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FEDERAL REGISTER

Vol. 87 Wednesday

No. 17 January 26, 2022

Pages 3921–4124

OFFICE OF THE FEDERAL REGISTER

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0056; Special Conditions No. 25–806–SC]

Special Conditions: Peregrine; Installed Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a supplemental type certificate to install rechargeable lithium batteries in the Emergency Exit Light (EEL) power supply on certain transport category airplanes. These airplanes, as modified by Peregrine, 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 the installation of an EEL power supply that contains rechargeable lithium batteries. 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 Peregrine on January 26, 2022. Send comments on or before March 14, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0056 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 proposal.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this Notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this Notice, it is important that you clearly designate the submitted comments as CBI. 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 Notice. Submissions containing CBI should be sent to Nazih Khaouly, Aircraft Systems, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@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: Nazih Khaouly, Aircraft Systems, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206 231 3160; email *nazih.khaouly@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

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 January 22, 2021, Peregrine applied for a supplemental type certificate to install rechargeable lithium batteries in the ELL power supply. Peregrine wants to apply this STC to multiple transport category airplanes and may periodically amend this STC to expand its applicability to include additional transport category airplane makes and models.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Peregrine must show that airplanes, for which they make application to modify by STC no. ST01086DE, as changed, continue to meet the applicable

provisions of the regulations listed in each airplane's respective type certificate 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 (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards 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 airplane model for which they are issued. Should the applicant apply for an STC 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.

In addition to the applicable airworthiness regulations and special conditions, the airplanes modified by STC no. ST01086DE 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 § 21.101

Novel or Unusual Design Features

The airplanes with STC no. ST01086DE will incorporate the following novel or unusual design feature:

The installation of an EEL power supply that contains rechargeable lithium batteries.

Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory. Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have ''automatic'' means, for charge rate and disconnect, due to the fast-acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

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 airplane models listed on the approved model list (AML) of STC no. ST01086DE, which is available at *rgl.faa.gov.* All models listed in the AML must be evaluated and determined to comply with these special conditions. Additionally each new model added to the AML subsequently must also be evaluated and determined to comply with these special conditions. Should Peregrine apply at a later date for a change to STC no. ST01086DE to include any other model on the AML to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well. Should Peregrine apply at a later date for another STC to modify any other model included on the type certificates of the models on the STC no. ST01086DE AML to incorporate the same novel or unusual design feature, these special conditions would also apply to that model as well. These special conditions are not applicable to those models in which special conditions for rechargeable lithium batteries have already been issued against the Type Certificate for that specific model.

Conclusion

This action only affects the installation of an EEL power supply that contains rechargeable lithium batteries on the airplane models listed on the AML of STC no. ST01086DE. It is not a rule of general applicability and affects only the applicant who will apply to the FAA for approval of these features on the airplanes.

List of Subjects in 14 CFR Part 25

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 airplane models listed on the approved model list of

supplemental type certificate no. ST01086DE, as modified by Peregrine.

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

8. Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: A battery system consists of the battery, battery charger, and any protective monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and the battery system is referred to as a battery.

Issued in Kansas City, Missouri, on January 20, 2022.

Patrick R. Mullen,

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

[FR Doc. 2022–01443 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0009; Project Identifier MCAI–2021–01459–R; Amendment 39–21914; AD 2022–02–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters. This AD was prompted by reports of engine flame out following prolonged operations in falling snow on helicopters with an inlet barrier filter (IBF) system installed. This AD requires revising the existing Rotorcraft Flight Manual (RFM) for your helicopter, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 10, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 10, 2022.

The FAA must receive comments on this AD by March 14, 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 above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material 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. Service information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0009.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0009; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0289–E, dated December 23, 2021 (EASA AD 2021–0289–E), to correct an unsafe condition for all Airbus Helicopters Deutschland GmbH (AHD), formerly Eurocopter Deutschland GmbH; and Airbus Helicopters Inc., formerly American Eurocopter LLC, Model MBB–BK117 C–2, D–2, D–3, and D–3m helicopters, all variants, all serial numbers.

This AD was prompted by reports of engine flame out following prolonged operations in falling snow with the IBF system installed. The FAA is issuing this AD to prevent partial icing of an IBF engine intake and engine flame out. The unsafe condition, if not addressed, could result in engine failure and reduced control of the helicopter, possibly resulting in damage to the

helicopter or injury to occupants. See EASA AD 2021–0289–E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0289–E requires amending the RFM by incorporating the applicable RFM temporary revision (TR), to amend the IBF system limitations and emergency procedures sections, to include a restriction to operation in falling or blowing snow.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Service Bulletin SB MBB–BK117 C–2–71–005, Revision 5, dated May 31, 2017; and Airbus Helicopters Service Bulletin SB MBB-BK117 D-2–71–001, Revision 1, dated August 2, 2017. This service information specifies procedures for installing an IBF system.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0289–E, described previously, as IBRed, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0289–E will be IBRed in this FAA final rule. This AD would, therefore, require compliance with EASA AD 2021–0289–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0289–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0289–E. Service information referenced in EASA AD 2021–0289–E for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0009.

Differences Between This AD and the EASA AD

EASA AD 2021–0289–E applies to Model MBB–BK117 D–3m helicopters, whereas this AD does not because that model is not FAA type-certificated. EASA AD 2021–0289–E defines ''Retrofit SB'' as, ''AH Service Bulletin (SB) MBB–BK117 C–2–71–005, SB MBB–BK117 D–2–71–001 and SB MBB–BK117 D–3–71–001, as applicable, installing the IBF system,'' whereas this AD redefines ''Retrofit SB'' because SB MBB–BK117 D–3–71–001 has not been issued.

EASA AD 2021–0289–E requires operators to ''inform all flight crews'' of revisions to the RFM, and thereafter to ''operate the helicopter accordingly.'' However, this AD does not specifically require those actions.

14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFM. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFM would be redundant and unnecessary. Additionally, FAA regulations mandate compliance with only the operating limitations section of the flight manual. Some of the flight manual changes required by this AD apply to the emergency procedures section of the existing RFM for your helicopter. Compliance with such requirements in an AD is impracticable to demonstrate or track on an ongoing basis; therefore, requirements to operate the aircraft in such a manner are unenforceable. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability be made aware of the flight manual changes and that they operate in accordance with the revised emergency procedures.

In this AD, the existing RFM for your helicopter may be revised and the logbook entry for that action may be made by the owner/operator (pilot) holding at least a private pilot certificate, whereas the EASA AD does not mention this allowance. This action must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the affected component is part of the propulsion system that is critical to the power of the helicopter. Partial icing of the affected component could result in engine flame out, engine failure, reduced control of the helicopter, and subsequent damage to the helicopter or injury to occupants. In light of this, required actions must be accomplished within 14 days or 40 hours time-in-service, whichever occurs first after the effective date of this AD. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0009; Project Identifier MCAI–2021–01459–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 213 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 AD.

Revising the existing RFM for your helicopter takes about 1 work-hour for an estimated cost of about $85 per helicopter and up to about $18,105 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

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–02–17 Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–21914; Docket No. FAA–2022–0009; Project Identifier MCAI–2021–01459–R.

(a) Effective Date

This airworthiness directive (AD) is effective February 10, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 7160, Engine Air Intake System.

(e) Unsafe Condition

This AD was prompted by reports of engine flame out following prolonged operations in falling snow with the inlet barrier filter (IBF) system installed. The FAA is issuing this AD to prevent partial icing of an IBF engine intake and engine flame out. The unsafe condition, if not addressed, could result in engine failure and reduced control of the helicopter, possibly resulting in damage to the helicopter or injury to occupants.

(f) Compliance

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

(g) Requirements

Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2021–0289–E, dated December 23, 2021 (EASA AD 2021–0289–E).

(h) Exceptions to EASA AD 2021–0289–E

(1) Where EASA AD 2021–0289–E defines Retrofit SB, replace the text ''AH Service Bulletin (SB) MBB–BK117 C–2–71–005, SB MBB–BK117 D–2–71–001 and SB MBB–BK117 D–3–71–001, as applicable, installing the IBF system,'' with ''AH Service Bulletin (SB) MBB–BK117 C–2–71–005 and SB MBB–BK117 D–2–71–001, as applicable, installing the IBF system; and for Model MBB–BK 117 D–3 helicopters, in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization

Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(2) Where EASA AD 2021–0289–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where EASA AD 2021–0289–E refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (1) of EASA AD 2021–0289–E specifies to ''inform all flight crews, and, thereafter, operate the helicopter accordingly,'' this AD does not require those actions.

(5) The action required by paragraphs (1) and (2) of EASA AD 2021–0289–E may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

(6) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0289–E.

(i) Special Flight Permit

Special flight permits may be permitted provided that there are no passengers on board.

(j) 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 (k) 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.

(k) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2021–0289–E, dated December 23, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0289–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0009.

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

Issued on January 13, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01540 Filed 1–24–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1010; Project Identifier MCAI–2020–00807–G; Amendment 39–21924; AD 2022–03–07]

RIN 2120–AA64

Airworthiness Directives; Stemme AG Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Stemme AG TSA–M Model S6 and S6–RT gliders. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a new version of the propeller gearbox tooth belt with a reduced life limit. This AD requires establishing a life limit of 5 years for certain propeller gearbox tooth belts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 2, 2022.

