample of each shape and size'' be tested. CPSC staff's testing of magnets, described below, suggests that individual magnets within the same product may have different flux indexes, which may suggest that it is important to test each individual magnet in a product. CPSC seeks comments on how firms would test products to align with the proposed requirements, whether another requirement regarding the number of magnets to test is appropriate, and how firms would satisfy such alternative requirements.

The second issue for which the Commission seeks comments is the utility of the flux index methodology for certain magnets—in particular, small spherical magnets. Staff has found the flux index methodology straightforward and consistent when used for large disc magnets. However, staff encountered some challenges finding the location of the poles for magnets smaller than 3 mm in diameter because of difficulties handling these particularly small spherical magnets. This may result in inaccurate measurements of the highest flux index values if the value is not measured above the magnet's pole. Staff testing of 2.5 mm spherical magnets, described below, illustrates this potential issue.

To examine possible ways to address this, staff refined the test procedure in ASTM F963–17 to include additional detail to locate the magnet pole and secure the magnet on a base, rather than holding it. This test procedure maintained the flux index methodology in ASTM F963–17, and merely added information to it, which staff found improved the accuracy and consistency of flux density measurements and calculations. This refined procedure is provided in detail in the Appendix to Tab D of the NPR briefing package. To summarize, the refined test method consists of the following steps:

(1) Use a flat magnetic or ferromagnetic utensil to attract spherical magnets into alignment with pole orientation towards the utensil;

(2) Transfer the spherical magnets from the utensil to a flat surface covered in at least 2 mm depth of putty that is dense/thick enough to maintain the configuration of the spherical magnets in the proper pole orientation (established by magnetic attraction with the utensil); and

(3) With the spherical magnets aligned in the flat surface putty with pole orientation facing away from the test surface, use the gauss meter probe to determine the maximum flux value of each individual magnet.

The additional detail in this refined procedure is one option for potentially supplementing the flux index methodology in ASTM F963–17. However, there are other potential alternatives to the method in ASTM F963–17, such as considering attraction and repulsion forces. The Commission requests comments on the variability of flux index results, issues determining the flux index of smaller magnets, and potential refinements or alternatives to the proposed methodology for assessing the strength of magnets.

Flux Index Limit. The proposed rule limits the flux index of magnets small enough to be swallowed to less than 50 kG^2 mm^2. ASTM introduced this flux index limit in 2007, in ASTM F963–07.[88] ASTM set the flux index limit at 50 kG^2 mm^2 based on measurements of flux indexes in magnetic toys that were involved in magnet ingestion incidents at the time, which generally had flux index measurements over 70 kG^2 mm^2. Based on this information, 70 kG^2 mm^2 was determined to be an unsafe flux index measurement, and ASTM set the limit at 50 kG^2 mm^2 to provide a factor of safety.

As part of an ASTM standard, the flux index limit was developed by consensus of various groups, including consumer groups, children's product engineers and experts, and manufacturers of children's products. Additional ASTM standards, as well as international standards that address magnet ingestions, including EN 71–1: 2014 and ISO 8124–1: 2018, also include a flux index limit of 50 kG^2 mm^2 for ingestible magnets. As such, the flux index limit of 50 kG^2 mm^2 is consistent with consensus standards developed with cooperation and input from various experts, is widely recognized, and has long been used as a way to reduce the internal interaction hazard when magnets are ingested.

Incident data support the effectiveness of this flux index limit to address the magnet ingestion hazard. Magnet ingestion incidents substantially declined during the years the magnet sets rule was announced and in effect, and substantially increased after the rule was vacated. The magnet sets rule included a flux index limit of 50 kG^2 mm^2 for ingestible magnets. The marked decline in magnet ingestions during that rule suggests that the performance requirements in that rule were effective at reducing the risk of injury and death associated with magnet ingestions. Similarly, there was a significant decline in recalls involving the magnet ingestion hazard after the toy standard became mandatory. The toy standard requires compliance with ASTM F963 and, therefore, includes the same 50 kG^2 mm^2 limit for ingestible magnets as the proposed rule. This decline in recalled toys for magnet ingestion hazards suggests that the requirements in that rule were effective at reducing the risk of injury and death associated with magnet ingestions. The low number of magnet ingestion incidents that identify ASTM F963 magnet toys as the involved product also indicate that the requirements in that standard have been effective at addressing the magnet ingestion hazard. Moreover, when magnet ingestions did occur with children's toys, they rarely resulted in internal interaction, and those that did result in internal interaction, did not comply with the toy standard.

Staff's assessment of the flux index of subject magnet products, including those involved in magnet ingestion incidents, and those known to have involved internal interaction injuries, indicates that subject magnet products have a wide range of flux indexes. The most common subject magnet products staff identified are 3 to 6 mm and have flux indexes of 300 to 400 kG^2 mm^2. However, staff's testing of smaller 2.5 mm magnets, some of which resulted in internal interaction injuries when ingested, yielded flux indexes close to 50 kG^2 mm^2. CPSC expects that, in order

[88] ASTM F963–2007 specified that prohibited hazardous magnets had a flux index greater than 50 kG^2 mm^2, however, this was revised in later versions of the standard, and ASTM F963–17 now prohibits hazardous magnets with a flux index of 50 kG^2 mm^2 or more.

to comply with the proposed rule, firms will use magnets with flux indexes sufficiently lower than 50 kG² mm² in subject magnet products, to account for manufacturing and testing variances/tolerances, which may result in subject magnet products having flux indexes even lower than required by the rule.

Based on the widespread and longstanding use of the flux index limit of 50 kG² mm², its development and acceptance by multiple stakeholders, the effectiveness of standards that have used this limit to address magnet ingestion incidents, and staff testing showing that magnets involved in internal interaction incidents had flux indexes close to 50 kG² mm², the Commission proposes to require that magnets that are small enough to ingest have a flux index of less than 50 kG² mm².

However, the Commission seeks comments on this flux index limit, whether a lower limit may be appropriate, and seeks testing and safety data supporting an appropriate flux index limit. CPSC testing of a small sample of subject magnet products suggests that magnets with a flux index lower than (*i.e.,* weaker than) 50 kG² mm² may be capable of causing internal interaction injuries, indicating that a flux index limit lower than 50 kG² mm² may be appropriate to address the internal interaction hazard; however, this testing did not provide conclusive evidence that magnets weaker than 50 kG² mm² present an internal interaction hazard. This testing is described below.

CPSC Testing. To gather information about the flux index methodology, flux index limit, and what flux index can interact internally though body tissue, staff conducted testing on a small number of magnets. Staff tested magnets with diameters smaller than 5 mm because they generally had lower flux indexes than larger magnets, and because these smaller magnets presented the testing challenges described above. Staff used the test method in ASTM F963–17 with the additions described in the Appendix to Tab D of the NPR briefing package. This testing involved only a small number of samples, and a limited variety of products, sizes, and shapes. As such, while this testing is informative and raises potential issues, the broader significance of these results is limited.

In March, April, and June 2021, CPSC staff tested magnets with diameters smaller than 5 mm, including 2.5 mm diameter spherical magnets from nine exemplar samples of one brand of magnet set, and two incident samples of the same brand.[89] Additionally, staff tested 3 mm diameter spherical magnets from two incident samples from unknown manufacturers. Staff selected these samples because of their involvement in internal interaction incidents. CPSC is aware of 16 ingestion incidents and one nasal insertion incident involving the 2.5 mm diameter spherical magnets that staff tested.[90] These 17 incidents resulted in at least 10 surgeries (such as appendectomy and bowel resection) and six instances of internal interaction through body tissue. The nasal insertion incident involved two 2.5 mm diameter spherical magnets attracting through and perforating the victim's nasal septum, which is tissue thicker than the GI walls.

In March 2021, staff conducted inter-rater reliability testing (*i.e.,* the extent to which 2 or more observations agree) in which 3 staff members tested the same 21 exemplar 2.5 mm diameter spherical magnets. Three magnets were tested from each of 7 sets/samples of the same magnet set brand. Staff chose 3 magnets from each set to analyze intra-set variability in magnetic flux index. Table 15 shows the results of this testing.

TABLE 15—INTER-RATER RELIABILITY TEST MEASUREMENTS OF 2.5 mm SPHERICAL MAGNETS

[March 2021]

Test set	Magnet 1 (kG² mm²)			Magnet 2 (kG² mm²)			Magnet 3 (kG² mm²)		
	Tester 1	Tester 2	Tester 3	Tester 1	Tester 2	Tester 3	Tester 1	Tester 2	Tester 3
1	53.788	56.294	42.730	48.950	50.797	47.197	50.797	53.246	50.462
2	59.477	60.876	53.926	52.055	54.175	40.755	53.372	56.197	74.308
3	29.021	29.627	28.191	29.205	30.752	27.507	39.152	41.192	35.507
4	33.226	33.932	31.232	51.627	54.623	36.160	53.605	53.705	42.825
5	42.940	41.681	46.425	52.600	51.631	48.106	46.501	48.576	44.031
6	34.381	34.838	34.217	40.974	40.279	39.920	35.085	36.197	33.905
7	55.118	56.522	53.955	56.819	57.577	56.230	40.890	34.274	39.933

These results suggest several points of interest. For one, they indicate that there was some variation in flux index results across testers. In addition, these results suggest that magnets from the same set tend have more similar flux index measurements than magnets from different sets of the same product. The results also suggest that there is variation in the flux indexes of magnets from the same set, and the same products (across sets). The flux index measurements of 21 exemplar 2.5 mm diameter spherical magnets from 7 different magnet sets of the same brand ranged from 27.507 to 74.308 kG² mm². This variation in flux indexes, potentially due to manufacturing variation and testing variation, may necessitate that firms use magnets with flux indexes sufficiently lower than 50 kG² mm² in subject magnet products, to account for this potential variation in flux index results.

This variation also may have implications for the number of magnets in a product that should be tested to assess flux index. Under the proposed rule, one loose or separable magnet with a flux index of 50 kG² mm² or more in a subject magnet product makes the whole product violative. However, this above testing suggests that this determination may be affected by the number or sample of magnets tested from a product because a product that includes multiple magnets may contain some magnets that meet and some that exceed the flux index limit. Thus, this testing may have implications for how many magnets from a product should be tested (*e.g.,* all magnets in the product,

[89] Exemplar refers to products that are the same model and brand as those involved in the incident, but not the actual product involved in the incident. Incident samples refer to the actual products involved in an incident.

[90] Many of these cases occurred after the NEISS and CPSRMS data extraction used for the NPR briefing package and, therefore, are not captured in those datasets.

a representative sample of magnets in the product).

In addition, because this testing used exemplars, and not the magnets that were actually ingested, staff cannot determine what flux index measurements resulted in internal interaction injuries. However, these results suggest that magnets ranging from approximately 30 to 70 kG^2 mm^2 could have resulted in internal interaction injuries. If the actual magnets involved in the incident had flux indexes of 50 kG^2 mm^2 or more, the proposed rule would address these injuries; if the actual magnets involved in the incident had flux indexes closer to 30 to 40 kG^2 mm^2, the proposed rule may not address these injuries.

In March and April 2021, staff conducted similar testing. Three staff members tested spherical magnets from 4 separate sample/sets that were involved in internal interaction incidents. Set 1 included a single 2.5 mm diameter magnet that had not been ingested, but was from a set of ingested magnets that had interacted internally through a victim's body tissue. The remaining 3 sets had magnets that were ingested and removed from the intestines of the victim who swallowed them (*i.e.,* interacted internally through victims' body tissue). Staff tested 3 magnets from each of these 3 sets; 2 of the 3 sets were composed of 3 mm diameter magnets and 1 set was composed of 2.5 mm diameter magnets. The results are provided in Table 16.

TABLE 16—TEST MEASUREMENTS OF 2.5 mm AND 3 mm SPHERICAL MAGNET SETS INVOLVED IN INGESTION INCIDENTS

Set	Magnet 1 (kG^2 mm^2)			Magnet 2 (kG^2 mm^2)			Magnet 3 (kG^2 mm^2)		
	Tester 1	Tester 2	Tester 3	Tester 1	Tester 2	Tester 3	Tester 1	Tester 2	Tester 3
1	42.020	45.173	41.766	N/A	N/A	N/A	N/A	N/A	N/A
2	76.919	82.469	65.959	72.911	70.882	63.795	70.206	68.475	63.843
3	46.239	48.513	46.384	47.536	49.427	47.991	48.309	52.135	48.749
4	93.979	96.426	89.349	90.240	96.383	88.218	89.070	94.970	95.712

The results in Table 16 show similar trends as the testing above, with there being some variation across testers, less variation within sets than across sets, and a range of flux indexes across magnets, and sets. Set 1 in Table 16 was the same brand as the sets shown in Table 15, was a 2.5 mm spherical magnet, and had flux indexes that ranged from 41.766 to 45.173 kG^2 mm^2. Although this magnet was from a set that was ingested and interacted internally through body tissue, this exact magnet was not ingested, so staff cannot determine the flux index of the magnets that were ingested, but it is possible that the magnets that interacted through body tissue were also in this range, with flux indexes less than 50 kG^2 mm^2.

Sets 2 and 4 in Table 16 were 3 mm diameter spherical magnets from 2 sets from unknown manufacturers. The magnets staff tested for these sets were actually ingested and had interacted internally through a victim's body tissue. As such, the results for these sets are particularly useful for assessing the magnet strength that may attract internally through body tissue. These magnets had flux indexes that ranged from 63.795 to 96.426 kG^2 mm^2. Thus, the limit of 50 kG^2 mm^2 in the proposed rule would address the magnet interaction hazard these magnets presented, with a factor of safety to account for potential variation in results across testers, manufacturing variation, and variation due to the challenges of testing small spherical magnets.