ADDRESSES: For service information identified in this final rule, contact Stemme AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341 3612–0; fax: +49 (0) 3341 3612–30; email: *airworthiness@stemme.de*; website: *https://www.stemme.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1010.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1010; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Stemme AG TSA–M Model S6 and S6–RT gliders. The NPRM published in the **Federal Register** on November 22, 2021 (86 FR 66229). The NPRM was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2020–0140, dated June 23, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on Stemme AG (Stemme) TSA–M Model S6 and S6–RT powered sailplanes (gliders) and ASP S15–1 airplanes. The MCAI states:

> The airworthiness limitations for Stemme TSA–M powered sailplanes and Stemme ASP aeroplanes, which are approved by EASA, are currently defined and published in Chapter 4 of the applicable AMM [aircraft maintenance manual]. These instructions have been identified as mandatory for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

During a regular incoming part inspection at Stemme, the supplier delivered a new version of the tooth belts used in the propeller gearbox. The new part (with marking ''Carbon'') deviates from the previously used part (with marking ''Extreme'') by its layer build up. The new tooth belt has been found airworthy, although with a reduced life limit.

Before Stemme identified the issue, new tooth belts were delivered, identified as Part Number (P/N) 830.185, the same as the previous part. These parts have to be identified by inspection, changed to P/N 832.502, and the reduced life limit implemented.

Consequently, Stemme issued the applicable ALS [airworthiness limitations section] introducing the new life limit for the new part. Stemme also issued the SB [service bulletin] providing additional instructions on relevant inspections and corrective actions.

For the reasons described above, this [EASA] AD requires a one-time inspection of the propeller gearbox tooth belts, and, depending on findings, re-identification. This [EASA] AD also requires implementation of the reduced life limit by accomplishment of the actions specified in the applicable ALS.

After issuance of the MCAI, EASA approved extending the life limit of the new ''Synchroforce Carbon'' belt to 5 years, the same as the original ''Extreme'' belt, as documented by Stemme in Revision 15 to the AMM Chapter 04 ALS.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1010.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an individual commenter. The commenter supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed Stemme Service Bulletin Doc. No. P062–980049, Revision 00, dated May 27, 2020. This service information specifies identifying the front propeller gearbox tooth belt, revising the AMM and illustrated parts catalogue, and introducing a life limit for the propeller gearbox tooth belt marked ''Synchroforce Carbon.''

Differences Between This AD and the MCAI or Service Information

The MCAI applies to Stemme AG Model ASP S15–1 airplanes, and this AD does not because that model does not have an FAA type certificate.

The MCAI requires an inspection to determine whether the propeller gearbox tooth belts are ''Synchroforce Carbon'' or ''Extreme.'' This AD does not require this inspection because instead, it applies only to gliders with a ''Synchroforce Carbon'' propeller gearbox tooth belt installed.

The MCAI requires revising the existing aircraft maintenance program (AMP) to introduce the reduced life limit for the affected propeller gearbox tooth belt, as well as other life limits, as specified in the Temporary Revision to the aircraft maintenance manual airworthiness limitations section (ALS). After the AMP is revised, the MCAI does not require recording AD compliance on a continued basis each time a task in the revised AMP is performed. Because the AMP is not required for U.S. operators and the ALS specified in the MCAI includes additional tasks that do not address the unsafe condition, this AD establishes a life limit for the affected propeller gearbox tooth belt by requiring that it be removed from service after 5 years. Operators are required to record AD compliance each time an affected propeller gearbox tooth belt reaches its life limit and is replaced.

Stemme Service Bulletin Doc. No. P062–980049, Revision 00, dated May 27, 2020, requires reporting information to Stemme AG, and this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 3 gliders of U.S. registry. The FAA estimates that it will take 4 work hours to replace the propeller gearbox tooth belt and require a part costing $300. The average labor rate is $85 per work hour. Based on these figures, the FAA estimates the cost to replace the propeller gearbox tooth belt on U.S. operators to be $1,920 or $640 per glider, every 5 years.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–03–07 Stemme AG: Amendment 39–21924; Docket No. FAA–2021–1010; Project Identifier MCAI–2020–00807–G.

(a) Effective Date

This airworthiness directive (AD) is effective March 2, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Stemme AG TSA–M Model S6 and S6–RT gliders, all serial numbers, certificated in any category, with a propeller gearbox tooth belt marked ''Synchroforce Carbon'' installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 6100, Propeller System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a new version of the propeller gearbox tooth belt with a reduced life limit. The FAA is issuing this AD to prevent a propeller gearbox tooth belt remaining in service beyond its fatigue life. The unsafe condition, if not addressed, could result in failure of the propeller gearbox tooth belt and reduced control of the glider.

(f) Compliance

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

(g) Required Actions

Before the propeller gearbox tooth belt accumulates 5 years since installation on a glider or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 5 years, remove the propeller gearbox tooth belt from service and install a propeller gearbox tooth belt with zero hours time-in-service.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0140, dated June 23, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1010.

(j) Material Incorporated by Reference

None.

Issued on January 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01479 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2020–0007]

RIN 1218–AD42

COVID–19 Vaccination and Testing; Emergency Temporary Standard

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

ACTION: Interim final rule; withdrawal.

SUMMARY: OSHA is withdrawing the November 5, 2021, emergency temporary standard (ETS) which was issued to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID–19 by strongly encouraging vaccination.

DATES: The withdrawal is effective January 26, 2022.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the agency designates Edmund C. Baird, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, to receive petitions for review of this agency action. Service can be accomplished by email to *zzSOL-Covid19-ETS@dol.gov.*

FOR FURTHER INFORMATION CONTACT:

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

For technical inquiries: Contact Andrew Levinson, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background and Rationale for Withdrawal

On November 5, 2021, OSHA adopted an emergency temporary standard (the Vaccination and Testing ETS), under sections 4, 6(c), and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655(c), 657), to protect unvaccinated employees of large employers (100 or more employees) from the risk of contracting COVID–19 by strongly encouraging vaccination (86 FR 61402). The Vaccination and Testing ETS required covered employers to develop, implement, and enforce a mandatory COVID–19 vaccination policy, with an exception for employers that instead adopted a policy requiring employees to either get vaccinated or elect to undergo regular COVID–19 testing and wear a face covering at work in lieu of vaccination. That ETS also serves as a ''proposed rule'' for a ''proceeding'' to promulgate an occupational safety or health standard. 29 U.S.C. 655(c)(3); see 29 U.S.C. 655(b).

On January 13, 2022, the U.S. Supreme Court stayed the Vaccination and Testing ETS, finding that challengers were likely to prevail on their claims. *Nat'l Fed'n of Indep. Bus.* v. *Dep't of Labor,* 595 U.S. __, __(2022) (per curium) (slip op. at 5, 9). After evaluating the Court's decision, OSHA is withdrawing the Vaccination and Testing ETS as an enforceable emergency temporary standard. To the extent that this withdrawal is not already generally exempt from the notice and comment requirements of the Administrative Procedure Act and the OSH Act, OSHA finds good cause that the opportunity for public comment on this withdrawal is impracticable, unnecessary, and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B), and 29 U.S.C. 655(b) because it would unnecessarily delay the resolution of ambiguity for employers and workers alike. This agency action becomes effective immediately both because there is good cause and because the action removes a requirement on the regulated community. 5 U.S.C. 553(d)(1), (3).

Although OSHA is withdrawing the Vaccination and Testing ETS as an enforceable emergency temporary standard, OSHA is not withdrawing the ETS to the extent that it serves as a proposed rule under section 6(c)(3) of the Act, and this action does not affect the ETS's status as a proposal under section 6(b) of the Act or otherwise

affect the status of the notice-and-comment rulemaking commenced by the Vaccination and Testing ETS. See 29 U.S.C. 655(c)(3).

Notwithstanding the withdrawal of the Vaccination and Testing ETS, OSHA continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID–19 in the workplace.

II. Minor Revisions to § 1910.504 and § 1910.509

OSHA has removed the reference to § 1910.501 from the introductory text of the Mini Respiratory Protection requirements in § 1910.504 because the former section is now removed. The Mini Respiratory Protection Program section is retained, however, because it remains a requirement for respirator use under § 1910.502(f)(4). Similarly, OSHA has revised the incorporation-by-reference list in § 1910.509 by removing the reference to § 1910.501(h) from § 1910.509(b)(5), as the incorporation by reference list now pertains only to documents incorporated by reference in § 1910.502.

Because these minor revisions do not make any substantive change to the duties of employers, OSHA finds good cause that the opportunity for public comment on these revisions is unnecessary within the meaning of 5 U.S.C. 553(b)(B) and 29 U.S.C. 655(b). In addition, OSHA finds that public comment is impracticable in light of the need to provide clarity to the regulated community and to workers.

III. State Plans

The occupational safety and health programs run by the 28 States and U.S. territories with their own OSHA-approved occupational safety and health plans (State Plans) must be at least as effective as Federal OSHA's program. This includes a requirement that, when Federal OSHA makes a program change that renders its program more effective, the State Plan must timely adopt a corresponding change in order to maintain a safety and health program that is at least as effective as Federal OSHA (29 CFR 1902.32(e); 29 CFR 1902.44(a)). However, where, as here, the Federal program change does not impose any new requirements or otherwise render the Federal program more effective, State Plans are not required to take any action.

List of Subjects in 29 CFR Part 1910

COVID–19, Disease, Health facilities, Health, Healthcare, Incorporation by reference, Occupational health and safety, Public health, Reporting and recordkeeping requirements, Respirators, SARS–CoV–2, Vaccines, Viruses.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document pursuant to the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8–2020 (85 FR 58393 (Sept. 18, 2020)); 29 CFR part 1911; and 5 U.S.C. 553.

Signed at Washington, DC, on January 21, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons set forth in the preamble, part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart U—COVID–19

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

Authority: 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 8–2020 (85 FR 58393); 29 CFR part 1911; and 5 U.S.C. 553.

§ 1910.501 [Removed and Reserved]

■ 2. Remove and reserve § 1910.501

■ 3. Amend § 1910.504 by revising paragraph (a) to read as follows:

§ 1910.504 Mini Respiratory Protection Program.

(a) *Scope and application.* This section applies only to respirator use in accordance with § 1910.502(f)(4).

* * * * *

■ 4. Amend § 1910.509 by revising paragraph (b)(5) to read as follows:

§ 1910.509 Incorporation by reference.

* * * * *

(b) * * *

(5) *Isolation Guidance.* COVID–19: Isolation If You Are Sick; Separate yourself from others if you have COVID–19, updated February 18, 2021, IBR approved for § 1910.502(l).

* * * * *

[FR Doc. 2022–01532 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0531; FRL–9289–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for 23 major volatile organic compound (VOC) and/or nitrogen oxide (NO_X) emitting facilities pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rule action, EPA is approving source-specific (also referred to as case-by-case or CbC) RACT determinations or alternative NO_X emissions limits for sources at 23 major NO_X and VOC emitting facilities within the Commonwealth submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on February 25, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0531. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2217. Mr. Burger can also be reached via electronic mail at *burger.riley@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 24, 2021, EPA published a notice of proposed rulemaking (NPRM). 86 FR 47270. In the NPRM, EPA proposed approval of case-by-case RACT determinations or alternative NO_X emissions limits for sources at 23 facilities, as EPA found that the RACT controls for these sources met the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. These case-by-case RACT determinations or alternative NO_X emissions limits for sources at these facilities were included in PADEP's May 7, 2020 SIP submission. As indicated in the NPRM, EPA views each facility as a separable SIP revision.

Under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of NO_X and VOC and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA based on the area's current classification(s). In Pennsylvania, sources located in any ozone nonattainment areas outside of moderate or above are subject to source thresholds of 50 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 184(b)(2).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_X RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_X and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_X and VOCs,* (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be implemented as RACT.[1] On September 26, 2017, PADEP submitted a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.[2] 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_X emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.,* by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_X emissions limits. This rulemaking is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_X emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the Pennsylvania RACT SIP revisions submitted by PADEP were case-by-case RACT determinations and alternative NO_X emissions limits for the existing emissions units at each of the major sources of NO_X and/or VOC that required a source-specific RACT determination or alternative NO_X emissions limits for major sources seeking such limits.

In PADEP's case-by-case RACT determinations, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emissions limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If more stringent, the RACT I requirements will continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements will supersede the prior RACT I requirements.[3]

In PADEP's RACT determinations involving NO_X averaging, an evaluation was completed to determine whether the aggregate NO_X emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_X emissions averaging plan using a 30-day rolling average are greater than the NO_X emissions that would be emitted by the group of included sources if each source complied with the applicable presumptive limitation in 25 Pa. Code 129.97 on a source-specific basis.

Here, EPA is approving SIP revisions pertaining to case-by-case RACT requirements and/or alternative NO_X emissions limits for sources at 23 major NO_X and/or VOC emitting facilities in Pennsylvania, as summarized in Table 1 in this document.

[1] The RACT I Rule was approved by EPA into the Pennsylvania SIP on March 23, 1998. 63 FR 13789. Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

[2] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). None of the sources in this final rule are subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

[3] While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

TABLE 1—TWENTY-THREE MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO_X and/or VOC)	RACT II permit (effective date)
AK Steel Corp (formerly Armco, Inc. Butler Operations Main Plant; Armco, Inc. Butler Operations Stainless Plant) (Butler).	Yes	NO_X and VOC	10–00001 (2/25/2020)
Allegheny and Tsingshan Stainless LLC, Midland Facility (formerly J & L Specialty Steel, Inc.—Midland Facility) (Beaver).	Yes	NO_X and VOC	04–00013 (2/24/2020)
Alumax Mill Products (Lancaster)	Yes	NO_X and VOC	36–05014 (9/9/2019)
American Craft Brewery LLC (Lehigh)	Yes	NO_X and VOC	39–00006F (10/23/2019)
American Refining Group Inc (formerly American Refining Group, Inc) (McKean).	Yes	NO_X and VOC	42–00004 (1/15/2020) and 42–004K (9/24/2019)
American Zinc Recycling Corp (formerly Horsehead Resource Development Company, Inc) (Carbon).	Yes	NO_X	13–00001 (3/25/2019)
Appvion Operations, Inc. (Blair)	Yes	NO_X and VOC	07–05001 (3/16/2020)
ArcelorMittal Steelton LLC (formerly Bethlehem Steel Corporation) (Dauphin).	Yes	NO_X and VOC	22–05012 (3/1/2020)
Carpenter Technology Corporation, Reading Plt (formerly Carpenter Technology Corporation—Reading Plant) (Berks).	Yes	NO_X and VOC	06–05007 (3/10/2020)
Chestnut Ridge Foam Inc (formerly Chestnut Ridge Foam, Inc.—Latrobe) (Westmoreland).	Yes	VOC	65–00181 (1/22/2020)
East Penn Manufacturing Company, Inc., Battery Assembly (Berks).	Yes	NO_X and VOC	06–05069 (5/21/2019)
General Carbide Corporation (formerly General Carbide Corp) (Westmoreland).	Yes	VOC	65–00622 (3/3/2020)
Lord Corp Saegertown (Crawford)	Yes	VOC	20–00194 (4/12/2021)
NLMK Pennsylvania LLC, Farrell Plt (formerly Caparo Steel Co.—Farrell) (Mercer).	Yes	NO_X and VOC	43–00310 (1/22/2020)
Omnova Solutions Inc.—Auburn Plant (formerly Gencorp, Inc) (Schuylkill).	Yes	VOC	54–00009 (6/26/2018)
Pixelle Specialty Solutions LLC—Spring Grove Mill (York)	Yes	NO_X and VOC	67–05004 (4/1/2020)
Sonneborn LLC (formerly Crompton Corporation, Fairview Township; Witco Corp—Petrolia Facility) (Butler).	Yes	NO_X and VOC	10–037I (9/17/2019)
Specialty Tires of America, Indiana Plant (formerly Specialty Tires of America, Inc) (Indiana).	Yes	VOC	32–00065 (1/16/2019)
Standard Steel LLC (formerly Standard Steel Division of Freedom Forge Corp) (Mifflin).	Yes	NO_X and VOC	44–05001 (8/16/2019)
Tennessee Gas Pipeline Co., Mercer Station 219 (formerly Tennessee Gas Pipeline Company, Station 219) (Mercer).	Yes	NO_X and VOC	43–00272 (1/2/2019)
Truck Accessories Group Milton Plant (formerly Truck Accessories Group East) (Northumberland).	Yes	VOC	49–00020 (1/14/2020)
United Refining Co (formerly United Refining Company) (Warren).	Yes	NO_X and VOC	62–00017 (2/6/2020)
Wheatland Tube Company (Mercer)	Yes	NO_X	43–00182 (3/26/2019)

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of new, additional, or revised emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. Similarly, PADEP's determinations of alternative NO_X emissions limits are included in RACT II permits. These RACT II permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 1 of this preamble, along with the permit effective date, and are part of the docket for this rule, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2021–0531.[4] EPA is incorporating by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT emissions limits and control measures and/or alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

[4] The RACT II permits included in the docket for this rule are redacted versions of the facilities' federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

B. EPA's Final Action

PADEP's SIP revisions incorporate its determinations of source-specific RACT II controls for individual emission units at major sources of NO_X and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation or where included in a NO_X emissions averaging plan. After thorough review and evaluation of the information provided by PADEP in its SIP revision submittals for sources at 23 major NO_X and/or VOC emitting facilities in Pennsylvania, EPA found that: (1) PADEP's case-by-case RACT

determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; (2) PADEP's determinations on alternative NO_X emissions limits demonstrate that emissions under the averaging plan are equivalent to emissions if the individual sources were operating in accordance with the applicable presumptive limit; and (3) PADEP's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

PADEP, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP-approved RACT I requirements would result in equivalent or additional reductions of NO_X and/or VOC emissions. The proposed revisions should not interfere with any applicable requirements concerning attainment of the NAAQS, reasonable further progress, or other applicable requirements under section 110(l) of the CAA.

Other specific requirements of the 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and alternative NO_X emissions limits and the rationale for EPA's proposed action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received one comment on the August 24, 2021 NPRM. 86 FR 47270. A summary of the comment and EPA's response are discussed in this section. A copy of the comment can be found in the docket for this rule action.

Comment 1: The commenter, on behalf of Sonneborn LLC, requests that EPA, as part of this rule action, remove the previously approved, RACT I NO_X emission limits for Boiler 7 (Source ID 034), Boiler 12 (Source ID 033), and Boiler 14 (Source ID 032) from the Pennsylvania SIP or confirm in writing that the RACT I NO_X emission limits for the three sources are deleted from the Pennsylvania SIP by operation of law. The commenter asserts that removing the RACT I NO_X emission limits for these three sources from the Pennsylvania SIP ''will avoid conflicting SIP (and permit) limits that apply to the same sources.'' The commenter asserts that the current NO_X emission limits for the three sources, which are complying with presumptive NO_X RACT II, are more stringent than the previously approved RACT I NO_X emission limits found in the Pennsylvania SIP.