Set 3 in Table 16 included three 2.5 mm diameter spherical magnets from a magnet set of the same brand as those in Table 15. The tested magnets had been ingested and interacted internally through the victim's tissue. Thus, like sets 2 and 4, these results are particularly useful for assessing the magnet strength that may attract internally through body tissue. The flux indexes for these magnets ranged from 46.239 to 52.135 kG^2 mm^2. Using only Tester 1 or Tester 3's results, these magnets would comply with the proposed rule because these testers found flux indexes less than 50 kG^2 mm^2 for all 3 magnets. Using Tester 2's results, these magnets would not comply with the proposed rule because magnet 3 in the set had a flux index of more than 50 kG^2 mm^2. Because, depending on the tester, this set may comply with the proposed rule but interacted internally through body tissue, these results raise the question whether a lower flux index limit may be appropriate. However, even with a flux index limit of 50 kG^2 mm^2, it is possible that the proposed rule would address the incident involving these magnets because the flux indexes for this set were very close to 50 kG^2 mm^2. To comply with the proposed rule, firms may build in a factor of safety to ensure their magnets are not close to 50 kG^2 mm^2, to account for variation in test results and testers and ensure their products will comply with the standard.

In June 2021, CPSC staff tested magnets from 2 more exemplar magnet sets of the same brand shown in Table 15, each of which consisted of spherical rare-earth magnets that were 2.5 mm in diameter. Magnet sets of this brand and type were known to have been involved in at least 6 internal interaction incidents. Staff measured the flux index of 3 magnets from each set and calculated the flux index values. The results are in Table 17.

TABLE 17—TEST MEASUREMENTS OF TWO 2.5 mm DIAMETER MAGNET SETS

[June 2021]

Magnet	Sample magnet set 1					Sample magnet set 2				
	Max flux (kG)	Max flux^2 (kG^2)	Diameter (mm)	Area (mm^2)	Flux index	Max flux (kG)	Max flux^2 (kG^2)	Diameter (mm)	Area (mm^2)	Flux index
1	2.812	7.907	2.520	4.985	*39.417*	3.343	11.174	2.520	4.985	*55.705*
2	2.714	7.363	2.550	5.104	*37.585*	3.450	11.903	2.590	5.266	*62.677*
3	2.798	7.826	2.410	4.559	*35.683*	3.275	10.726	2.530	5.025	*53.896*

Again, these results indicate variation in the flux indexes of magnets within the same set, and that flux indexes are more similar within a set than across sets. For the 6 magnets tested, flux indexes ranged from 35.683 to 62.677 kG^2 mm^2.

The following provides a summary of the consolidated results of all of these tests. Staff assessed 2.5 mm and 3 mm diameter spherical magnets associated with internal interaction incidents. The exemplar 2.5 mm magnets had flux index values between 27.507 to 74.308 kG^2 mm^2. Incident samples with magnets involved in internal interaction injuries had flux index values between 46.239 and 52.135 kG^2 mm^2 for the 2.5 mm magnets, and 63.795 to 96.426 kG^2 mm^2 for the 3 mm diameter magnets. In general, these results suggest that the proposed rule would address the internal interaction hazard associated with magnet ingestions because many of the sets tested would not comply with the proposed rule because at least one of the tested magnets had a flux index of 50 kG^2 mm^2 or more. For the reasons described above, staff considers the flux index methodology and limit in the proposed rule to be appropriate to adequately address the magnet ingestion hazard.

However, these results also suggest that there is some variability in the flux index values, which may have implications for the proposed flux index test methodology. These results also indicate that magnets that may have flux indexes lower than 50 kG^2 mm^2 may have caused internal interaction injuries, suggesting that a lower flux index limit than 50 kG^2 mm^2 may be appropriate; however, the results are inconclusive because staff could not identify, with certainty, the flux indexes of magnets that actually caused internal interaction injuries. In addition, staff notes the limited scope of this testing, including the small sample size, and limited variety of products tested. The Commission seeks comments on the proposed requirements regarding flux index methodology and limits, including information about whether flux indexes below 50 kG^2 mm^2 present an internal interaction hazard.

VII. Preliminary Regulatory Analysis[91]

The Commission is proposing to issue a rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission prepare a preliminary regulatory analysis and publish it with the text of the proposed rule. 15 U.S.C. 2058(c). The following discussion is extracted from staff's memorandum, ''Preliminary Regulatory Analysis of a Draft Proposed Rule that Would Establish a Standard for Hazardous Magnet Products,'' available in Tab E of the NPR briefing package.

A. Preliminary Description of Potential Costs and Benefits of the Proposed Rule

The preliminary regulatory analysis must include a description of the potential benefits and costs of the proposed rule. The benefits of the rule are measured as the expected reduction in the societal costs of deaths and injuries that would result from adopting the proposed rule and any benefits that cannot be quantified. The costs of the rule consist of the added costs associated with modifying or discontinuing products that do not comply with the requirements of the rule, including any impacts on the utility of the products for consumers, as well as any costs that cannot be quantified.

1. Deaths and Injuries Related to Magnet Ingestions

As discussed above, based on NEISS data, which is a nationally representative probability sample of about 100 U.S. hospitals, there were an estimated 4,400 ED-treated magnet ingestions between 2010 and 2020 that involved subject magnet products, and an additional estimated 18,100 ED-treated magnet ingestions that involved unidentified magnet products, of which CPSC concludes a large portion involved subject magnet products.

In addition to injuries initially treated in hospital EDs, many product-related injuries are treated in other medical settings, such as, physicians' offices, clinics, and ambulatory surgery centers. Some injuries also result in direct hospital admissions, bypassing hospital EDs entirely. CPSC estimates the number of subject magnet product injuries treated outside of hospital EDs with CPSC's Injury Cost Model (ICM), which uses empirical relationships between the characteristics of injuries (diagnosis and body part) and victims (age and sex) initially treated in hospital EDs and the characteristics of those initially treated in other settings.[92]

The ICM estimate of injuries treated outside of hospitals or hospital EDs (*e.g.,* in doctors' offices, clinics) is based on data from the Medical Expenditure Panel Survey (MEPS). The MEPS is a nationally representative survey of the civilian, non-institutionalized population that quantifies individuals' use of health services and corresponding medical expenditures. It combines data from a panel of participants interviewed quarterly over a two-year period with data from the respondents' medical providers. The MEPS is administered by the Agency for Healthcare Research and Quality (AHRQ). The ICM uses the MEPS data, in combination with a classification tree analysis technique, to project the number and characteristics of injuries treated outside of hospitals. To project the number of direct hospital admissions that bypass hospital EDs, the ICM uses data from the Nationwide Inpatient Sample of the Healthcare Cost and Utilization Project (HCUP–NIS), which was also analyzed using a classification tree analysis technique. HCUP is a family of healthcare databases and related software tools and products developed through a federal-state-industry partnership and sponsored by AHRQ. The HCUP–NIS provides information annually on approximately 3 to 4 million in-patient stays from about 1,000 hospitals.

The classification tree analysis technique (also called decision tree) is a statistical tool that divides and sorts data into smaller and smaller groups for estimating the ED share of injuries until no further gains in predictive power can be obtained. This technique allows for more precise estimates of injuries treated in doctor visits or injuries admitted directly to the hospital than other regression techniques. For example, where data permit, the age and sex of the victim can have an influence on the estimates of the number of injuries treated outside the ED. Combining the national estimates of NEISS with the non-ED estimates from the ICM using classification tree techniques provides total estimated medically-treated injuries.

Based on the estimate of 2,135 magnet injuries initially treated in hospital EDs annually during 2017 through 2020, the ICM projects that another 856 magnet injuries were treated annually outside of hospitals (*e.g.,* in doctors' offices,

[91] Further detail regarding the preliminary regulatory analysis is available in Tab E of the NPR briefing package.

[92] A detailed discussion of the ICM and these methods is in: Miller, T.R., Lawrence, B.A., Jensen, A.F., Waehrer, G.M., Spicer, R.S., Lestina, D.C., and Cohen, M.A., *The Consumer Product Safety Commission's Revised Injury Cost Model,* Calverton, MD: Public Services Research Institute (2000); Bhattacharya, S., Lawrence, B., Miller, T., Zaloshnja, E., Jones, P., *Ratios for Computing Medical Treated Injury Incidence and Its Standard Error from NEISS Data* (Contract CPSC–D–05–0006, Task Order 8), Calverton, MD: Pacific Institute for Research and Evaluation (2012); and Lawrence, B.A., *Revised Incidence Estimates for Nonfatal, Non-Hospitalized Consumer Product Injuries Treated Outside Emergency Departments* (Contract CPSC–D–89–09–0003, Task Order 2), Calverton, MD: Pacific Institute for Research and Evaluation (2013).

clinics) and that there were about 264 direct hospital admissions annually, bypassing the ED. Thus, combined with the ED-treated injuries, staff estimates that there were a total of 3,255 medically treated injuries annually involving subject magnets products from 2017 through 2020.

2. Societal Costs of Deaths and Injuries

The ICM is fully integrated with NEISS and provides estimates of the societal costs of injuries reported through NEISS, as well as the societal costs of other medically treated injuries estimated by the ICM. The major aggregated societal cost components provided by the ICM include medical costs, work losses, and the intangible costs associated with lost quality of life or pain and suffering.

Medical costs include three categories of expenditures: (1) Medical and hospital costs associated with treating the injury victim during the initial recovery period and in the long term, including the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. CPSC derived the cost estimates for these expenditure categories from a number of national and state databases, including MEPS, HCUP–NIS, the Nationwide Emergency Department Sample (NEDS), the National Nursing Home Survey (NNHS), MarketScan® claims data, and a variety of other federal, state, and private databases.

Work loss estimates are intended to include: (1) The forgone earnings of the victim, including lost wage work and household work; (2) the forgone earnings of parents and visitors, including lost wage work and household work; (3) imputed long term work losses of the victim that would be associated with permanent impairment; and (4) employer productivity losses, such as the costs incurred when employers spend time juggling schedules or training replacement workers. Estimates are based on information from HCUP–NIS, NEDS, Detailed Claims Information (a workers' compensation database), the National Health Interview Survey, U.S. Bureau of Labor Statistics, and other sources. The intangible, or non-economic, costs of injury reflect the physical and emotional trauma of injury, as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and need to be accounted for in any benefit-cost analysis involving health outcomes. The ICM develops a monetary estimate of these intangible costs from jury awards for pain and suffering. While these awards can vary widely on a case-by-case basis, studies have shown them to be systematically related to a number of factors, including economic losses, the type and severity of injury, and the age of the victim.[93] CPSC derived estimates for the ICM from regression analysis of jury awards in nonfatal product liability cases involving consumer products compiled by Jury Verdicts Research, Inc.

Table 18 provides annual estimates of the injuries and societal costs associated with ingestions of magnets categorized as magnet sets, magnet toys, and jewelry.

TABLE 18—ESTIMATED AVERAGE ANNUAL MEDICALLY TREATED INJURIES AND ASSOCIATED SOCIETAL COSTS FOR INGESTIONS OF PRODUCTS CATEGORIZED AS MAGNET SETS, MAGNET TOYS, AND JEWELRY, FOR 2017 THROUGH 2020

Injury disposition	Estimated No.	Estimated societal costs ($ millions) *
Doctor/Clinic	164	$2.2
Treated and Released from Hospital ED	278	6.2
Admitted to Hospital through ED (NEISS)	†159	26.4
Direct Hospital Admissions, Bypassing	77	12.8
Total Medically Attended Injuries	678	47.6

* In 2018 dollars.
† This estimate may not be reliable because of the small number of cases on which it is based.

The 2017 through 2020 NEISS estimates suggest an estimated annual average of about 437 ED-treated injuries, comprised of 278 injuries that were treated and released and 159 injuries that required hospitalization. Additionally, based on estimates from the ICM, 164 injuries were treated outside of hospitals annually and another 77 injuries resulted in direct hospital admission.

Based on ICM estimates, these injuries resulted in annual societal costs of about $47.6 million (in 2018 dollars) during 2017 through 2020. The average estimated societal cost per injury was about $13,000 for injuries treated in physician's offices, clinics, and other non-hospital settings; about $22,000 for injuries to victims who were treated and released from EDs; and about $166,000 for injuries that required admission to the hospital for treatment. Medical costs and work losses (including work losses of caregivers) accounted for about 44 percent of these injury cost estimates, and the less tangible costs of injury associated with pain and suffering accounted for about 56 percent of the estimated injury costs.

Table 18 reflects magnet ingestion incidents that involved products categorized as magnet sets, magnet toys, and jewelry—it does not include incidents categorized as involving unidentified product types. However, as discussed in section *IV.A.5. Uncertainties in Incident Data,* above, most of the incidents in this unidentified product type category likely involved subject magnet products. Thus, in addition to the magnet ingestion incidents upon which Table 15 was based, there were 322 NEISS cases during 2017 through 2020 (representing about 1,873 ED-treated injuries annually) in the unidentified product type category. Based on ICM

[93] W. Kip Viscusi (1988), *The determinants of the disposition of product liability cases: Systematic compensation or capricious awards?,* International Review of Law and Economics, 8, 203–220; Gregory B. Rodgers (1993), *Estimating jury compensation for pain and suffering in product liability cases involving nonfatal personal injury,* Journal of Forensic Economics 6(3), 251–262; and Mark A. Cohen and Ted R. Miller (2003), ''*Willingness to award*'' *nonmonetary damages and implied value of life from jury awards,* International Journal of Law and Economics, 23, 165–184.

estimates for unidentified product types involved in magnet ingestion injuries, average annual societal costs for 2017–2020 totaled $151.8 million. Consequently, to the extent that the unidentified magnet products were products that would be covered by the proposed rule, Table 18 could substantially understate the societal costs associated with the ingestion of subject magnet products.