Response 1: As identified by the commenter, the RACT I NO_X emission limits for Sonneborn's Boilers 7, 12, and 14 were incorporated into the Pennsylvania SIP in 2001.[5] The RACT I limits were contained in Plan Approval No. PA–10–037, effective June 27, 1995 (formerly Witco Corp, Petrolia Facility), which is part of the record for this docket. The RACT I emission limits were later modified in a subsequent SIP revision that was also incorporated into the SIP through Operating Permit No. OP–10–37, effective June 4, 2003 (formerly Crompton Corporation, Fairview Township). 69 FR 29444 (May 24, 2004).[6] The RACT I NO_X emission limits included in the SIP are as follows:

- Boiler 7: 0.180 lb/MMBtu when burning natural gas;[7] 0.40 lb/MMBtu when burning oil;[8] 53.1 tpy[9]
- Boiler 12:[10] 0.180 lb/MMBtu when burning natural gas; 0.40 lb/MMBtu when burning oil; 40.9 tpy
- Boiler 14:[11] 0.180 lb/MMBtu; 32.3 tpy

Under RACT II, PADEP established new presumptive RACT II limits for a variety of sources, which were approved by EPA and incorporated into the SIP on May 9, 2019. 84 FR 20274. Among the RACT II presumptive limits were those related to certain combustion sources. 25 Pa. Code 129.97(g). Sonneborn's Boilers 7, 12, and 14 are now subject to the limits in these presumptive standards. 25 Pa. Code 129.97(g)(1)(i)–(iii). The commenter is correct that the lb/MMBtu NO_X emission limits applicable to Boilers 7, 12, and 14 under the presumptive NO_X RACT II requirements are more stringent than the lb/MMBtu NO_X emission limits currently found in the Pennsylvania SIP for these three sources, which were established under RACT I. The presumptive NO_X RACT II limits are as follows:

- *Boiler 7:* 0.10 lb/MMBtu when burning natural gas; 0.12 lb/MMBtu when burning distillate oil,
- *Boiler 12:* 0.10 lb/MMBtu when burning natural gas; 0.20 lb/MMBtu when burning residual oil, and
- *Boiler 14:* 0.10 lb/MMBtu.[12]

However, the RACT I NO_X emission limits for these boilers, which are part of the SIP, also include annual (tpy) limits—(53.1 tpy—Boiler 7, 40.9 tpy—Boiler 12, and 32.3 tpy—Boiler 14).[13] The new presumptive NO_X RACT II requirements do not include any annual limits. They only establish lb/MMBtu emission limits for NO_X. The commenter has not explained how the new presumptive RACT II limits are more stringent than these SIP-approved annual limits.

EPA disagrees with the commenter's request that the NO_X emission limits (either the lb/MMBtu or the annual limits) for Boilers 7, 12, and 14 established under RACT I should be removed from the SIP or deleted from the SIP by operation of law. EPA can only approve or disapprove what has been formally submitted by a state. As the court recognized in *Concerned Citizens of Bridesburg,* a state has the primary control over the terms to be included in its SIP and EPA's authority to reject a SIP submittal is limited. *Concerned Citizens of Bridesburg* v. *EPA,* 836 F. 2d 777 (3rd Cir. 1987). EPA must approve a SIP revision if it meets the general requirements of CAA section 7410(a)(2). *Id.* The SIP revision for Sonneborn submitted by PADEP to EPA on May 7, 2020 primarily seeks to add case-by-case RACT II requirements for three sources at the facility (not Boilers 7, 12, and 14). In response to an EPA comment during the state public comment period questioning the status of the facility's RACT I limits, PADEP specifically stated that the ''RACT I requirements will remain in effect and will remain in the facility's operating permit. No requirement removed is proposed. The most stringent requirements are always enforced whenever any redundancy occurs.''[14]

[5] In the comment, the commenter states that the RACT I emission limits for the three boilers in question were incorporated into the SIP on August 21, 2001. 66 FR 43779, 43782. In order to clarify the record, EPA notes that the August 21, 2001 rulemaking referenced by the commenter was a direct final rule. When EPA received public comments on the rule, EPA withdrew the direct final rule and acted pursuant to a related proposed rulemaking that was noticed at the same time as the direct final rule. 66 FR 43822 (August 21, 2001). Subsequently, on October 17, 2001, EPA responded to the public comments and finalized its approval of the emission limits for the three boilers, which at that time were part of the Witco Corp, Petrolia Facility, a former owner of the Sonneborn facility. 66 FR 52705.

[6] Permit OP–10–37, effective June 4, 2003, can be viewed at *https://www.epa.gov/sips-pa/pennsylvania-sip-source-specific-requirement-crompton-corporation-fairview-township.*

[7] OP–10–37, effective June 4, 2003, Condition 3 and PA–10–037, effective June 27, 1995, Condition 6.

[8] OP–10–37, effective June 4, 2003, Condition 3.

[9] PA–10–037, effective June 27, 1995, Condition 6.

[10] *Id.*

[11] *Id.*

[12] 25 Pa. Code 129.97(g)(1)(i)–(iii).

[13] See Plan Approval 10–037I, which is part of the record for this docket.

[14] See PADEP Memo, ''10–037H, Plan Approval Draft, Comments of RACT Proposal, dated 06/28/

The choice of what to propose for inclusion in the Pennsylvania SIP is under the control of PADEP. EPA can only act upon what has been formally submitted to it by the state. In this circumstance, PADEP's SIP revision for Sonneborn included new case-by-case RACT II determinations for several sources for incorporation into the Pennsylvania SIP with an explicit statement that all RACT I requirements would be retained. PADEP's SIP submittal for the facility is consistent with Pennsylvania's RACT program and the CAA and is approvable. Therefore, EPA will finalize its approval of the SIP revision for Sonneborn as proposed.

Should PADEP wish to address the commenter's concerns over the continued inclusion of RACT I requirements for Sonneborn in the SIP, PADEP would need to submit to EPA another SIP revision in the future, proposing to remove the prior, less stringent RACT I NO_X emission limits for Boilers 7, 12, and 14 from the Pennsylvania SIP. If PADEP does submit such a SIP revision in the future, it would be subject to an evaluation under CAA section 110(l), which prohibits EPA from approving any SIP revisions that would interfere with applicable requirements concerning attainment, reasonable further progress, or other CAA requirements.

IV. Final Action

EPA is approving case-by-case RACT determinations and/or alternative NO_X emissions limits for 23 sources in Pennsylvania, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations and alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of VOC and NO_X in Pennsylvania. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[15]

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Pennsylvania's NO_X and VOC RACT requirements for 23 facilities for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

2018, Sonneborn, LLC—Petrolia Facility, Petrolia Borough/Fairfield Township, Butler County,'' dated July 25, 2018, which is part of the record for this docket.

[15] 62 FR 27968 (May 22, 1997).

Dated: December 8, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons set out in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entries ''Caparo Steel Co.—Farrell''; ''Carpenter Technology Corp.—Reading Plant''; ''Chestnut Ridge Foam, Inc.—Latrobe''; ''J & L Specialty Steel, Inc.—Midland Facility''; ''Witco Corp.—Petrolia Facility''; ''Armco, Inc. Butler Operations Main Plant''; ''Armco, Inc. Butler Operations Stainless Plant''; ''General Carbide Corp''; ''Bethlehem Steel Corporation''; ''Horsehead Resource Development Company, Inc''; ''Crompton Corporation, Fairview Township''; ''Tennessee Gas Pipeline Company, Station 219''; ''Specialty Tires of America, Inc''; ''Truck Accessories Group East''; ''Standard Steel Division of Freedom Forge Corp''; ''United Refining Company'' (Permit No. OP–62–017); ''Wheatland Tube Company''; ''American Refining Group, Inc''; and ''Gencorp, Inc'';

■ b. Adding entries at the end of the table for ''AK Steel Corp (formerly referenced as Armco, Inc. Butler Operations Main Plant; Armco, Inc. Butler Operations Stainless Plant)''; ''Allegheny and Tsingshan Stainless LLC, Midland Facility (formerly referenced as J & L Specialty Steel, Inc.—Midland Facility)''; ''Alumax Mill Products''; ''American Craft Brewery LLC''; ''American Refining Group Inc (formerly referenced as American Refining Group, Inc)''; ''American Zinc Recycling Corp (formerly referenced as Horsehead Resource Development Company, Inc)''; ''Appvion Operations, Inc.''; ''ArcelorMittal Steelton LLC (formerly referenced as Bethlehem Steel Corporation)''; ''Carpenter Technology Corporation, Reading Plt (formerly referenced as Carpenter Technology Corporation—Reading Plant)''; ''Chestnut Ridge Foam Inc (formerly referenced as Chestnut Ridge Foam, Inc.—Latrobe)''; ''East Penn Manufacturing Company, Inc., Battery Assembly''; ''General Carbide Corporation (formerly referenced as General Carbide Corp)''; ''Lord Corp Saegertown''; ''NLMK Pennsylvania LLC, Farrell Plt (formerly referenced as Caparo Steel Co.—Farrell)''; ''Omnova Solutions Inc.—Auburn Plant (formerly referenced as Gencorp, Inc)''; ''Pixelle Specialty Solutions LLC—Spring Grove Mill''; ''Sonneborn LLC (formerly referenced as Crompton Corporation, Fairview Township; Witco Corp—Petrolia Facility)''; ''Specialty Tires of America, Indiana Plant (formerly referenced as Specialty Tires of America, Inc)''; ''Standard Steel LLC (formerly referenced as Standard Steel Division of Freedom Forge Corp)''; ''Tennessee Gas Pipeline Co., Mercer Station 219 (formerly referenced as Tennessee Gas Pipeline Company, Station 219)''; ''Truck Accessories Group Milton Plant (formerly referenced as Truck Accessories Group East)''; and ''United Refining Co (formerly referenced as United Refining Company)''; and