3. Potential Benefits of Proposed Rule

The benefits of the proposed rule would be the reduction in the risk of injury and death from magnet ingestions and the resulting value of the societal costs of the injuries that the rule would prevent. In addition to the injuries reflected in the analysis above, staff is aware of 5 fatalities in the United States resulting from magnet ingestions. Thus, the rule would reduce the likelihood of future fatalities as well as injuries.

The annual expected benefits of the rule depend on the exposure to risk associated with subject magnet products, as well as the estimated societal costs described in Table 18, above. Although subject magnet products may retain their magnetism for many years, it is likely that some are discarded well before that time. Thus, the actual expected product life of subject magnet products is uncertain; this analysis presents a range of potential benefit estimates under an assumed product life of 1.5, 2, and 3 years. Table 19 presents benefit estimates under the alternative product life assumptions (line (b)).

TABLE 19—PRESENT VALUE OF SOCIETAL COSTS PER SUBJECT MAGNET PRODUCT IN USE (OR GROSS BENEFITS OF A RULE), FOR THREE EXPECTED PRODUCT LIVES FROM 2017 THROUGH 2020.

(a) Aggregate Annual Societal Costs (millions $)	$47.6	$47.6	$47.6
(b) Expected Useful Product Life (years)	1.5	2	3
(c) Magnet Products in Use, Average Annual	444,000	545,000	701,000
(d) Annual Societal Costs per Subject Magnet Product [(a) ÷ (c)]	$107	$87	$68
(e) Present Value of Societal Costs, per Subject Magnet Product (*3% Discount Rate*)	$160	$171	$190
(f) Present Value of Societal Costs, per Subject Magnet Product (*7% Discount Rate*)	$154	$162	$178

In Table 19, line (a) shows the average annual aggregate societal costs from Table 18. Line (c) presents the average annual estimated number of subject magnet products in use from 2017 through 2020, based on producer-reported annual magnet set sales [94] collected by the Directorate for Compliance through mid-2012 and assumptions of annual sales of all subject magnet products through 2020 (including an assumption of 500,000 units per year for 2018–2020), an assumed expected product life of 1.5, 2, and 3 years (line b), and the application of the CPSC's Product Population Model, a computer algorithm that projects the number of products in use given estimates of annual product sales and product failure rates. The Commission requests information on annual sales and expected product life of subject magnet products.

Figure 7 shows changes in the estimated number of subject magnet products in use, from 2009 through 2020.

BILLING CODE 6355–01–P

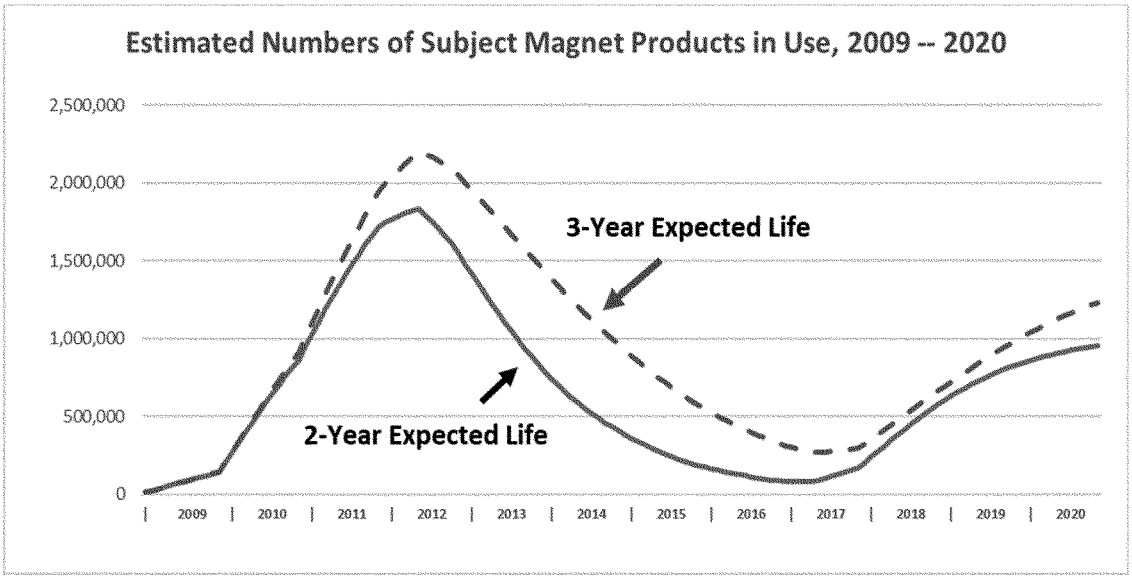


Figure 7: Estimated Numbers of Subject Magnet Products in Use, 2009-2020.

[94] Although this information is for magnet sets, and not all subject magnet products, staff primarily had information about magnet sets, and magnet sets likely make up a large portion of subject magnet products.

In Table 19, the annual estimated societal costs per subject magnet product in use (line d) are presented as the quotient of the annual societal costs (line a), per product in use, and the estimated average number of products in use (line c). Based on these estimates, and an assumed average product life ranging from 1.5 to 3 years, the present value of societal costs, per subject magnet product, ranges from about $160 to about $190 using a 3 percent discount rate (line e), or from about $154 to $178 using a 7 percent discount rate (line f).

The first order estimate of benefits would be equal to the present value of societal costs, presented in lines (e) and (f) and would range from about $154 (with a 1.5-year product life and a 7 percent discount rate) to $190 (with a 3-year product life and a 3 percent discount rate) per subject magnet product. The aggregate benefits would range from $80 million to $95 million using the 500,000 units assumption from Table 19 and 3 percent discount rate.[95] If the proposed rule allows some products to remain on the market that present the magnet ingestion hazard, the benefits of the rule would be reduced by some unknown amount and would be measured as the net reduction in injuries and the concomitant reduction in societal costs that would result.

4. Costs Associated With the Proposed Rule

This section discusses the costs associated with the proposed rule, which include costs to consumers and to manufacturers/importers of subject magnet products. Both consumers and producers benefit from the production and sale of consumer products. The consuming public obtains the use value or utility associated with the consumption of products; producers obtain income and profits from the production and sale of products. Consequently, the costs of requiring that subject magnet products comply with the proposed rule would consist of: (1) The lost use value experienced by consumers who would no longer be able to purchase magnets that do not meet the standard (lost consumer surplus); and (2) the lost income and profits to firms that could not produce and sell non-complying products (lost producer surplus).

Both consumer and producer surplus depend on product sales, among other things. However, CPSC does not know the unit sales of subject magnet products. Therefore, this analysis considers possible costs associated with several estimates of sales, ranging from about 250,000 to 1 million subject magnet products per year. For purposes of discussion, the analysis below assumes annual sales of 500,000 per year.

a. Costs to Consumers

The primary cost associated with the proposed rule is lost utility to consumers. Subject magnet products may be used for a variety of purposes, including amusement and jewelry. Previous comments CPSC has received regarding magnet sets, which likely comprise the majority of subject magnet products on the market, indicate that consumers use them as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. CPSC is also aware of claims that the magnets can have beneficial therapeutic value for children with attention-deficit/hyperactivity disorder. Incident data also suggests that magnet sets are used as jewelry. The individual magnets in subject magnet products might also have additional uses, apart from those for which they are intended (*e.g.,* using magnets from a magnet set on a refrigerator). However, there would presumably be little lost utility for these unintended product uses since products intended for those purposes (*e.g.,* refrigerator magnets) would be unaffected by the proposed rule. If products that comply with the proposed rule do not serve the identical utility (*e.g.,* consumers prefer smaller, stronger magnets), this represents lost utility to consumers. CPSC notes that the proposed rule applies to amusement and jewelry products and, therefore, would not affect products intended for research, education, industrial, or commercial uses, if they do not otherwise meet the definition of subject magnet products.

CPSC cannot estimate the use value that consumers receive from subject magnet products, so the following discussion instead describes use value conceptually. In general, use value includes the amount of: (1) Consumer expenditures for the product, plus (2) consumer surplus. Assuming annual sales of about 500,000 subject magnet products annually, and assuming an average retail price of about $20 (based on price data for magnet sets), consumer expenditures would amount to about $10 million annually. These expenditures represent the minimum value that consumers would expect to get from these products. It is represented by the area of the rectangle OBDE in the standard supply and demand graph in Figure 8, where B equals $20, and E equals 500,000 units.

[95] Aggregate benefits are the product of the per-unit benefit ($160 and $190 for a 1.5-year and 3-year useful life discounted at 3 percent), and 500,000 estimated annual units.

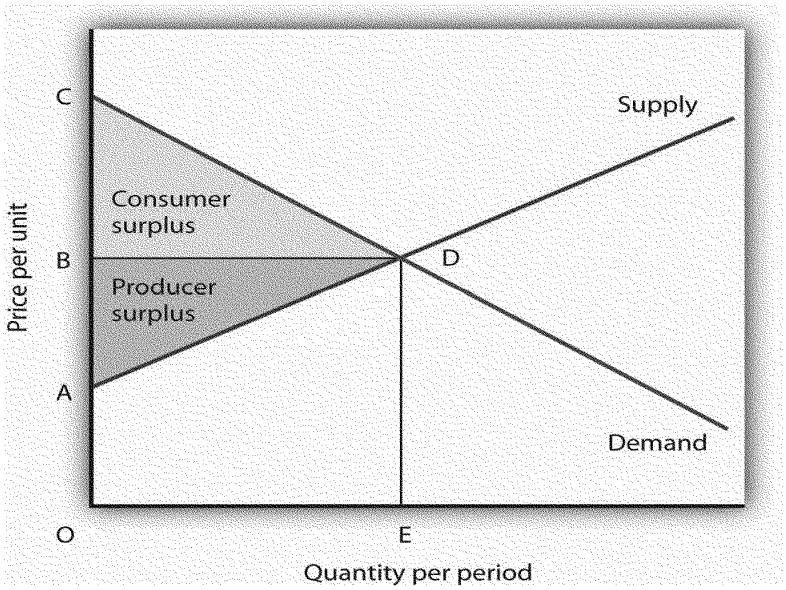


Figure 8: Supply and demand graph illustrating the concepts of consumer and producer surplus.

BILLING CODE 6355–01–C

In Figure 8, consumer surplus is given by the area of the triangle BCD under the graph's demand function, and represents the difference between the market-clearing price and the maximum amount consumers would have been willing to pay for the product. This consumer surplus will vary for individual consumers, but it represents a benefit to consumers over and above what they paid.[96] For example, tickets to a concert might sell for $100 each, but some consumers who buy them for $100 would have been willing to pay $150 per ticket. Those consumers paid $100 and received benefits that they value at $150, thereby receiving a consumer surplus of $50.[97]

In general, the use value of the subject magnet products obtained by consumers is represented by the area of the trapezoid OCDE in Figure 8. However, the prospective loss in use value associated with the proposed rule would amount to, at most, the area of the triangle representing the consumer surplus. This is because consumers would no longer be able to obtain utility from the products that do not comply with the proposed rule, but they would have the $10 million (represented by the rectangle OBDE) that they would have spent on non-complying subject magnet products in the absence of a rule. The net loss in consumer surplus associated with the proposed rule would be reduced by consumers' ability to purchase replacement products that comply with the proposed rule and provide the same utility, or by their ability to purchase other products that provide use-value.

CPSC does not have information regarding aggregate consumer surplus or, by extension, the amount of utility that would be lost as a result of the proposed rule. However, if, for example, consumers who purchased subject magnet products that do not comply with the proposed rule at an average price of $20 would have been willing to spend, on average, $35 to $45 per product (*i.e.,* an additional $15 to $25 per product), the lost utility might amount to about $7.5 million (*i.e.,* [$35–$20] × 500,000 units annually) to $12.5 million (*i.e.,* [$45–$20] × 500,000 units annually) on an annual basis.

However, the loss in consumer surplus described above represents the maximum loss of consumer utility from the proposed rule because consumers are likely to gain some amount of consumer surplus from products that are purchased as an alternative to subject magnet products that would no longer be available because of the rule. If, for example, there were close substitutes (*e.g.,* products that are similarly satisfying and priced) for the subject magnet products that do not meet the standard, the overall loss in consumer surplus (and, hence, the costs of the proposed rule) likely would be small. Staff is aware of subject magnet products that comply with the proposed rule. For example, there are magnet sets with flux indexes less than 50 kG^2 mm^2, magnetic desk sculptures that use a magnetic base and ferromagnetic pieces, sets of large magnetic balls, and a wide variety of fidget toys. Manufacturers of magnetic jewelry with loose or separable magnets have options for complying with the rule, including using magnets that are not hazardous, or close substitutes that are nonmagnetic. If jewelry manufacturers wish to offer separable pieces on necklaces or bracelets, they might offer nonmagnetic pieces that attach to a bracelet or necklace incorporating attached magnets. Additionally, magnetic stud earrings and faux piercing jewelry have clip-on alternatives and pierced jewelry as substitutes. These products and alternatives suggest that compliant products may provide similar utility to non-compliant subject magnet products.

b. Costs to Manufacturers/Importers

The lost benefits to firms that could result from the proposed rule are measured by a loss in producer surplus. Producer surplus is a profit measure that is somewhat analogous to consumer surplus. Whereas consumer surplus is a measure of benefits received by individuals who consume products, net of the cost of purchasing the products, producer surplus is a measure of the

[96] The concept of consumer surplus is discussed in the Office of Management and Budget's Circular A–4, *Regulatory Analysis,* available through 68 FR 58366 (Oct. 9, 2003), and has been applied in a number of CPSC staff analyses.