■ c. Adding an additional entry at the end of the table for ''Wheatland Tube Company''.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Caparo Steel Co.—Farrell	OP–43–285	Mercer	11/3/95	12/20/96, 61 FR 67229	See also 52.2064(i)(14); 52.2037(g).
*	*	*	*	*	*
Carpenter Technology Corp.—Reading Plant.	OP–06–1007	Berks	9/27/96	4/18/97, 62 FR 19049	See also 52.2064(i)(9).
*	*	*	*	*	*
Chestnut Ridge Foam, Inc.—Latrobe.	(OP)65–000–181	Westmoreland	12/29/95	10/17/01, 66 FR 52695	See also 52.2064(i)(10).
*	*	*	*	*	*
J & L Specialty Steel, Inc.—Midland Facility.	(OP)04–000–013	Beaver	3/23/01	10/16/01, 66 FR 52511	See also 52.2064(i)(2).
*	*	*	*	*	*
Witco Corp.—Petrolia Facility	PA–10–037	Butler	6/27/95	10/17/01, 66 FR 52705	See also 52.2064(i)(17).
*	*	*	*	*	*
Armco, Inc. Butler Operations Main Plant.	PA–10–001M	Butler	2/23/96	10/15/01, 66 FR 52338	See also 52.2064(i)(1).
Armco, Inc. Butler Operations Stainless Plant.	PA–10–001S	Butler	2/23/96	10/15/01, 66 FR 52338	See also 52.2064(i)(1).
*	*	*	*	*	*
General Carbide Corp	(OP)65–000–622	Westmoreland	12/29/95	10/17/01, 66 FR 52700	See also 52.2064(i)(12).
*	*	*	*	*	*
Bethlehem Steel Corporation	OP–22–02012	Dauphin	4/9/99	5/23/02, 67 FR 36108	See also 52.2064(i)(8).
*	*	*	*	*	*
Horsehead Resource Development Company, Inc.	OP–13–0001	Carbon	5/16/95	4/1/03, 68 FR 15661	See also 52.2064(i)(6).

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Crompton Corporation, Fairview Township.	OP–10–037	Butler	6/4/03	5/25/04, 69 FR 29444	See also 52.2064(i)(17).
*	*	*	*	*	*
Tennessee Gas Pipeline Company, Station 219.	OP–43–0272	Mercer	4/7/99	10/27/04, 69 FR 62585	See also 52.2064(i)(20).
*	*	*	*	*	*
Specialty Tires of America, Inc	32–000–065	Indiana	1/6/00	3/29/05, 70 FR 15774	See also 52.2064(i)(18).
Truck Accessories Group East	OP–49–0005	Northumberland	3/26/99	3/29/05, 70 FR 15774	See also 52.2064(i)(21).
*	*	*	*	*	*
Standard Steel Division of Freedom Forge Corp.	44–2001	Mifflin	5/31/95	3/30/05, 70 FR 16118	See also 52.2064(i)(19).
*	*	*	*	*	*
United Refining Company	OP–62–017	Warren	5/31/95, 11/14/96	3/31/05, 70 FR 16423	See also 52.2064(i)(22).
*	*	*	*	*	*
Wheatland Tube Company	OP–43–182	Mercer	7/26/95	8/24/05, 70 FR 49496	See also 52.2064(i)(23).
*	*	*	*	*	*
American Refining Group, Inc	OP–42–004	McKean	11/23/98	6/14/06, 71 FR 34259	See also 52.2064(i)(5).
*	*	*	*	*	*
Gencorp, Inc	54–0009	Schuylkill	5/31/96	6/14/06, 71 FR 34259	See also 52.2064(i)(15).
*	*	*	*	*	*
AK Steel Corp (formerly referenced as Armco, Inc. Butler Operations Main Plant; Armco, Inc. Butler Operations Stainless Plant).	10–00001	Butler	2/25/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(1).
Allegheny and Tsingshan Stainless LLC, Midland Facility (formerly referenced as J & L Specialty Steel, Inc.—Midland Facility).	04–00013	Beaver	2/24/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(2).
Alumax Mill Products	36–05014	Lancaster	9/9/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(3).
American Craft Brewery LLC	39–00006F	Lehigh	10/23/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(4).
American Refining Group Inc (formerly referenced as American Refining Group, Inc).	42–00004, 42–004K	McKean	1/15/20, 9/24/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(5).
American Zinc Recycling Corp (formerly referenced as Horsehead Resource Development Company, Inc).	13–00001	Carbon	3/25/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(6).
Appvion Operations, Inc.	07–05001	Blair	3/16/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(7).
ArcelorMittal Steelton LLC (formerly referenced as Bethlehem Steel Corporation).	22–05012	Dauphin	3/1/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(8).
Carpenter Technology Corporation, Reading Plt (formerly referenced as Carpenter Technology Corporation—Reading Plant).	06–05007	Berks	3/10/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(9).
Chestnut Ridge Foam Inc (formerly referenced as Chestnut Ridge Foam, Inc.—Latrobe).	65–00181	Westmoreland	1/22/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(10).
East Penn Manufacturing Company, Inc., Battery Assembly.	06–05069	Berks	5/21/2019	1/26/22, [insert **Federal Register** citation].	52.2064(i)(11).
General Carbide Corporation (formerly referenced as General Carbide Corp).	65–00622	Westmoreland	3/3/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(12).
Lord Corp Saegertown	20–00194	Crawford	4/12/21	1/26/22, [insert **Federal Register** citation].	52.2064(i)(13).
NLMK Pennsylvania LLC, Farrell Plt (formerly referenced as Caparo Steel Co.—Farrell).	43–00310	Mercer	1/22/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(14).
Omnova Solutions Inc.—Auburn Plant (formerly referenced as Gencorp, Inc).	54–00009	Schuylkill	6/26/18	1/26/22, [insert **Federal Register** citation].	52.2064(i)(15).
Pixelle Specialty Solutions LLC—Spring Grove Mill.	67–05004	York	4/1/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(16).
Sonneborn LLC (formerly referenced as Crompton Corporation, Fairview Township; Witco Corp—Petrolia Facility).	10–037I	Butler	9/17/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(17).
Specialty Tires of America, Indiana Plant (formerly referenced as Specialty Tires of America, Inc).	32–00065	Indiana	1/16/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(18).

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
Standard Steel LLC (formerly referenced as Standard Steel Division of Freedom Forge Corp).	44–05001	Mifflin	8/16/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(19).
Tennessee Gas Pipeline Co., Mercer Station 219 (formerly referenced as Tennessee Gas Pipeline Company, Station 219).	43–00272	Mercer	1/2/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(20).
Truck Accessories Group Milton Plant (formerly referenced as Truck Accessories Group East).	49–00020	Northumberland	1/14/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(21).
United Refining Co (formerly referenced as United Refining Company).	62–00017	Warren	2/6/20	1/26/22, [insert **Federal Register** citation].	52.2064(i)(22).
Wheatland Tube Company	43–00182	Mercer	3/26/19	1/26/22, [insert **Federal Register** citation].	52.2064(i)(23).

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (i) to read as follows:

§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(i) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for the facilities listed in this paragraph (i) are incorporated as specified. (Rulemaking Docket No. EPA–OAR–2021–0531.)

(1) AK Steel Corp—Incorporating by reference Permit No. 10–00001, effective February 25, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Plan Approvals Nos. PA–10–001M and PA–10–001S, effective February 23, 1996, except for Conditions #4 (annual stack testing requirement for the #3 Baghouse only), #10, and #15 (as it relates to Boiler #10 only) in Plan Approval No. PA–10–001M. See also § 52.2063(c)(175)(i)(B) and (C), for prior RACT approvals.

(2) Allegheny and Tsingshan Stainless LLC, Midland Facility—Incorporating by reference Permit No. 04–00013, effective February 24, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP–04–000–013, effective March 23, 2001. See also § 52.2063(c)(172)(i)(B)(*10*), for prior RACT approval.

(3) Alumax Mill Products—Incorporating by reference Permit No. 36–05014, effective September 9, 2019, as redacted by Pennsylvania.

(4) American Craft Brewery LLC—Incorporating by reference Permit No. 39–00006F, effective October 23, 2019, as redacted by Pennsylvania.

(5) American Refining Group Inc—Incorporating by reference Permit No. 42–00004, effective January 15, 2020, and Plan Approval No. 42–004K, effective September 24, 2019, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP–42–004, effective November 23, 1998, remain as RACT requirements. See also § 52.2020(d)(1), for prior RACT approval.

(6) American Zinc Recycling Corp—Incorporating by reference Permit No. 13–00001, effective March 25, 2019, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP–13–00001, effective May 16, 1995. See also § 52.2063(c)(196)(i)(B)(*3*), for prior RACT approval.

(7) Appvion Operations, Inc.—Incorporating by reference Permit No. 07–05001, effective March 16, 2020, as redacted by Pennsylvania.

(8) ArcelorMittal Steelton LLC—Incorporating by reference Permit No. 22–05012, effective March 1, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. 22–02012, effective April 9, 1999, remain as RACT requirements except for Conditions 9–15 and for Condition 20 as it relates to Boilers #2 and #5, Soaking Pit Batteries #1–#3, and the 20'' Mill Reheat Furnace. See also § 52.2063(c)(191), for prior RACT approval.

(9) Carpenter Technology Corporation, Reading Plt—Incorporating by reference Permit No. 06–05007, revised March 10, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 06–1007, issued September 27, 1996, except as modified by Section E, Source Group 23 Condition No. 001 in Permit No. 06–05007, referenced above, which remains as a RACT requirement.