[97] If the above graph represents the market for tickets, the demand curve describes the quantity of tickets demanded at each price (*i.e.,* the quantity of tickets consumers are willing and able to purchase at each price). In this example, the $150 that the consumer would have been willing to pay for the ticket is represented on the demand curve at a point to the left of point D. The consumer surplus is given by the relevant point on the demand curve (*i.e.,* where price = $150), minus the market clearing price of $100.

benefits accrued to firms that produce and sell products, net of the costs of producing them. Producer surplus is defined as the total revenue (TR) of firms selling subject magnet products, less the total variable costs (TVC) of production. Variable costs are costs that vary with the level of output and usually include expenditures for raw materials, wages, distribution of the product, and similar costs.

In Figure 8, above, total revenue is given by the area OBDE, which is the product of sales and price. The total variable costs of production are given by the area under the supply function, OADE. Consequently, producer surplus is given by the triangle ABD, which is the area under the market clearing price and above the supply function. Note that this represents the maximum loss to producers; if there were product alternatives that were similar to subject magnet products that suppliers could produce and sell, the lost producer surplus could be less.

Following the example above, if sales of the subject magnet products average about 500,000 units annually, with an average retail price of about $20 per product, then total industry revenues have averaged about $10 million annually (*i.e.,* 500,000 units × $20 per product). Information provided by magnet set sellers suggests that the average import cost of magnet sets to U.S. importers, a major variable cost, may amount to about $10 per set, or an average of about $5 million annually (*i.e.*, 500,000 sets × $10 import cost per set). Apart from the import costs, the variable costs of production are probably relatively small. Because subject magnet products are often packaged and shipped from China and sometimes sent directly to the importers point of sale, U.S. labor costs may be low; and because subject magnet products are small, storage costs are probably low. If, for example, the variable costs of production account for about half of the difference between total revenues ($10 million) and import costs ($5 million), producer surplus would amount to about $2.5 million (*i.e.,* ($10 million − $5 million) ÷ 2) annually. At most, the lost producer surplus would amount to about $5 million annually, if there were no variable costs other than the costs of importing the magnets (*i.e.,* total revenue of $10 million for 500,000 units annually less the import costs of about $5 million). While this information is specifically related to magnet sets, a similar relationship could apply to other subject magnet products.

Like costs to consumers, lost producer surplus could be offset by products that comply with the proposed rule. That is, although firms could not offer subject magnet products that do not comply with the proposed rule, they could offer substitutions that serve the same or similar purpose but comply with the proposed rule.

As noted above, CPSC does not know the actual sales levels of non-complying subject magnet products, and does not have information to reliably estimate either consumer surplus or producer surplus. Table 20, below, provides rough estimates of the possible costs of the rule, for various hypothetical sales levels ranging from 250,000 to 1 million products annually. The cost estimates are based on a number of assumptions described above, and are made for illustrative purposes. Nevertheless, because the range of sales is wide, and is likely to include actual sales levels on an annual basis, it is reasonable to assume that the costs of the proposed rule could range from about $5 to $8.75 million (if sales amount to about 250,000 products annually), to about $20 to $35 million (if sales amount to about 1 million products annually). As noted above, these costs could be partially offset by products that comply with the proposed rule.

TABLE 20—POSSIBLE COSTS OF THE PROPOSED RULE, FOR VARIOUS LEVELS OF NON-COMPLYING SUBJECT MAGNET PRODUCT SALES

Magnet product sales (annually)	Consumer surplus (millions $)	Producer surplus (millions $)	Total costs (millions $)
250,000	$3.75 to $6.25	$1.25 to $2.5	$5 to $8.75.
500,000	$7.5 to $12.5	$2.5 to $5	$10 to $17.5.
750,000	$11.25 to $18.75	$3.75 to $7.5	$15 to $26.25.
1,000,000	$15 to $25	$5 to $10	$20 to $35.

In addition to lost producer surplus, manufacturers/importers of subject magnet products that comply with the proposed rule would likely incur some additional costs associated with certifying that their products comply with the rule. Section XII. Testing, Certification, and Notice of Requirements, below, describes the requirements in section 14 of the CPSA regarding certifications. To summarize, consumer products that are subject to a mandatory standard must be certified as complying with the standard. Certification must be based on a test of each product or a reasonable testing program. For subject magnet products, the costs of this testing may be minimal, especially for manufacturers that currently have product testing done for products subject to the requirements in ASTM F963–17, which is mandated in 16 CFR part 1250. Importers may rely upon testing completed by other parties, such as their foreign suppliers, if those tests provide sufficient information for the manufacturers or importers to certify that the magnets in their products comply with the proposed rule. For subject magnet products that are children's products, such as children's jewelry, the certification must be based on testing by an accredited third-party conformity assessment body, at somewhat higher costs.

B. Reasons for Not Relying on a Voluntary Standard

When the Commission issues an ANPR, it must invite interested parties to submit existing standards or provide a statement of intention to modify or develop a standard that would address the hazard at issue. 15 U.S.C. 2058(a). When CPSC receives such standards or statements in response to an ANPR, the preliminary regulatory analysis must provide reasons that the proposed rule does not include such standards. *Id.* 2058(c). In the present rulemaking, the Commission did not issue an ANPR. Accordingly, CPSC did not receive submissions of standards or statement of intention to develop standards regarding the magnet ingestion hazard.

Nevertheless, staff evaluated existing standards relevant to magnet ingestions and determined that these standards would not adequately reduce the risk of injury associated with magnet ingestions because they do not cover the products most often involved in incidents or do not include adequate performance requirements to reduce the risk of injury. A detailed discussion of these standards, and why staff considers

them inadequate, is in section V. Relevant Existing Standards.

C. Alternatives to the Proposed Rule

Finally, a preliminary regulatory analysis must describe alternatives to the proposed rule that CPSC considered, their potential costs and benefits, and a brief explanation of the reasons the alternatives were not chosen. CPSC considered several alternatives to the proposed rule. These alternatives, their potential costs and benefits, and the reasons the Commission did not select them, are described in detail in section VIII. Alternatives to the Proposed Rule, below, and Tab F of the NPR briefing package.

VIII. Alternatives to the Proposed Rule

CPSC considered several alternatives to reduce the risk of injuries and death associated with ingestion of subject magnet products. However, as discussed below, CPSC does not consider any of these alternatives capable of adequately reducing the risk of injury and death.

A. No Mandatory Standard

One alternative to the proposed rule is to take no regulatory action and, instead, rely on the ASTM standards to address the magnet ingestion hazard. As discussed above, there are four ASTM standards that address the magnet ingestion hazard, covering children's toys, jewelry, and magnet sets. Relying on these standards would eliminate the costs associated with the proposed rule because it would not mandate compliance. ASTM F3458, in particular, has the potential to address the magnet ingestion hazard because it applies to magnet sets, which are involved in a large portion of magnet ingestion incidents where the product type could be identified.

However, there are considerable limitations and unknowns associated with this alternative. The shortcomings of the ASTM standards are discussed in detail in section V. Relevant Existing Standards. For one, CPSC does not consider ASTM F3458 capable of adequately reducing the magnet ingestion hazard because of its limited scope and lack of size and strength requirements for magnets. Although Subcommittee F15.77 on Magnets formed a task group to consider revising ASTM F3458–21 to include performance requirements for magnet sets intended for users 14 years and older, CPSC does not know whether the standard will be revised or what requirements may be added to it.

Moreover, ASTM F3458 applies only to magnets sets, which are not the only products implicated in magnet ingestion incidents. Additional magnet toys intended for users 14 years and older, as well as jewelry are also implicated. Although ASTM has standards regarding the magnet ingestion hazard in jewelry, CPSC considers those standards inadequate because they do not impose size and strength limits on all jewelry with loose or separable magnets. In addition, CPSC does not know the level of compliance with ASTM F3458, ASTM F2999, or ASTM F2923; if the rate of compliance is low, these would not be an effective way to address the hazard, even if the requirements in these standards were adequate. Finally, waiting for ASTM to revise its standards to adequately address the hazard would delay the safety benefits of the proposed rule. For these reasons, the Commission did not select this alternative.

B. Alternative Performance Requirements

Another alternative to the proposed rule is to adopt a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This may reduce the costs associated with the rule by allowing firms to market and consumers to use a wider variety of products than under the proposed rule. The reduction in costs would depend on the specific requirements adopted.

However, this option would likely reduce the safety benefits of the rule. If the alternative performance requirements reduced costs by allowing more products to remain on the market, it likely would also leave more hazardous products on the market, thereby decreasing the safety benefits. Therefore, the Commission did not select this alternative. The Commission seeks comments on what potential alternative performance requirements may adequately reduce the risk of injury associated with magnet ingestions, while reducing costs to firms and impacts on consumer utility.

C. Safety Messaging

Instead of performance requirements, the Commission could require safety messaging on products to address the magnet ingestion hazard, such as through requirements for labeling and instructional literature. This alternative would reduce the costs associated with the proposed rule because it would allow firms to continue to sell subject magnet products with loose or separable hazardous magnets and the costs of warnings and instructional information likely would be small.

However, CPSC does not consider this alternative effective for adequately reducing the risk of injury and death associated with magnet ingestions. For a detailed discussion of why labeling and instructional literature requirements are insufficient to adequately address the magnet ingestion hazard, see section *V.D. ASTM F3458–21.* To summarize, warnings are the least effective strategy for addressing a hazard, relative to designing out the hazard or designing guards against the hazard. The effectiveness of warnings depends on convincing consumers to avoid the hazard, and there are numerous reasons consumers may disregard warnings for these products. Caregivers do not expect older children and teens to ingest inedible objects; the magnet ingestion hazard is not readily apparent; caregivers and children underappreciate the likelihood and severity of the hazard; magnets are often ingested accidentally; and children and teens commonly access magnets without their packaging, such as from friends or at school.

Warning information on labels and instructional literature, as well as public outreach efforts to inform consumers of the hazard, have been used to try to address the magnet ingestion hazard for many years. However, these efforts have been unsuccessful at reducing the magnet ingestion hazard, as evidenced by the increase in magnet ingestion incidents in recent years, and magnet ingestion incidents involving products with clear warnings.

For these reasons, the Commission did not select this alternative.

D. Packaging Requirements

Another alternative is for the Commission to require special packaging for subject magnet products that contain hazardous magnets to limit children's access to the products. Such packaging could, for example, help consumers determine if all magnets have been returned to the packaging and include child-resistant features. Although this alternative would create some costs associated with packaging, those costs likely would be lower than the proposed rule because they would allow subject magnet products to remain unchanged. Staff estimates that the cost of safety packaging may amount to about $1 per magnet product, depending on the requirements and features of the packaging.

However, CPSC does not consider this alternative effective for adequately reducing the risk of injury and death associated with magnet ingestions. For a detailed discussion of why packaging requirements are insufficient to

adequately address the magnet ingestion hazard, see section *V.D. ASTM F3458–21.* To summarize, for packaging requirements to be effective at preventing the magnet ingestion hazard, users would have to repackage all magnets after each use, and the packaging would have to prevent children and teens from accessing the magnets. Neither of these are likely to occur to a sufficient extent to address the hazard.

For one, consumers are unlikely to repackage all magnets after each use. After assembling structures or jewelry, or using the magnets for other purposes, consumers would be unlikely to disassemble their creations to return them to the package. In addition, products often contain hundreds or thousands of magnets, making it time consuming and difficult to ensure all of the magnets are returned to the package. Moreover, small magnets become loose in the environment and are hard to locate to return to the package. In addition, consumers often do not perceive subject magnet products as hazardous, making it less likely that they would repackage all of the magnets. Even for products that are obviously hazardous and commonly use CR packaging, such as chemicals and pharmaceuticals, consumers use the packaging inconsistently. Consumers may also consider CR packaging a nuisance, making them unlikely to store magnets in the packaging after every use.

Even if consumers return all magnets to a package after each use, safety features to prevent easy access to the contents of the package would only address a minority of the vulnerable population. Safety packaging is generally intended to restrict children under 5 years old from accessing package contents. Older children and teens are likely to have the cognitive and motor skills necessary to access products in special packaging. This is problematic because incident data show that older children and teens make up the majority of magnet ingestion victims. In addition, many incidents involve children and teens acquiring magnets without the product packaging, such as from friends, at school, or loose in the environment. For these reasons, the Commission did not select this alternative.

E. Aversive Agents

Instead of the size and strength requirements in the proposed rule, the Commission could require manufacturers to coat loose or separable hazardous magnets in subject magnet products with aversive agents, such foul odors or bitterants. Aversive agents may dissuade some children and teens from placing hazardous magnets in their mouths. This alternative would reduce the costs associated with the proposed rule because it would allow firms to continue to sell subject magnet products with loose or separable hazardous magnets, would allow consumers to continue to use them, and the costs of such coatings likely would be small.

However, real-world investigations have not demonstrated that bitterants are effective at preventing ingestions.[98] Bitterants do not deter initial ingestion because the user has not yet tasted the bitterant; this makes them ineffective at protecting users from harms that can result from a single ingestion. Incident reports indicate that ingesting a single magnet (and ferromagnetic object), or multiple magnets at once or in quick succession, can result in serious injuries. Thus, the ineffectiveness of bitterants to prevent an initial ingestion makes them ineffective for addressing the magnet ingestion hazard.