(10) Chestnut Ridge Foam Inc—Incorporating by reference Permit No. 65–00181, effective January 22, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP–65–000–181, effective December 29, 1995, except for Condition 8, which remains a RACT requirement. See also § 52.2063(c)(170)(i)(B)(*4*), for prior RACT approval.

(11) East Penn Manufacturing Company, Inc.—Incorporating by reference Permit No. 06–05069, revised May 21, 2019, as redacted by Pennsylvania.

(12) General Carbide Corporation—Incorporating by reference Permit No. 65–00622, effective March 3, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP–65–000–622, effective December 29, 1995, remain as RACT requirements. See also § 52.2063(c)(178)(i)(B)(*6*), for prior RACT approval.

(13) Lord Corp Saegertown—Incorporating by reference Permit No. 20–00194, effective April 12, 2021, as redacted by Pennsylvania.

(14) NLMK Pennsylvania LLC, Farrell Plt—Incorporating by reference Permit No. 43–00310, issued January 22, 2020 as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 43–285, effective November 3, 1995. See also § 52.2063(c)(113)(i)(B)(*1*), for prior RACT approval.

(15) Omnova Solutions Inc.—Auburn Plant—Incorporating by reference Permit No. 54–00009, issued June 26, 2018, as redacted by PADEP. All permit conditions in the prior RACT Permit No. 54–0009, issued June 12, 1996, are superseded except for Condition No. 5(c) for the Hot Oil Furnace and Pump House Heater, which remains as a RACT requirement. See also § 52.2020(d)(1), for prior RACT approval.

(16) Pixelle Specialty Solutions LLC—Spring Grove Mill—Incorporating by reference Permit No. 67–05004, effective April 1, 2020, as redacted by PADEP.

(17) Sonneborn LLC—Incorporating by reference Permit No. 10–037I, effective September 17, 2019, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit Nos. OP–10–037, effective June 4, 2003, and PA–10–037, effective June 27, 1995,

remain as RACT requirements. See also § 52.2063(c)(213)(i)(B)(*2*) and (c)(173)(i)(B)(*2*), for prior RACT approvals.

(18) Specialty Tires of America, Indiana Plant—Incorporating by reference Permit No. 32–00065, effective January 16, 2019, as redacted by Pennsylvania, which supersedes Permit No. 32–000–065, effective January 1, 2000 except for short term VOC limits for Source 103 and short and annual limits for Sources 101, 102, and 104 in Condition 5, which remain as RACT. See also § 52.2020(d)(1), for prior RACT approval.

(19) Standard Steel LLC—Incorporating by reference Permit No. 44–05001, effective August 16, 2019, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 44–2001, effective May 31, 1995, except for Conditions 4, 5 (as it applies to the three continuous conveyors Nos. AFM 8138, AFM 8139, and AFM 8139 [Source IDs 201, 201B, and 201C] only), 6, 7, 9, 10, 11, 12, 13, 14, 16 (as it applies to 7465 150 HP Boiler 7466 500 HP Boiler, and 7467 300 HP Boiler [Source IDs 032, 037, and 038] only). See also § 52.2020(d)(1), for prior RACT approval.

(20) Tennessee Gas Pipeline Co., Mercer Station 219—Incorporating by reference Permit No. 43–00272, effective January 2, 2019, as redacted by Pennsylvania. Previously incorporated Permit No. 43–0272, effective April 7, 1999, remains as RACT, except for Condition 3 requirements for retarding ignition timing of the six 1100 bhp Cooper-Bessemer GMV–10TF engines (Sources 131, 132, 133, 134, 135, and 136) and five 1350 bhp Cooper-Bessemer GMV10 engines (Sources 139, 140, 141, 142, and 143) and Condition 5 pound per hour limits for the six 1100 bhp Cooper-Bessemer GMV–10TF engines (Sources 131, 132, 133, 134, 135, and 136), two 1350 bhp Cooper-Bessemer GMV 10TFS engines (Sources 137 and 138), and five 1350 bhp Cooper-Bessemer GMV10 engines (Sources 139, 140, 141, 142, and 143), which are superseded. See also § 52.2063(c)(218)(i)(B)(*2*), for prior RACT approval.

(21) Truck Accessories Group Milton Plant—Incorporating by reference Permit No. 49–00020, effective January 14, 2020, as redacted by Pennsylvania, in addition to the prior RACT Permit No. 54–0041, Permit No. OP–49–0005, effective March 26, 1999, which also remains as RACT. See also § 52.2020(d)(1), for prior RACT approval.

(22) United Refining Co—Incorporating by reference Permit No. 62–00017, effective February 6, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP–62–017, effective November 14, 1996, remain as RACT requirements. See also § 52.2020(d)(1), for prior RACT approval.

(23) Wheatland Tube Company—Incorporating by reference Permit No. 43–00182, issued June 9, 2015, revised and effective March 26, 2019, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. 43–182, issued July 26, 1995, remain as RACT requirements. See also § 52.2020(d)(1), for prior RACT approval.

[FR Doc. 2021–27233 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0054; FRL–9352–01–OCSPP]

Thiabendazole; Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of August 30, 2021, establishing tolerances for residues of thiabendazole in or on multiple commodities requested by the Interregional Research Project Number 4 (IR–4) under the Federal Food, Drug, and Cosmetic Act (FFDCA). That document inadvertently instructed the **Federal Register** to remove four tolerances that should have been revised and to delete two footnotes concerning other tolerances. This document corrects the final regulation. As a housekeeping measure, it also removes two tolerances that expired in 2017.

DATES: This correction is effective January 26, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0054, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the August 30, 2021 final rule a list of those who may be potentially affected by this action.

II. What do these corrections do?

EPA issued a final rule in the **Federal Register** of August 30, 2021 (86 FR 48308) (FRL–8750–02–OCSPP) that established tolerances for residues of thiabendazole in or on multiple commodities and removed some tolerances in response to a petition filed by IR–4. EPA inadvertently directed the **Federal Register** to remove entries to the table in paragraph (a)(1) of 40 CFR 180.242 for ''Alfalfa, forage''; ''Alfalfa, hay''; ''*Brassica,* head and stem, subgroup 5A''; and ''Vegetable, root (except sugarbeet), subgroup 1B''. The instructions should have directed the **Federal Register** to revise the entries for ''Alfalfa, forage''; ''Alfalfa, hay''; ''*Brassica,* head and stem, subgroup 5A''; and ''Vegetable, root (except sugarbeet), subgroup 1B'' by adding a new footnote to the table indicating that these tolerances expire on February 28, 2022, which is six months after the August 30, 2021 final rule published. Maintaining these tolerances for six months is necessary to comply with the World Trade Organization's Sanitary and Phytosanitary Measures Agreement, as explained in the August 30, 2021 final rule (see 86 FR 48313). In addition, EPA inadvertently directed the **Federal Register** to revise footnote 1 and delete footnote 2 to the table in paragraph (a)(1) of 40 CFR 180.242. The instructions should have directed the **Federal Register** to add a new footnote indicating that the tolerances for ''Alfalfa, forage''; ''Alfalfa, hay''; ''*Brassica,* head and stem, subgroup

5A''; and ''Vegetable, root (except sugarbeet), subgroup 1B'' expire on February 28, 2022.

As a housekeeping measure, EPA is also directing the **Federal Register** to remove entries to the table in paragraph (a)(1) of 40 CFR 180.242 for ''Bean, dry, seed'' and ''Soybean'' in this correction document, because these tolerances expired on March 21, 2017. Footnote 2 to the table in paragraph (a)(1) of 40 CFR 180.242 indicating that these tolerances expired on March 21, 2017 was already removed in the August 30, 2021 final rule, as described above.

EPA's instructions in the August 30, 2021 final rule regarding tolerances for ''Alfalfa, forage''; ''Alfalfa, hay''; ''*Brassica,* head and stem, subgroup 5A''; and ''Vegetable, root (except sugarbeet), subgroup 1B'' and footnote 1 to the table in 40 CFR 180.242(a)(1) were not consistent with its authority under FFDCA section 408(d)(4)(A) or with the preamble of the August 30, 2021 final rule. Therefore, EPA is rescinding those instructions and reinstating and revising the entries for ''Alfalfa, forage''; ''Alfalfa, hay''; ''*Brassica,* head and stem, subgroup 5A''; and ''Vegetable, root (except sugarbeet), subgroup 1B'' in the table in paragraph (a)(1) of 40 CFR 180.242. Additionally, EPA is reinstating footnote 1 and adding a new footnote 2 to the table in paragraph (a)(1) of 40 CFR 180.242. The new footnote 2 indicates that the four tolerances expire six months from publication of today's notice rather than on February 28, 2022 to make sure the phased tolerance change is clear and transparent.

III. Why are these corrections issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making these corrections final without prior proposal and opportunity for comment, because EPA inadvertently instructed the **Federal Register** to remove four tolerances that should have been revised and to delete two footnotes concerning other tolerances, as described above. Additionally, EPA has determined that removing the tolerances that expired in 2017 is a housekeeping measure that has no substantive effect. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order review apply to this action?

No. For a detailed discussion concerning the statutory and executive order review refer to Unit VI. of the August 30, 2021 final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA 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 prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 20, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is correcting 40 CFR part 180 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 § 180.242, amend Table 1 to Paragraph (a)(1) by:

■ i. Adding alphabetically the entries ''Alfalfa, forage [2]''and ''Alfalfa, hay [2]'';

■ ii. Removing the entry for ''Bean, dry, seed [2]'';

■ iii. Adding alphabetically the entry ''*Brassica,* head and stem, subgroup 5A [2]'';

■ iv. Removing the entry for ''Soybean [2]'';

■ v. Adding alphabetically, after the existing entry ''Vegetable, root, except sugar beet, subgroup 1B'', an entry for ''Vegetable, root (except sugarbeet), subgroup 1B [2]''; and

■ vi. Revising footnote 1 and adding footnote 2.

The additions read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Alfalfa, forage [2]	0.02
Alfalfa, hay [2]	0.02
* * * * *	
Brassica, head and stem, subgroup 5A [2]	0.02
* * * * *	
Vegetable, root (except sugar beet), subgroup 1B [2]	0.02
* * * * *	

[1] There are no U.S. registrations on the indicated commodity.

[2] This tolerance expires on July 26, 2022.

* * * * *

[FR Doc. 2022–01487 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB743]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2022 Pacific cod total allowable catch (TAC) allocated to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI.

DATES: This inseason action became applicable at 1200 hours, Alaska local time (A.l.t.), January 23, 2022, and remains in effect through 1200 hours, A.l.t., September 1, 2022.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea

and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2022 Pacific cod TAC allocated to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI is 5,720 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021) and inseason adjustment (86 FR 74389, December 30, 2021).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2022 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 20, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: January 21, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–01530 Filed 1–21–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 17
Wednesday, January 26, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Mutual Fund Window

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) will make a mutual fund window available to participants in the Thrift Savings Plan (TSP), beginning in the summer of 2022. The FRTIB is proposing a fee designed to guarantee that the availability of the mutual fund window will not indirectly increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window. The FRTIB is also proposing rules and procedures to govern fund transfers to and from the mutual fund window.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Dharmesh Vashee, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

Comments will be made available to the public online at *https://www.regulations.gov.* Do not include any personally identifiable or confidential information that you do not want publicly disclosed. Anonymous comments are acceptable.

FOR FURTHER INFORMATION CONTACT: *For press inquiries,* contact Kim Weaver at (202) 465–5220. *For information about how to comment on this proposed rule,* contact Laurissa Stokes at (202) 308–7707.

SUPPLEMENTARY INFORMATION: The FRTIB administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99 335, 100 Stat. 514. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79.

FERSA requires the TSP to offer the following individual investment funds to TSP participants: (1) A Government Securities Investment Fund (G Fund); (2) a Fixed Income Investment Fund (F Fund); (3) a Common Stock Index Investment Fund (C Fund); (4) a Small Cap Stock Index Investment Fund (S Fund); and (5) an International Stock Index Investment Fund (I Fund). 5 U.S.C. 8438(b)(1)(A)–(E). In addition to these five individual funds, the TSP is statutorily required to offer Lifecycle (L) Funds which are target retirement date portfolios comprised of varying proportions of the five individual funds. 5 U.S.C. 8438(c)(2). These statutorily mandated investment options are referred to as the TSP core funds. The FRTIB does not have discretionary authority to add or remove funds from its menu of core funds.

I. Background

What is a mutual fund?

A mutual fund is a company that pools money from many investors and invests the pooled money in other investments such as stocks, bonds, and short-term debt instruments. Investors buy shares in mutual funds. Each share represents an investor's part ownership in the fund and the income it generates. Investors buy mutual fund shares from the mutual fund itself rather than from other investors. Mutual funds are governed primarily by the Securities Act of 1933, the Securities and Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisors Act of 1940.

What is a mutual fund window?

A mutual fund window is a type of self-directed brokerage account that gives individuals the ability to buy shares of mutual funds through a broker-dealer that has been selected by their retirement plan or by one of their retirement plan's service providers. Unlike a plan's core funds, the investments available through a brokerage account are not ordinarily vetted by a plan fiduciary to determine whether they are prudent investments.

Authority To Offer a Mutual Fund Window

For many years, TSP participants have voiced a desire to have more investment options. A *2008 TSP Participant Survey* indicated that 39% of participants believed that the addition of a mutual fund window would improve the TSP.[1] In 2009, Congress passed legislation that authorizes, but does not require, the FRTIB to offer a mutual fund window to TSP participants. *Thrift Savings Plan Enhancement Act of 2009,* Public Law 111–31, Division B, Title I, sec. 104 (codified at 5 U.S.C. 8438(b)(5)(A)). Congress authorized a mutual fund window instead of adding more funds to the TSP's statutorily mandated menu of core funds.

Decision To Offer a Mutual Fund Window

In the same year that Congress authorized the FRTIB to offer a mutual fund window, the FRTIB's Executive Director initiated discussions with the FRTIB Board members and the Employee Thrift Advisory Council (ETAC) about adding a mutual fund window to the TSP.[2] In the April 2009 FRTIB Board meeting, the four Board members in attendance deadlocked on the decision to adopt a resolution in support of the mutual fund window by a vote of two-to-two.[3]

To inform future discussions, the FRTIB assembled a cross-functional team of subject matter experts from its operations, legal, investment, finance, communications, research, and technology offices who spent the next several years studying industry

[1] Subsequent surveys have consistently reaffirmed these survey results.

[2] ETAC is comprised of representatives from Federal and Postal unions and management associations, as well as a representative from the Department of Defense on behalf of uniformed service members. ETAC provides advice on matters relating to TSP investment policies and plan administration.

[3] *See* April 2009 FRTIB Board Meeting Minutes, available at *https://www.frtib.gov/MeetingMinutes/2009/2009Apr.pdf.* Links to attachments accompanying the minutes are embedded in the PDF of the minutes.

practices, participant preferences, costs, and operational considerations associated with adding a mutual fund window to the TSP. Their research was presented to the FRTIB Board members and ETAC during public meetings in May 2014, November 2014, and July 2015.[4]

In July 2015, the FRTIB Board members voted unanimously in support of adding a mutual fund window to the TSP. The FRTIB Executive Director committed to including a mutual fund window in the scope of services sought the next time the FRTIB recompeted its major service provider contract(s). In August 2019, the FRTIB announced the release of a request for proposals for various recordkeeping services, the scope of which included a mutual fund window. The contract was awarded in November 2020. The FRTIB is currently undergoing an 18–24 month transition to its new recordkeeping service provider.

II. Need for Regulation Amendments

Fees and Expenses

FERSA requires the Executive Director to publish regulations that ''shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of net earnings under section 8437(d) of this title, as determined by the Executive Director.'' 5 U.S.C. 8439(a)(3). In addition, the Thrift Savings Plan Enhancement Act of 2009 added a provision to FERSA that requires the FRTIB to ''ensure that any expenses charged for the use of the mutual fund window are borne solely by the participants who use such window.'' 5 U.S.C. 8438(b)(5)(B). This proposed rule aims to fulfill these two Congressional directives.

Participants who choose to invest through the mutual fund window will incur fees and expenses that do not apply to participants who invest only in the TSP core funds. These fees and expenses fall into four general categories: (1) An annual maintenance fee of $95, (2) a per trade fee of $28.75, (3) fees and expenses imposed by the specific mutual fund(s) in which the participant chooses to invest, and (4) a fee designed to guarantee that the availability of the mutual fund window will not indirectly increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window. The scope of this proposed rule includes only the latter category of fees and expenses.

Investment Elections and Fund Transfers

FERSA requires the FRTIB Executive Director to publish regulations governing investment elections and fund transfers. 5 U.S.C. 8438(d). Accordingly, the FRTIB is proposing to amend its regulations to include rules and procedures for transferring funds to and from the mutual fund window.

III. Proposed Regulation Amendments

Administrative Expenses

Currently, all TSP participants bear a pro rata share of the TSP's administrative expenses. The TSP's administrative expenses are reflected as a reduction in the unit prices of the TSP core funds. When participants begin moving assets from the TSP core funds to mutual funds, this method of allocating TSP administrative expenses will no longer be sufficient to ensure that all participants bear a pro rata share of the TSP's administrative expenses. The TSP has no control over the share prices of the mutual funds. Thus, this method cannot be used to allocate the appropriate share of TSP administrative expenses to assets invested through the mutual fund window. Failure to collect the appropriate share of TSP administrative expenses from assets invested through the mutual fund window would increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window.

Therefore, the FRTIB is proposing to collect an annual fee of $55 from mutual fund window users to guarantee that the availability of the mutual fund window does not indirectly increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window. The amount of the proposed fee was derived by multiplying an assumed average mutual fund window account balance of approximately $120,000 by an assumed TSP administrative expense ratio of 4.59 basis points. The FRTIB proposes to redetermine the annual fee every three years using the actual average mutual fund window account balance and expense ratio, as of the date of redetermination.

Minimum and Maximum Fund Transfers

The mutual fund window will allow access to funds that are not as diversified as the TSP core funds and therefore may expose participants to greater market risk. The mutual fund window is intended for TSP participants who are experienced investors. It is not suitable for all TSP participants. While there may be legitimate reasons for a participant to invest in undiversified funds, such needs can be met through limited portfolio allocations. Because of the increased risk associated with the breadth of options offered through the mutual fund window, the FRTIB is proposing several restrictions on transfers and allocations between the TSP core funds and the mutual fund window.

First, the TSP is proposing to require an initial fund transfer of at least $10,000 to the mutual fund window. Second, this initial investment may not cause the portion of the participant's TSP balance that is invested through the mutual fund window to exceed 25 percent of the participant's total TSP balance. These two restrictions, taken together, would require a participant to have a minimum TSP balance of $40,000 before becoming eligible to invest through the mutual fund window. Third, subsequent transfers to the mutual fund window would be limited to amounts that do not cause the portion of the participant's TSP balance that is invested through the mutual fund window to exceed 25 percent of their total TSP balance.