Similarly, once a magnet is in a person's mouth, they may not be able to prevent ingestion even if deterred by a bitterant. The power of the magnetic forces can cause magnets to move erratically as pieces repel or attract, and movement of magnets toward the back of the throat can trigger the reflex to swallow the magnets before the person can remove them. Bitterants would be particularly ineffective for accidental ingestions, where victims did not intentionally place magnets in their mouths; incident data indicate that some magnet ingestions involve unintentional ingestions, particularly for older victims. Moreover, incidents involving ingestion of other hazardous substances demonstrates the ineffectiveness of aversive agents to prevent ingestions. Children frequently ingest unpalatable substances, such as gasoline, cleaners, and ammonia, indicating that unpleasant taste or odor, alone, is not sufficient to deter children from ingesting items or substances. In addition, some portion of the population, possibly as high as 30 percent, may be insensitive to certain bitterants.

For these reasons, the Commission did not select this alternative.

F. Longer Effective Date

Another alternative is to provide a longer effective date for a final rule. In this proposed rule, the Commission proposes to make a final rule effective 30 days after the final rule is published. A longer effective date would reduce the impact of the rule on manufacturers and importers by extending the time firms have to develop products that comply with the rule or modify products to comply with the rule. However, delaying the effective date would delay the safety benefits of the rule as well. As such, the Commission did not select this alternative. However, the Commission requests comments about the proposed effective date.

IX. Paperwork Reduction Act

This proposed rule does not contain a collection of information that is subject to public comment and review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).[99]

X. Initial Regulatory Flexibility Analysis[100]

When an agency is required to publish a proposed rule, section 603 of the Regulatory Flexibility Act (5 U.S.C. 601–612) requires that the agency prepare an initial regulatory flexibility analysis (IRFA) that describes the impact that the rule would have on small businesses and other entities. An IRFA is not required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The IRFA must contain:

(1) A description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) identification, to the extent practicable, of relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

An IRFA must also describe any significant alternatives that would accomplish the objectives of the applicable statutes and minimize any significant economic impact on small

[98] This alternative is discussed in detail in the Final Rule briefing package for the 2014 rule on magnet sets, available at: *https://www.cpsc.gov/s3fs-public/pdfs/foia_SafetyStandardforMagnetSets-FinalRule.pdf.*

[99] There is an Office of Management and Budget control number, under the Paperwork Reduction Act, for collection of information regarding third-party testing for children's products, addressed in 16 CFR part 1107.

[100] Further details about the initial regulatory flexibility analysis are available in Tab F of the NPR briefing package. Additional information about costs associated with the rule are available in Tab E of the NPR briefing package.

entities. Alternatives could include: (1) Establishing different compliance or reporting requirements that consider the resources available to small businesses; (2) clarification, consolidation, or simplification of compliance and reporting requirements for small entities; (3) use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule thereof, for small entities.

The IRFA for this proposed rule is available in Tab F of the NPR briefing package; this section provides an overview of the impact of the proposed rule on small businesses.

A. Reason for Agency Action

The intent of this rulemaking is to reduce deaths and injuries resulting from magnet ingestions. As incident data show, magnet ingestion incidents have increased in recent years, and commonly involve products categorized as amusement or jewelry products. Most incidents involve children and teens, particularly under 14 years old. If ingested, some magnets are powerful enough to interact internally with one another through body tissue, and resist natural bodily forces to separate the magnets. This interaction has led to serious injuries and several deaths in the United States. The internal interaction hazard is a hidden hazard, which children and caregivers are unlikely to anticipate, appreciate, and avoid, as demonstrated by incident data. Incident data and the health outcomes of magnet ingestions demonstrate the need for agency action.

B. Objectives of and Legal Basis for the Rule

The objective of the proposed rule is to reduce the risk of injury and death associated with ingestion of hazardous magnets, as discussed above. The proposed rule would be issued under the authority of sections 7 and 9 of the CPSA.

C. Small Entities to Which the Rule Will Apply

The proposed rule would apply to small entities that manufacture, import, or sell subject magnet products, which are products with one or more magnets, which are loose or separable, and designed, marketed, or intended to be used by consumers for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes. Examples of subject magnet products include magnet sets, other types of magnet toys intended for users 14 years and older, and jewelry with separable magnets that can be arranged by the consumer.

Because CPSC's previous rulemaking work regarding magnet ingestions has focused on magnet sets, CPSC staff has more detailed information about magnet sets than other subject magnet products. For this reason, this analysis provides detailed information about magnet sets; however, staff also provides information about additional subject magnet products, to the extent information about these products is available.

All of the importers of magnet sets are small businesses under U.S. Small Business Administration (SBA) size standards, and CPSC expects that this is also true for manufacturers and importers of other subject magnet products. Currently, nearly all marketers (firms or individuals) of magnet sets sell through internet sites, rather than through physical retail stores such as bookstores, gift shops and other outlets (which commonly sold magnet sets from 2009 through mid-2012). Some of these internet sites are operated by the importers, but the majority of sellers (in terms of distinct firms or individuals, if not unit sales) appear to sell through their stores, operated on the sites of other internet platforms. These online retail outlets may also be used commonly by manufacturers and sellers of other subject magnet products.

As discussed above, in late 2018, IEc examined the market for magnet sets. In its review of internet platforms, IEc found a total of 69 sellers. IEc also identified 10 manufacturers and 2 retailers, which also are small businesses.[101] CPSC staff provided IEc with staff's prior research, which identified at least 121 sellers of magnet sets on two major internet retail platforms. IEc reviewed these sellers with the intention of merging CPSC's research with newer information but found that the vast majority of sellers CPSC identified no longer sold magnet sets, indicating high turnover rates.

In 2020, CPSC staff reviewed the status of previously identified sellers of magnet sets on two major internet platforms and found further evidence of high turnover rates: Most of the sellers identified in late 2018 no longer sold magnet sets or had abandoned their stores. Only 9 of 69 sellers were still selling magnet sets. The remaining sellers no longer offered magnet sets or no longer operated on the platforms. In addition, staff identified 29 sellers that IEc had not identified as active in the market in late 2018.

Based on this information, CPSC staff expects the dominant business model for importers of magnet sets will be direct sales to consumers using their own internet websites or other internet shopping sites. However, the proposed rule could also affect some third-party retailers of the products, whether selling them online or in physical stores. Such retailers sell a wide variety of consumer products; retailers classified as small businesses that sell the products would not be likely to derive significant proportions of total revenues from sales of affected magnet sets, and the impacts on individual firms should be minimal.

D. Compliance, Reporting, and Recordkeeping Requirements in the Proposed Rule

The proposed rule would establish a mandatory standard that all subject magnet products would have to meet to be sold in the United States. As stated above, the proposed rule would require consumer products that are designed, marketed, or intended to be used for entertainment, jewelry, mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets to meet performance requirements. The proposed performance requirements specify that each loose or separable magnet in a subject magnet product that is small enough to fit entirely in the small parts cylinder must have a flux index less than 50 kG^2 mm^2. The requirements of the proposed standard are described, in detail, in this preamble, and the proposed regulatory text is at the end of this notice.

In addition, certification requirements, which are discussed in section XII. Testing, Certification, and Notification of Requirements, below, would apply to subject magnet products. To summarize, section 14 of the CPSA requires manufacturers, importers, or private labelers of a consumer product that is subject to a consumer product safety rule to certify, based on a test of each product or a reasonable testing program, that the product complies with all rules, bans or standards applicable to the product. The proposed rule specifies the test procedure to use to determine whether a subject magnet product complies with the requirements. For products that manufacturers certify, manufacturers would issue a general certificate of conformity (GCC). In the case of subject magnet products that could be considered children's products, the certification must be based on testing by

[101] IEc classified manufacturers as firms producing and selling their own magnet set products, and retailers as firms that typically sell magnets from multiple manufacturers.

an accredited third-party conformity assessment body.

The requirements for the GCC are stated in section 14 of the CPSA. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third-party conformity assessment body on whose testing the certificate relies; the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, telephone number; and contact information for the individual responsible for maintaining records of test results. The certificates must be furnished to each distributor or retailer of the product and to CPSC, if requested.

1. Costs of the Proposed Rule That Would Be Incurred by Small Manufacturers

Small manufacturers and importers of subject magnet products would likely incur some costs to certify that their products meet the requirements of the proposed rule, as required by section 14 of the CPSA. The certification must be based on a test of each product or a reasonable testing program. The costs of the testing might be minimal, especially for small manufacturers that currently have product testing done for products subject to the requirements in ASTM F963–17, which is mandated by 16 CFR part 1250. Importers may also rely on testing completed by other parties, such as their foreign suppliers, if those tests provide sufficient information for the manufacturers or importers to certify that the magnets in their products comply with the proposed rule. As noted above, for subject magnet products that could be considered children's products, such as children's jewelry, the certification must be based on testing by an accredited third-party conformity assessment body, at somewhat higher costs. The Commission requests comments regarding the costs or other impacts of the certification requirements under section 14 of the CPSA.

2. Impact on Small Businesses

As discussed in the preliminary regulatory analysis, the primary impact of the proposed rule on small businesses would be the lost income and profits to firms that could not produce, import, and sell non-complying products in the future. The lost benefits to firms resulting from a proposed rule are measured by a loss in producer surplus, which is a measure of the total revenue of firms selling the magnets, less the total variable costs of production. As predominantly imported products, the variable costs for small businesses handling subject magnet products are mainly the import costs. The producer surplus for magnet sets could average about $5 to $10 per unit, based on an average price of $20. A similar relationship could apply to other subject magnet products affected by the proposed rule.

A few small firms whose businesses focus on sales of subject magnet products that would not comply with the proposed rule, including some of the firms selling products on their own websites, would face relatively greater losses in producer surplus. These and other small businesses could respond to the rule by marketing magnets that comply with or are not subject to the proposed rule. Such measures could offset losses in producer surplus.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

CPSC did not identify any federal rules that duplicate, overlap, or conflict with the proposed rule.

F. Alternatives Considered To Reduce the Burden on Small Entities

As discussed in section VIII. Alternatives to the Proposed Rule, above, CPSC examined several alternatives to the proposed rule, which could reduce the burden on firms, including small entities. For the reasons described in that section, the Commission concluded that those alternatives would not adequately reduce the risk of injury and death associated with magnet ingestions, and is not proposing those alternatives. See Tab F of the NPR briefing package for further discussion of alternatives to the proposed rule. The Commission seeks comments on any alternatives that would reduce the impact on small entities, while adequately reducing the risk of injury and death associated magnet ingestions.

XI. Incorporation by Reference

The proposed rule incorporates by reference ASTM F963–17. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, in the preamble of an NPR, an agency must summarize the incorporated material, and discuss the ways in which the material is reasonably available to interested parties or how the agency worked to make the materials reasonably available. 1 CFR 51.5(a). In accordance with the OFR requirements, this preamble summarizes the provisions of ASTM F963–17 that the Commission proposes to incorporate by reference.

The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F963–17 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; *www.astm.org.* Additionally, during the NPR comment period, a read-only copy of ASTM F963–17 is available for viewing on ASTM's website at: *https://www.astm.org/CPSC.htm.* Once a final rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

XII. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that children's products and non-children's products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children's product:

- Manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in September 2002, and any successor to such guidelines.

Id. ''For use'' by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products may be decorated or embellished with a childish theme, be sized for children, or

be marketed to appeal primarily to children. *Id.* 1200.2(d)(1).

As discussed above, some subject magnet products (*e.g.,* children's jewelry) are children's products and some are not. Therefore, a final rule would require subject magnet products that are not children's products to meet the certification requirements under section 14(a)(1) of the CPSA and would require subject magnet products that are children's products to meet the certification requirements under sections 14(a)(2) and (a)(3) of the CPSA. The Commission's requirements for certificates of compliance are codified in 16 CFR part 1110.

Non-Children's Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers [102]) of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a)(1).

Children's Products. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on testing by a third-party conformity assessment body (*i.e.,* testing laboratory), the product complies with the applicable children's product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish a notice of requirements (NOR) for a testing laboratory to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A). Because some subject magnet products are children's products, the proposed rule is a children's product safety rule, as applied to those products. Accordingly, if the Commission issues a final rule, it must also issue an NOR.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* which established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, as part of this NPR, the Commission proposes to amend part 1112 to add this proposed standard for magnets to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test subject magnet products that are children's products for compliance with the new rule would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1262, *Safety Standard for Magnets,* in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: *www.cpsc.gov/labsearch.*

XIII. Environmental Considerations

The Commission's regulations address whether CPSC is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). 16 CFR 1021.5. Those regulations list CPSC actions that ''normally have little or no potential for affecting the human environment,'' and, therefore, fall within a ''categorical exclusion'' under the National Environmental Policy Act (42 U.S.C. 4231–4370h) and the regulations implementing it (40 CFR parts 1500–1508) and do not require an EA or EIS. 16 CFR 1021.5(c). Among those actions are rules that provide performance standards for products. *Id.* 1021.5(c)(1). Because this proposed rule would create performance requirements for subject magnet products, the proposed rule falls within the categorical exclusion, and thus, no EA or EIS is required.

XIV. Preemption

Executive Order (E.O.) 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996), section 3(b)(2)(A). In accordance with E.O. 12988, CPSC states the preemptive effect of the proposed rule, as follows:

The regulation for subject magnet products is proposed under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that ''whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.'' 15 U.S.C. 2075(a). The federal government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk of injury as the CPSC standard if the federal, state, or local requirement provides a higher degree of protection than the CPSA requirement. *Id.* 2075(b). In addition, states or political subdivisions of a state may apply for an exemption from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard: (1) Provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. *Id.* 2075(c).

Thus, the requirements proposed in today's **Federal Register** would, if finalized, preempt non-identical state or local requirements for subject magnet products designed to protect against the same risk of injury and prescribing requirements regarding the performance, composition, contents, design, finish, construction, packaging or labeling of subject magnet products.

XV. Effective Date

The CPSA requires that consumer product safety rules take effect at least 30 days after the date the rule is promulgated, but not later than 180 days after the date the rule is promulgated unless the Commission finds, for good cause shown, that an earlier or later effective date is in the public interest and, in the case of a later effective date, publishes the reasons for that finding. 15 U.S.C. 2058(g)(1). The Commission proposes that this rule, and the amendment to part 1112, become effective 30 days after publication of the final rule in the **Federal Register**. The rule would apply to all subject magnet products manufactured or imported on or after the effective date. The Commission requests comments on the proposed effective date.

XVI. Proposed Findings

As discussed in section II. Statutory Authority, above, the CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. 15 U.S.C. 2058(f)(1), (f)(3). This section discusses preliminary support for those findings.

[102] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

A. Degree and Nature of the Risk of Injury

To issue a final rule, the CPSA requires the Commission to make findings regarding the degree and nature of the risk of injury the rule is designed to eliminate or reduce. NEISS incident data indicate that there were an estimated 4,400 magnet ingestions treated in U.S. hospital EDs between January 1, 2010 and December 31, 2020 that involved products categorized as being for amusement or jewelry, which are the products subject to this rule. An additional estimated 18,100 ED-treated magnet ingestions during this period involved unidentified magnet products. CPSC concludes that a large portion of these unidentified magnet product incidents likely involved subject magnet products, for the reasons stated below.

In addition to magnet ingestion injuries treated in U.S. hospital EDs, the ICM projects that there were an estimated 3,255 magnet ingestion injuries per year treated in medical settings other than EDs from 2017 through 2020. Incident reports available through CPSRMS indicate that there were at least 284 magnet ingestions between January 1, 2010 and December 31, 2020, 75 percent of which involved products categorized as being for amusement or jewelry, which are the products subject to this rule, and an additional 15 percent involved unidentified magnet products, which CPSC concludes are likely to have involved subject magnet products for the reasons stated below.

The potential injuries when a person ingests one or more magnets are serious. Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. CPSC is aware of several fatal magnet ingestion incidents resulting from internal interaction of the magnets.

As indicated above, CPSC concludes that many of the magnet ingestion incidents for which information was insufficient to identify the specific product type involved subject magnet products. This conclusion is supported by incident data, trends in magnet ingestion rates and recalls surrounding mandatory standards, and behavioral and developmental considerations. Incident data indicate that, of the magnet ingestion incidents for which CPSC could identify a product type, the primary products involved were magnet sets, magnet toys, and jewelry; this is likely to apply to incidents that lacked product identification information as well.

Trends in magnet ingestion rates surrounding a previous Commission rule on magnet sets indicate that magnet ingestions significantly declined during the time the rule was in effect, and significantly increased after the rule was vacated. This indicates that a large portion of magnet ingestions involved magnet sets, which are subject magnet products. Similarly, incident data and recalls surrounding the Commission's mandatory standard for magnets in children's toys, in 16 CFR part 1250, indicate that, while amusement products are involved in most magnet ingestion incidents with identifiable product types, those amusement products are not children's toys. Relatively few magnet ingestion incidents identify children's toys as the product involved, suggesting that these make up few of the unidentified product type incidents as well. And the number of recalls of children's products for magnet-related hazards has appreciably declined since 16 CFR part 1250 took effect, suggesting that these products do not make up a large portion of magnet ingestion incidents.

Finally, behavioral and developmental factors support the conclusion that many magnet ingestions with unidentified product types involve subject magnet products. These include the attractiveness of magnetic products and their features to children and teens, consumers' perception that amusement and jewelry products are appropriate and safe for children, and consumers' underappreciation of the magnet ingestion hazard.

B. Number of Consumer Products Subject to the Proposed Rule

To issue a final rule, the CPSA requires the Commission to make findings regarding the approximate number of consumer products subject to the rule. Staff estimates that there are approximately 500,000 subject magnet products sold annually in the United States. However, to account for a range of sales estimates, staff also provided information for sales ranging from 250,000 to 1 million units annually.

C. The Public Need for Subject Magnet Products and the Effects of the Proposed Rule on Their Utility, Cost, and Availability

To issue a final rule, the CPSA requires the Commission to make findings regarding the public's need for the products subject to the rule and the probable effect of the rule on the cost, availability, and utility of such products. Consumers use subject magnet products for entertainment, mental stimulation, stress relief, and jewelry. The proposed rule requires subject magnet products to meet performance requirements regarding size or strength, but does not restrict the design of products. As such, subject magnet products that meet the standard would continue to serve the purpose of amusement or jewelry for consumers. Magnets that comply with the proposed rule, such as non-separable magnets, larger magnets, weaker magnets, or non-permanent magnets, would likely still be useful for amusement or jewelry. However, it is possible that there may be some negative effect on the utility of subject magnet products if compliant products function differently or do not include certain desired characteristics.

Retail prices of subject magnet products generally average under $20. CPSC has identified subject magnet products that comply with the proposed rule, indicating that the costs of compliant and non-compliant products are comparable.

If the costs associated with redesigning or modifying subject magnet products to comply with the proposed rule result in manufacturers discontinuing products, there may be some loss in availability to consumers. However, this would be mitigated to the extent that compliant products meet the same consumer needs.

D. Other Means To Achieve the Objective of the Proposed Rule, While Minimizing Adverse Effects on Competition and Manufacturing

To issue a final rule, the CPSA requires the Commission to make findings regarding ways to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices. CPSC considered several alternatives to achieve the objective of reducing unreasonable risks of injury and death associated with magnet ingestions.

One alternative is to take no regulatory action and instead rely on existing ASTM standards to address the magnet ingestion hazard. This would eliminate costs associated with the rule by avoiding a mandatory standard; however, this alternative is unlikely to adequately reduce the risk of injury and death associated with magnet ingestions. For one, none of the existing standards address all of the products most commonly identified in magnet ingestion incidents, and several of the standards provide exceptions to

performance requirements for certain subject magnet products. In addition, under the existing standards, certain subject magnet products would not be subject to performance requirements regarding size and strength, instead relying on alternative requirements, such as safety messaging, which is unlikely to adequately reduce the magnet ingestion hazard.

Another alternative is a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This could reduce the costs associated with a rule by allowing firms to market a wider variety of products than under the proposed rule. However, for this alternative to reduce costs, it would allow more products to remain on the market, thereby decreasing the safety benefits.

Safety messaging requirements are another alternative to the proposed rule. This would reduce the costs associated with the rule because it would not require modifying or discontinuing subject magnet products, and the costs of warnings and instructional information likely would be small. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions because the effectiveness of safety messaging depends on consumers seeing the messaging and being convinced to avoid the hazard. Incident data indicate that children commonly access ingested magnets from sources that are unlikely to include the product packaging bearing instructions or warnings. Moreover, consumers are unlikely to consistently heed warnings because of the perception that subject magnet products are appropriate for children, and underappreciation of the magnet ingestion hazard. Safety messaging is generally considered the least effective way to address product hazards, and has been ineffective at addressing the magnet ingestion hazard, to date.

Another alternative is to require special packaging to limit children's access to subject magnet products. Such packaging could help consumers determine if all magnets have been returned to the container and include child-resistant features. Although this alternative would create some packaging costs, those likely would be lower than the costs associated with the proposed rule because it would allow subject magnet products to remain unchanged. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions. For packaging requirements to be effective, users would have to repackage all magnets after each use, which is unlikely given the size and number of magnets in a product, the potential to lose magnets, and consumers' demonstrated underappreciation of the hazard. In addition, packaging is unlikely to be effective because it generally only restricts young children (under 5 years old) from accessing package contents, and would not prevent older children or teens from accessing the package contents, although the majority of magnet ingestion incidents involved children 5 years and older.

Another alternative is to require subject magnet products to be coated with aversive agents. This alternative would reduce the costs associated with the rule because it would allow firms to continue to sell subject magnet products and the costs of such coatings likely would be small. However, such requirements are not likely to adequately reduce the risk of injury and death associated with magnet ingestions because they do not address ingestions that occur when the first magnet is placed in the victim's mouth, before the aversive agent is detected, accidental ingestions, or children who are developmentally inclined to place objects in their mouths.

Another alternative is to provide a longer effective date for the final rule. This may reduce the costs associated with the rule by spreading them over a longer period, but it would also delay the safety benefits of the rule.

E. Unreasonable Risk

To issue a final rule, the CPSA requires the Commission to find that the rule, including the effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Factors the Commission considered with respect to this preliminary finding include the likelihood and severity of the risk, and the potential costs and benefits associated with the proposed rule.

As described above, there were an estimated 23,700 magnet ingestions treated in U.S. hospital EDs from January 1, 2010 to December 31, 2020. Although this includes ingestions of all magnet types, and is not limited to subject magnet products, it provides an indication of the frequency with which children and teens ingest magnets, and the need to address the magnet ingestion hazard. Of these estimated 23,700 ED-treated magnet ingestions, an estimated 4,400 involved products categorized as being used for amusement or jewelry, which are the products subject to this rule, and an additional estimated 18,100 involved unidentified magnet product types. As discussed with respect to the finding regarding the degree and nature of the risk of injury, a large portion of the incidents involving unidentified magnet products likely involve subject magnet products. In addition, the ICM projects that there were an additional estimated 3,255 magnet ingestion injuries per year treated in medical settings other than EDs from 2017 through 2020. Trend analysis indicates that magnet ingestions have significantly increased in recent years.

The potential injuries when a person ingests one or more magnets are serious. Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. One indication of the potential severity of magnet ingestions is hospitalization rates. Considering NEISS data, approximately 18 percent of estimated ED-treated magnet ingestions result in hospitalization. Of the 284 CPSRMS magnet ingestion cases, approximately twice as many resulted in hospitalization as other non-hospitalization treatment (187 hospitalizations, 94 other treatments). For subject magnet products, in particular, hospitalization was two to three times as common as other treatments. Specifically, for magnet set ingestions, 88 resulted in hospitalization and 46 resulted in other treatment; for magnet toys, 36 resulted in hospitalization and 13 resulted in other treatment; and for jewelry, 21 resulted in hospitalization, and 10 resulted in other treatment.

Another clear indication of the severity of health risks are fatal incidents. Staff identified five fatal magnet ingestion incidents that occurred in the United States between November 24, 2005 and January 5, 2021.[103] All of these incidents involved victims who died from injuries resulting from internal interaction of the magnets. Four of the five incidents involved children 2 years old or younger (the additional death involved an adult). At least one of these fatal incidents involved a magnet set, one involved an

[103] CPSC is also aware of two deaths in other countries, which involved ingestion of hazardous magnets. Although staff does not know the specific products involved in these incidents, the magnets were similar, if not identical to magnets typically found in magnet sets.

amusement product, and two fatal incidents provided product descriptions consistent with subject magnet products.

CPSC staff estimates that the rule could result in aggregate benefits of about $80 million to $95 million annually; this estimate excludes magnet ingestion incidents involving unidentified magnet products, which are likely to commonly involve subject magnet products, making the benefits of the rule substantially greater. CPSC staff estimates that the costs to consumers and manufacturers associated with the rule could range from $10 million to $17.5 million annually, assuming annual sales of 500,000 units.

For these reasons, the Commission concludes preliminarily that ingestion of subject magnet products poses an unreasonable risk of injury and finds that the proposed rule is reasonably necessary to reduce that unreasonable risk of injury.

F. Public Interest

To issue a final rule, the CPSA requires the Commission to find that issuing the rule is in the public interest. This proposed rule is intended to address an unreasonable risk of injury and death posed by magnet ingestions. The Commission believes that compliance with the requirements of the proposed rule will significantly reduce magnet ingestion deaths and injuries in the future; thus, the rule is in the public interest.

G. Voluntary Standards

To issue a final rule, the CPSA requires the Commission to find that, if a voluntary standard addressing the risk of injury has been adopted and implemented, that either compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk or injury, or there is unlikely to be substantial compliance with the voluntary standard.

The Commission is aware of six voluntary and international standards that address the magnet ingestion hazard: ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety;* ASTM F2923–20, *Standard Specification for Consumer Product Safety for Children's Jewelry;* ASTM F2999–19, *Standard Consumer Safety Specification for Adult Jewelry;* ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index* $\geq$ *50 kG² mm²);* EN–71–1: 2014, *Safety of Toys; Part 1: Mechanical and Physical Properties;* and ISO 8124–1: 2018, *Safety of Toys—Part 1: Safety Aspects Related to Mechanical and Physical Properties.* The Commission does not consider the standards likely to result in an adequate reduction of the risk of injury associated with magnet ingestions because of the scope of products each standard covers, and the types of requirements included in them.

None of these standards apply to all of the products most commonly identified in magnet ingestion incidents—magnet sets intended for users 14 years and older, magnet toys intended for users 14 years and older, and jewelry. Moreover, even for the products the standards do address, several standards provide exceptions for certain amusement and jewelry products, imposing only warning requirements for those products.

In addition, several of the standards do not impose performance requirements on magnets themselves, such as size and strength requirements, instead recommending or requiring safety messaging or packaging. CPSC does not consider safety messaging or packaging requirements sufficient, without additional performance requirements, to adequately reduce the risk of injury and death associated with magnet ingestions. Incident data indicate that children commonly access ingested magnets from sources that do not include packaging or safety messaging; children and caregivers have commonly disregarded safety messaging to date; safety packaging only limits young children from accessing its contents, which does not address the majority of magnet ingestions, which involve older children and teens; and safety packaging requires users to repackage all magnets after every use to be effective, which is unlikely given the large number and small size of magnets often in subject magnet products.

H. Relationship of Benefits to Costs

On a per unit basis (as shown in Table 19), CPSC estimates the expected benefits per unit to range from $160 (assuming a 1.5-year product life and a 3 percent discount rate) to $190 (assuming a 3-year product life and a 3 percent discount rate). The estimated expected cost to manufacturers per unit is between about $5 and $10, and there is an unquantifiable cost to consumers associated with lost utility and availability.

CPSC estimates the aggregate benefits of the rule to be $80 million to $95 million annually and estimates the cost of the rule to be between $10 million to $17.5 million annually, assuming sales of 500,000 units annually (estimated costs range from $5 million to $35 million annually, depending on annual sales between 250,000 and 1 million units). The Commission believes, preliminarily, that the benefits expected from the proposed rule bear a reasonable relationship to its costs.

I. Least Burdensome Requirement That Would Adequately Reduce the Risk of Injury

CPSC considered several less-burdensome alternatives to the proposed rule. One alternative is to take no regulatory action and, instead, rely on existing standards to address the magnet ingestion hazard. This would reduce the burden associated with the rule by avoiding a mandatory standard; however, this alternative is unlikely to adequately address the magnet ingestion hazard because none of the existing standards apply performance requirements to all of the products most commonly involved in magnet ingestions incidents.

Another alternative is a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This could reduce the burden associated with a rule by allowing firms to market a wider variety of products than under the proposed rule. However, this alternative would reduce the safety benefits because allowing certain hazardous magnets in subject magnet products to remain on the market does not address the hazard such products pose.

Safety messaging is another alternative to the proposed rule. This alternative would reduce the burdens associated with the rule because it would not require modifying or discontinuing subject magnet products, and the costs of such warnings and instructional information likely would be small. However, this alternative is not likely to adequately reduce the magnet ingestion hazard. Safety messaging is generally the least effective way to reduce hazards associated with consumer products; incident data shows children commonly access ingested magnets from sources that do not include product packaging, where warnings are provided; incident data, behavioral and developmental factors, and other information indicate that children and caregivers commonly disregard safety messaging regarding the magnet ingestion hazard; and this approach has not been effective at adequately reducing the hazard, to date.

Another alternative is to require special packaging to limit children's access to subject magnet products. Such packaging could help consumers determine if all magnets have been

returned to the container and include child-resistant features. Although this alternative would create some packaging costs, those costs likely would be lower than the proposed rule because it would allow subject magnet products to remain unchanged. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions. Consumers are unlikely to repackage all magnets after each use, given the small size and large number of magnets in products, the potential to lose magnets, and consumers' demonstrated underappreciation of the hazard. In addition, packaging requirements are unlikely to be effective because they generally only restrict young children (under 5 years old) from accessing package contents, and would not prevent older children or teens from accessing the package contents, although the majority of magnet ingestion incidents involved children 5 years and older.

Another alternative is to require subject magnet products to be coated with aversive agents. This alternative would reduce the burden associated with the rule because it would allow firms to continue to sell subject magnet products and the costs of such coatings likely would be small. However, such requirements are not likely to adequately address the hazard because they do not address ingestions that occur when the first magnet is placed in the victim's mouth, before the aversive agent is detected, accidental ingestions, or children who are developmentally inclined to place objects in their mouths.

Another alternative is to provide a longer effective date for the final rule. This may reduce the burdens associated with the rule by spreading them over a longer period, but it would also delay the safety benefits of the rule.

XVII. Request for Comments

The Commission requests comments on all aspects of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice. The following are specific comment topics that the Commission would find helpful:

A. Scope and Definitions

- The scope of products covered by the proposed rule, and whether additional products should be included or excluded from the scope;
- Specifically, whether home/kitchen magnets or education products should be addressed in the rule;
- Data supporting any recommendations to include or exclude products from the scope of the rule; and
- Information and data about magnets involved in ingestion incidents that are categorized as unidentified product types in staff's analysis.

B. Performance Requirements

- Application of the ASTM F963 test method for measuring flux density, particularly to test small diameter spherical magnets in the 2 to 3 mm diameter range;
- Variances in flux density measurements of small spherical magnets, including correct identification of pole surfaces, accurate measurement of maximum absolute flux density, and accurate calculation of maximum cross section of the magnetic poles;
- Potential alternative methods of assessing the strength of magnets or their ability to cause internal interaction injuries;
- How many magnets should be tested, including whether all loose or separable magnets in subject magnet products should be tested, or only a representative sample or at least one representative sample of each shape and size should be tested, and how firms may satisfy such requirements;
- Whether statistical sampling should be used to determine how many magnets to test in a subject magnet product and to reasonably verify the tested sample is representative, particularly for products made up of numerous individual magnets;
- The proposed flux index limit of 50 kG^2 mm^2, including data on whether magnets with flux indexes less than 50 kG^2 mm^2 pose concern for the internal interaction hazard; and
- Whether the rule should include requirements similar to ASTM F963 to ensure that products do not liberate hazardous magnets after use and abuse testing.

C. Safety Messaging and Packaging Requirements

- Whether the rule should include requirements for safety messaging, particularly for products with flux indexes within the permissible range for which there is uncertainty about the flux indexes that can cause internal interaction hazards;
- Whether the rule should include requirements for packaging, particularly for products with flux indexes within the permissible range for which there is uncertainty about the flux indexes that can cause internal interaction hazards;
- What safety messaging requirements should include, and why they should be included; and
- What packaging requirements should include, and why they should be included.

D. Existing Standards

- Data regarding the level of compliance with existing standards that address magnet ingestions, including ASTM standards.

E. Economic Analysis (Preliminary Regulatory Analysis and IRFA)

- The estimates and other valuations used in CPSC's analysis regarding benefits and costs associated with the proposed rule;
- The annual unit sales of subject magnet products;
- The expected product life of subject magnet products;
- The number of subject magnet products subject to the proposed rule;
- The accuracy and reasonableness of the benefits estimates;
- Information about the costs to consumers associated with the proposed rule, including consumer needs for subject magnet products, and the potential impact of the proposed rule on the utility, cost, and availability of subject magnet products for those needs;
- The accuracy and reasonableness of the cost estimates for manufacturers and importers (if available, sales or other shipment data would be helpful);
- The potential impact of the proposed rule on small entities;
- Costs associated with testing and certification requirements, including requirements in section 14 of the CPSA, particularly for small businesses;
- Potential modifications to subject magnet products to comply with the proposed rule, and the costs associated with those modifications;
- The types and magnitude of manufacturing costs that might disproportionately impact small businesses or were not considered in the agency's analysis;
- The different impacts on small businesses associated with different effective dates; and
- Other alternatives that would minimize the impact on small businesses while reducing the magnet ingestion hazard.

F. Effective Date

- The reasonableness of the proposed 30-day effective date and recommendations for a different effective date, if justified. Comments recommending a longer effective date should describe the problems associated with meeting the proposed effective

date and the justification for a longer one.

G. Anti-Stockpiling

- Whether the Commission should consider including in the rule anti-stockpiling provisions to prevent manufacturing or importing of non-compliant subject magnet products at an increased rate during the period between announcing a final rule and the effective date of the rule; and
- Information relevant to whether an anti-stockpiling provision is necessary.

XVIII. Promulgation of a Final Rule

Section 9(d)(1) of the CPSA requires the Commission to promulgate a final consumer product safety rule within 60 days of publishing a proposed rule. 15 U.S.C. 2058(d)(1). Otherwise, the Commission must withdraw the proposed rule if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or is not in the public interest. *Id.* However, the Commission can extend the 60-day period, for good cause shown, if it publishes the reasons for doing so in the **Federal Register**. *Id.*

The Commission finds that there is good cause to extend the 60-day period for this rulemaking. Under both the Administrative Procedure Act and the CPSA, the Commission must provide an opportunity for interested parties to submit written comments on a proposed rule. 5 U.S.C. 553; 15 U.S.C. 2058(d)(2). The Commission typically provides 75 days for interested parties to submit written comments. A shorter comment period may limit the quality and utility of information CPSC receives in comments, particularly for areas where it seeks data and other detailed information that may take time for commenters to compile. In addition, the CPSA requires the Commission to provide interested parties with an opportunity to make oral presentations of data, views, or arguments. 15 U.S.C. 2058. This requires time for the Commission to arrange a public meeting for this purpose, and provide notice to interested parties in advance of that meeting. After receiving written and oral comments, CPSC staff must have time to review and evaluate those comments.

These factors make it impractical for the Commission to issue a final rule within 60 days of this proposed rule. Moreover, issuing a final rule within 60 days of the NPR may limit commenters' ability to provide useful input on the rule, and CPSC's ability to evaluate and take that information into consideration in developing a final rule. Accordingly, the Commission finds that there is good cause to extend the 60-day period.

XIX. Conclusion

For the reasons stated in this preamble, the Commission proposes requirements for subject magnet products to address an unreasonable risk of injury associated with ingestion of such products.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1262

Consumer protection, Imports, Incorporation by reference, Safety.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(52) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(52) 16 CFR part 1262, Safety Standard for Magnets.

* * * * *

■ 3. Add part 1262 to read as follows:

PART 1262—SAFETY STANDARD FOR MAGNETS

Sec.

1262.1 Scope, purpose, application, and exemptions.
1262.2 Definitions.
1262.3 Requirements.
1262.4 Test procedure for determining flux index.
1262.5 Findings.

Authority: 15 U.S.C. 2056, 2058

§ 1262.1 Scope, purpose, application, and exemptions.

(a) *Scope and purpose.* This part 1262, a consumer product safety standard, prescribes the safety requirements for a *subject magnet product,* as defined in § 1262.2(b). These requirements are intended to reduce or eliminate an unreasonable risk of death or injury to consumers who ingest one or more *hazardous magnets* (as defined in § 1262.2(a)) from a *subject magnet product.*

(b) *Application.* Except as provided in paragraph (c) of this section, all *subject magnet products* that are manufactured in the United States, or imported, on or after [effective date], are subject to the requirements of this part 1262, if they are *consumer products.* Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) defines the term *consumer product* as an ''article, or component part thereof, produced or distributed

(i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or

(ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.'' The term does not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer.

(c) *Exemptions.* Toys that are subject to 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys,* are exempt from this part 1262.

§ 1262.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for purposes of this part 1262:

(a) *Hazardous magnet* means a magnet that fits entirely within the cylinder described in 16 CFR 1501.4 and that has a flux index of 50 kG^2 mm^2 or more when tested in accordance with the method described in this part 1262.

(b) *Subject magnet product* means a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets.

§ 1262.3 Requirements.

Each loose or separable magnet in a *subject magnet product* that fits entirely within the cylinder described in 16 CFR 1501.4 must have a flux index of less than 50 kG^2 mm^2 when tested in accordance with the method described in 1262.4.

§ 1262.4 Test procedure for determining flux index.

(a) Select at least one loose or separable magnet of each shape and size in the *subject magnet product.*

(b) Measure the flux index of each selected magnet in accordance with the procedure in section 8.25.1 through 8.25.3 of ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety,* approved on May 1, 2017. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.* A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 1262.5 Findings.

(a) *General.* Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule. Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission (Commission, CPSC) when the standard was issued on [final rule publication date].

(b) *Degree and nature of the risk of injury.* (1) The standard is designed to reduce the risk of death and injury associated with magnet ingestions. The Commission has identified 284 magnet ingestions that were reported to have occurred between January 1, 2010 and December 31, 2020. Seventy-five percent of these incidents involved amusement or jewelry products, which are the products covered by this rule, and an additional 15 percent involved unidentified magnet products, a large portion of which CPSC concludes are likely to have involved subject magnet products, based on developmental and behavioral factors, identified products involved in magnet ingestion incidents, products involved in recalls for magnet ingestion hazards, and trend analyses indicating a significant decrease in magnet ingestion incidents when there was a mandatory standard for certain subject magnet products. There were an estimated 4,400 magnet ingestions treated in U.S. hospital emergency departments between January 1, 2010 and December 31, 2020 that involved products categorized as being for amusement or jewelry, which are the products subject to this rule, and an additional estimated 18,100 emergency department treated magnet ingestions involving unidentified magnet products, a large portion of which CPSC concludes are likely to have involved subject magnet products for the reasons stated above. In addition, the Injury Cost Model projects that there were an additional estimated 3,255 magnet ingestion injuries per year treated in medical settings other than emergency departments from 2017 through 2020.

(2) The potential injuries when a child or teen ingests one or more magnets are serious. Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. CPSC is aware of several fatal magnet ingestion incidents that occurred in the United States, resulting from internal interaction of the magnets (small intestine ischemia and volvulus).

(c) *Number of consumer products subject to the rule.* Approximately 500,000 subject magnet products are estimated to be sold annually in the United States.

(d) *The need of the public for subject magnet products and the effects of the rule on their cost, availability, and utility.* (1) Consumers use subject magnet products for entertainment, mental stimulation, stress relief, and jewelry. The proposed rule requires subject magnet products to meet performance requirements regarding size or strength, but does not restrict the design of products. As such, subject magnet products that meet the standard would continue to serve the purpose of amusement or jewelry for consumers. Magnets that comply with the proposed rule, such as non-separable magnets, larger magnets, weaker magnets, or non-permanent magnets, would likely still be useful for amusement or jewelry. However, it is possible that there may be some negative effect on the utility of subject magnet products if compliant products function differently or do not include certain desired characteristics.

(2) Retail prices of subject magnet products generally average under $20. CPSC has identified subject magnet products that comply with the proposed rule, indicating that the cost of compliant and non-compliant products are comparable.

(3) If the costs associated with redesigning or modifying subject magnet products to comply with the proposed rule results in manufacturers discontinuing products, there may be some loss in availability to consumers. However, this would be mitigated to the extent that compliant products meet the same consumer needs.

(e) *Other means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.* (1) The Commission considered several alternatives to achieve the objective of reducing unreasonable risks of injury and death associated with magnet ingestions. One alternative is to take no regulatory action and, instead rely on existing voluntary standards to address the magnet ingestion hazard. This would eliminate costs associated with the rule by avoiding a mandatory standard; however, this alternative is unlikely to adequately reduce the risk of injury and death associated with magnet ingestions. For one, none of the existing standards address all of the products most commonly identified in magnet ingestion incidents, and several of the standards provide exceptions to performance requirements for certain subject magnet products. In addition, under the existing standards, certain subject magnet products would not be subject to performance requirements regarding size and strength, instead relying on alternative requirements, such as safety messaging, which is unlikely to adequately reduce the magnet ingestion hazard.

(2) Another alternative is a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This could reduce the costs associated with a rule by allowing firms to market a wider variety of products than under the proposed rule. However, for this alternative to reduce costs, it would allow more products to remain on the market, thereby decreasing the safety benefits.

(3) Safety messaging requirements are another alternative to the proposed rule. This would reduce the costs associated with the rule because it would not require modifying or discontinuing subject magnet products, and the costs of warnings and instructional information likely would be small. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestion because the effectiveness of safety

messaging depends on consumer seeing the messaging and convincing them to avoid the hazard. Incident data indicate that children commonly access ingested magnets from sources that are unlikely to include the product packaging bearing instructions or warnings. Moreover, consumers are unlikely to consistently heed warnings because of the perception that subject magnet products are appropriate for children, and underappreciation of the magnet ingestion hazard. Safety messaging is generally considered the least effective way to address product hazards, and has been ineffective at addressing the magnet ingestion hazard, to date.

(4) Another alternative is to require special packaging to limit children's access to subject magnet products. Such packaging could help consumers determine if all magnets have been returned to the container and include child-resistant features. Although this alternative would create some packaging costs, those likely would be lower than the costs associated with the proposed rule because it would allow subject magnet products to remain unchanged. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions. For packaging requirements to be effective, users would have to repackage all magnets after each use, which is unlikely given the small size and large number of magnets often in a product, the potential to lose magnets, and consumers' demonstrated underappreciation of the hazard. In addition, packaging requirements are unlikely to be effective because they generally only restrict young children (under 5 years old) from accessing package contents, and would not prevent older children or teens from accessing the package contents, although the majority of magnet ingestion incidents involved children 5 years and older.

(5) Another alternative is to require subject magnet products to be coated with aversive agents. This alternative would reduce the costs associated with the rule because it would allow firms to continue to sell subject magnet products and the costs of such coatings likely would be small. However, such requirements are not likely to adequately reduce the risk of injury and death associated with magnet ingestions because they do not address ingestions that occur when the first magnet is placed in the victim's mouth, before the aversive agent is detected, accidental ingestions, or children who are developmentally inclined to place objects, including unpalatable substances, in their mouths.

(6) Another alternative is to provide a longer effective date for the final rule. This may reduce the costs associated with the rule by spreading them over a longer period, but it would also delay the safety benefits of the rule.

(f) *Unreasonable risk.* (1) Incident data indicate that there were an estimated 23,700 magnet ingestions treated in U.S. hospital emergency departments from January 1, 2010 to December 31, 2020. Although this includes ingestions of all magnet types, and is not limited to subject magnet products, it provides an indication of the frequency with which children and teens ingest magnets, and the need to address the magnet ingestion hazard. Of these estimated 23,700 emergency department treated magnet ingestions, an estimated 4,400 involved products categorized as being for amusement or jewelry, which are the products subject to this rule, and an additional estimated 18,100 involved unidentified magnet product types. The Commission considers a large portion of the incidents involving unidentified magnet products to have been subject magnet products, based on the factors described above with respect to the finding regarding the degree and nature of the risk of injury. In addition, the Injury Cost Model projects that there were an additional estimated 3,255 magnet ingestion injuries per year treated in medical settings other than emergency departments from 2017 through 2020. Trend analysis indicates that magnet ingestions have significantly increased in recent years.

(2) The potential injuries when a person ingests one or more magnets are serious. Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. Magnet ingestion incidents commonly result in hospitalization, particularly when subject magnet products are ingested. The Commission is aware of five fatal magnet ingestion incidents that occurred in the United States between November 24, 2005 and January 5, 2021. Four of these incidents involved children 2 years old or younger, and all five victims died from injuries resulting from internal interaction of the magnets. Four of the five incidents identified the products as magnet sets, amusement products, or described them as having characteristics that are consistent with subject magnet products.

(3) For these reasons, the Commission preliminarily concludes that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

(g) *Public interest.* This rule is intended to address an unreasonable risk of injury and death posed by magnet ingestions. The Commission believes that compliance with the requirements of the rule will significantly reduce magnet ingestion deaths and injuries in the future; thus, the rule is in the public interest. For these reasons, the Commission preliminarily concludes that issuing the rule is in the public interest.

(h) *Voluntary standards.* (1) The Commission is aware of six voluntary and international standards that address the magnet ingestion hazard: ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety;* ASTM F2923–20, *Standard Specification for Consumer Product Safety for Children's Jewelry;* ASTM F2999–19, *Standard Consumer Safety Specification for Adult Jewelry;* ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index ≥50 kG² mm²);* EN–71–1: 2014, *Safety of Toys; Part 1: Mechanical and Physical Properties;* and ISO 8124–1: 2018, *Safety of Toys—Part 1: Safety Aspects Related to Mechanical and Physical Properties.* The Commission does not consider the standards likely to result in an adequate reduction of the risk of injury associated with magnet ingestions because of the scope of products each standard covers, and the types of requirements included in them.

(2) None of these standards apply to all of the products most commonly identified in magnet ingestion incidents—magnet sets intended for users 14 years and older, magnet toys intended for users 14 years and older, and jewelry. Even for the products the standards do address, several standards provide exceptions for certain amusement and jewelry products, imposing only warning requirements for those products.

(3) In addition, several of the standards do not impose performance requirements on magnet themselves, such as size and strength requirements, instead recommending or requiring safety messaging or packaging. CPSC does not consider safety messaging or packaging requirements sufficient, without additional performance requirements, to adequately reduce the risk of injury and death associated with

magnet ingestions. Incident data indicate that children commonly access ingested magnets from sources that do not include packaging or safety messaging; children and caregivers have commonly disregarded safety messaging to date; safety packaging only limits young children (typically, children under 5 years old) from accessing its contents, which does not address magnet ingestions by older children and teens, which make up the majority of incidents; and safety packaging requires users to repackage all magnets after every use to be effective, which is unlikely given the large number and small size of magnets often in subject magnet products.

(4) For these reasons, the Commission preliminarily concludes that compliance with existing standards is not likely to result in the elimination or adequate reduction of the risk of injury associated with magnet ingestion.

(i) *Relationship of benefits to costs.* (1) CPSC estimates the aggregate benefits of the rule to be $80 million to $95 million annually and estimates the cost of the rule to be between $10 million to $17.5 million annually, assuming sales of 500,000 units annually (estimated costs range from $5 million to $35 million annually, depending on annual sales between 250,000 and 1 million units).

(2) On a per unit basis, CPSC estimates the expected benefits per unit to range from $160 (assuming a 1.5-year product life and a 3 percent discount rate) to $190 (assuming a 3-year product life and a 3 percent discount rate). The estimated expected cost to manufacturers per unit is between about $5 and $10, and there is an unquantifiable cost to consumers associated with lost utility and availability.

(3) Based on this analysis, the Commission preliminarily finds that the benefits expected from the rule bear a reasonable relationship to its anticipated costs.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* (1) CPSC considered several less-burdensome alternatives to the proposed rule. One alternative is to take no regulatory action and, instead, rely on existing standards to address the magnet ingestion hazard. This would reduce the burden associated with the rule by avoiding a mandatory standard, however, this alternative is unlikely to adequately address the magnet ingestion hazard because none of the existing standards apply performance requirements to all of the products most commonly involved in magnet ingestions incidents.

(2) Another alternative is a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This could reduce the burden associated with a rule by allowing firms to market a wider variety of products than under the proposed rule. However, this alternative would reduce the safety benefits because allowing certain hazardous magnets in subject magnet products to remain on the market does not address the hazard such products pose.

(3) Safety messaging is another alternative to the proposed rule. This alternative would reduce the burdens associated with the rule because it would not require modifying or discontinuing subject magnet products, and the costs of such warnings and instructional information likely would be small. However, this alternative is not likely to adequately reduce the magnet ingestion hazard. Safety messaging is generally the least effective way to reduce hazards associated with consumer products; incident data shows children commonly access ingested magnets from sources that do not include product packaging, where warnings are provided; incident data, behavioral and developmental factors, and other information indicate that children and caregivers commonly disregard safety messaging regarding the magnet ingestion hazard; and this approach has not been effective at adequately reducing the hazard, to date.

(4) Another alternative is to require special packaging to limit children's access to subject magnet products. Such packaging could help consumers determine if all magnets have been returned to the container and include child-resistant features. Although this alternative would create some packaging costs, those costs likely would be lower than the proposed rule because it would allow subject magnet products to remain unchanged. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions. Consumers are unlikely to repackage all magnets after each use, given the small size and large number of magnets in products, the potential to lose magnets, and consumers' demonstrated underappreciation of the hazard. In addition, packaging requirements would only prevent young children (typically, children under 5 years old) from accessing the product, not older children or teens, who are involved in the majority of magnet ingestion incidents.

(5) Another alternative is to require subject magnet products to be coated with aversive agents. This alternative would reduce the burden associated with the rule because it would allow firms to continue to sell subject magnet products and the costs of such coatings likely would be small. However, such requirements are not likely to adequately address the hazard because they do not address ingestions that occur when the first magnet is placed in the victim's mouth, before the aversive agent is detected, accidental ingestions, or children who are developmentally inclined to place objects in their mouths.

(6) Another alternative is to provide a longer effective date for the final rule. This may reduce the burdens associated with the rule by spreading them over a longer period, but it would also delay the safety benefits of the rule.

(7) For these reasons, the Commission preliminarily finds that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury associated with magnet ingestions.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2021–27826 Filed 1–7–22; 8:45 am]

BILLING CODE 6355–01–P

Reader Aids

Federal Register

Vol. 87, No. 6

Monday, January 10, 2022

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–150 3
151–376 4
377–728 5
729–874 6
875–1060 7
1061–1316 10

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9704 (Amended by Proc. 10327) 1
9705 (Amended by Proc. 10328) 11
9980 (Amended by Proc. 10328) 11
10315 (Revoked by Proc. 10329) 149
10327 1
10328 11
10329 149
10330 151
10331 869
10332 871
10333 873
Administrative Orders:
Memorandums:
Memorandum of December 27, 2021 27

5 CFR

Proposed Rules:
315 200
432 200
724 736
752 200

9 CFR

93 29

10 CFR

207 1061
218 1061
429 1061
431 1061
490 1061
501 1061
601 1061
820 1061
824 1061
851 1061
1013 1061
1017 1061
1050 1061
Proposed Rules:
429 890
430 890

12 CFR

337 1065
747 377

13 CFR

121 380

14 CFR

25 1066
27 1068
39 ..... 29, 382, 385
95 388
97 ..... 153, 156
Proposed Rules:
39 ..... 55, 1083

15 CFR

6 157
15 160
774 729

16 CFR

1 1070
Proposed Rules:
1112 ..... 1014, 1260
1120 891
1260 1014
1262 1260

17 CFR

232 391

21 CFR

Proposed Rules:
112 913

22 CFR

35 1072
103 1072
127 1072
138 1072

23 CFR

625 32

26 CFR

1 ..... 166, 276
301 166

27 CFR

478 182

31 CFR

210 42
800 731
802 ..... 731, 875

33 CFR

165 ..... 875, 1074, 1076, 1078
Proposed Rules:
165 916

34 CFR

Proposed Rules:
Ch. II 57

36 CFR

Proposed Rules:
7 413

38 CFR

Proposed Rules:
17 418

21 1087

40 CFR

63 393
147 47
271 194
Proposed Rules:
63 421
180 1091
271 209

41 CFR

102–173 1080

42 CFR

414 199

43 CFR

8365 732

45 CFR

Proposed Rules:
144 584
147 584
153 584
155 584
156 584
158 584
1167 210

47 CFR

1 396
52 398
Proposed Rules:
64 212

48 CFR

615 1081
652 1081

49 CFR

Proposed Rules:
1144 62
1145 62

50 CFR

12 876
13 876
17 ..... 546, 876
19 876
20 876
21 876
22 876
217 885
300 885
622 ..... 51, 53, 886
648 887
679 ..... 412, 735

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 30, 2021

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.