Operational Details

To invest in mutual funds, a TSP participant must first establish a mutual fund window account that is separate from the portion of their TSP balance that is invested in TSP core funds. The FRTIB proposes the following rules and procedures:

1. *Elected Transfers.* A participant may elect to transfer money (in whole dollar increments only) from TSP core funds to a mutual fund window account. Amounts transferred to a participant's mutual fund window account will initially be invested in a sweep money market fund. The participant may then choose from among the mutual funds offered. A participant cannot make contributions directly to a mutual fund account. All contributions must first be invested in the TSP core funds. Similarly, a participant cannot receive a withdrawal directly from a mutual fund window account. A participant who wishes to

[4] *See* May 2014 FRTIB Board Meeting Minutes, available at *https://www.frtib.gov/MeetingMinutes/2014/2014May.pdf*; November 2014 FRTIB Board Meeting Minutes, available at *https://www.frtib.gov/MeetingMinutes/2014/2014Nov.pdf*; July 2015 FRTIB Board Meeting Minutes, available at *https://www.frtib.gov/MeetingMinutes/2015/2015Jul.pdf*. Links to attachments accompanying the minutes are embedded in the PDFs of the minutes.

make a withdrawal election that exceeds the amount of their balance that is invested in TSP core funds must first transfer money (in whole dollar increments only) from their mutual fund window account back to the TSP core funds.

2. *Forced Transfers.* The FRTIB is sometimes required by law to make payments from a TSP account even when a participant has not made a withdrawal election. For example, the Internal Revenue Code requires the TSP to make minimum payments of a certain amount to participants who are age 72 years or older. For another example, the FRTIB is sometimes required to make payments under court orders that award benefits to a participant's spouse or child. Paragraph (c)(1) of the proposed regulatory text contains a non-exhaustive list of the types of payments that the FRTIB might be required by law to make from a participant's TSP account.

If the amount a participant has invested in TSP core funds is insufficient to cover a payment that the FRTIB is required by law to make, then the FRTIB will force a transfer from the participant's mutual fund window account to the TSP core funds. If the participant's mutual fund window account balance is at least $25,000, the forced transfer amount will equal the amount needed to cover the insufficiency plus $1,000. The forced transfer amount will be liquidated first from amounts held in the sweep money market fund and then from amounts invested in mutual funds, beginning with the position with the highest balance. If the participant's mutual fund account balance is less than $25,000, his or her entire mutual fund account balance will be transferred back to the TSP core funds. All forced transfers will be invested in the TSP core funds in accordance with the participant's existing contribution allocation. The participant will be responsible for any fees incurred as a result of the forced transfer.

3. *Monthly Transfer Limit.* Currently, participants are allowed two interfund transfers in a calendar month. After that, they can only transfer money into the G Fund. Any transfer from the TSP core funds to a participant's mutual fund window account, or vice versa, including a forced transfer, will count toward the existing monthly limit on interfund transfers. Consistent with current rules, a participant may always elect a fund transfer from his or her mutual fund window account to the G Fund.

4. *Acknowledgment of Risk.* FERSA requires any participant who elects to invest in ''any investment fund or option other than the Government Securities Investment Fund'', to sign an acknowledgment which states that the investment is made at the participant's own risk, that the participant is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government. 5 U.S.C. 8439(d). The FRTIB is proposing to treat the mutual fund window as an ''investment option'' for purposes of this requirement.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB proposes to amend 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICE OF TSP FUNDS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8438, 8474(b)(5) and (c)(1).

■ 2. Add subpart F to read as follows:

Subpart F—Mutual Fund Window

Sec.

1601.51 Applicability.
1601.52 Fund transfers.
1601.53 Fees.

§ 1601.51 Applicability.

This subpart applies only to the transfer of amounts between the TSP core funds and the mutual fund window; it does not apply to the investment of future deposits, which is covered in subpart B of this part, or fund reallocations or fund transfers among the TSP core funds, which is covered in subpart C of this part.

§ 1601.52 Fund transfers.

(a) *Fund transfers to mutual fund window.* A participant may elect to make one or more fund transfers to the mutual fund window from the portion of his or her TSP balance invested in the TSP core funds, subject to the following rules:

(1) The participant must establish a mutual fund window account that is separate from the portion of his or her TSP balance invested in the TSP core funds. A participant with more than one TSP account may establish a separate mutual fund window account for each TSP account, and the limitations and fees described in this section will apply separately to each account;

(2) If the participant does not have an acknowledgment of risk on file as of the date of his or her initial fund transfer request to the mutual fund window, the participant must complete an acknowledgment of risk before the fund transfer can be processed;

(3) Fund transfers must be made in whole dollar increments (percentages are not permitted);

(4) The following limitations must be satisfied:

(i) A participant's initial fund transfer into his or her mutual fund window account must be at least $10,000 and may not exceed 25 percent of the participant's TSP account balance, as of the date of such transfer; and

(ii) Subsequent fund transfers into a participant's mutual fund window account may not cause the balance in the participant's mutual fund window account to exceed 25 percent of the participant's total TSP balance, as of the date of any such transfer;

(5) Each fund transfer into the mutual fund window counts toward the monthly limit set forth in § 1601.32(b);

(6) Amounts transferred to a participant's mutual fund window account will initially be invested in a sweep money market fund. Subsequently, the participant may direct the investment of the transferred amounts into any mutual fund(s) that are available through the mutual fund window;

(7) Fund transfers are subject to the fees set forth in § 1601.53; and

(8) A participant may not withdraw funds directly from his or her mutual fund window account. To make a withdrawal, the participant must elect a fund transfer back to the TSP core funds as described in paragraph (b) of this section. Upon completion of such fund transfer, the participant may make a withdrawal in accordance with 5 CFR part 1650.

(b) *Fund transfers back to TSP core funds.* A participant may elect to make a fund transfer to the TSP core funds from amounts invested in his or her mutual fund window account, subject to the following rules:

(1) Fund transfers must be made in whole dollar increments (percentages are not permitted);

(2) Amounts to be transferred from a participant's mutual fund window account to the TSP core funds must first be transferred to the sweep money market fund. Subsequently, the participant may direct the investment of the transferred amounts into the TSP core funds;

(3) Each fund transfer back to the TSP core funds from the mutual fund window account counts toward the monthly limit set forth in § 1601.32(b); except, however, that a participant may always elect a fund transfer from the mutual fund window account to the G Fund; and

(4) Fund transfers are subject to the fees set forth in § 1601.53.

(c) *Forced transfers.* The TSP record keeper will force a transfer from the participant's mutual fund window account to the TSP core funds in the following situations, and subject to the following rules:

(1) A forced transfer may occur if the balance invested in the TSP core funds is insufficient to cover:

(i) Amounts necessary to comply with a court order, legal process, or levy described in 5 CFR part 1653;

(ii) A beneficiary asset transfer;

(iii) A required minimum distribution;

(iv) A distribution of an account balance less than $200 described in 5 CFR 1650.23; or

(v) Any other payment or transfer that the Board is required by law to make from the participant's TSP account balance;

(2) The amount of the forced transfer shall be equal to the amount of the insufficiency described in paragraph (c)(1) of this section, plus $1,000; except, however, that if the participant's mutual fund window account balance is less than $25,000, the entire mutual fund window account balance shall be transferred to the TSP core funds;

(3) Forced transfers shall be liquidated from the participant's mutual fund window account first from amounts held in the sweep money market fund; and then from amounts invested in mutual funds, beginning with the position with the highest balance;

(4) Forced transfers from a participant's mutual fund window account to the TSP core funds shall be invested according to the participant's existing contribution allocation; and

(5) The participant shall be responsible for any fees incurred as a result of the forced transfer.

§ 1601.53 Fees.

(a) The Board will allocate a portion of the TSP's administrative expenses to mutual fund users by charging an annual fee of $55.00. The amount of this fee will be redetermined once every three years by multiplying the average mutual fund window account balance by the TSP administrative expense ratio, as of the date of redetermination.

(b) The fee described in paragraph (a) of this section is in addition to any mutual fund window account maintenance fees, trading fees, and fees and expenses associated with the specific mutual fund(s) in which the participant chooses to invest.

[FR Doc. 2022–01312 Filed 1–25–22; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0015; Project Identifier AD–2021–00832–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–23–05, which applies to certain Airbus Helicopters Model EC225LP helicopters. AD 2020–23–05 requires inspecting the control rod attachment yokes (yokes) of certain main rotor (M/R) rotating swashplates (swashplates), establishing a life limit, a one-time inspection of stripped yokes, and applicable corrective actions. Since the FAA issued AD 2020–23–05, the FAA has determined that a revised compliance time is necessary for swashplates that have accumulated less than seven years since the date of manufacture and that clarification is necessary for the condition that concludes with a dye penetrant inspection of the yoke. This proposed AD would continue to require the actions in AD 2020–23–05, with a revised compliance time for a certain inspection. 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 March 14, 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 above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone: (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/technical-services/support.html*. 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–2022–0015; 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 European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@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–2022–0015; Project Identifier AD–2021–00832–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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–23–05, Amendment 39–21321 (85 FR 73604, November 19, 2020), (AD 2020–23–05), for certain Airbus Helicopters Model EC225LP helicopters. AD 2020–23–05 requires inspecting the yokes of certain swashplates, establishing a life limit, a one-time inspection of stripped yokes, and applicable corrective actions. AD 2020–23–05 was prompted by a crack in a swashplate yoke, which could result in failure of the yoke, loss of M/R control, and subsequent loss of control of the helicopter.

EASA AD 2019–0074, dated March 28, 2019 (EASA AD 2019–0074), was issued by EASA, which is the Technical Agent for the Member States of the European Union, to supersede EASA AD 2017–0191R2, dated December 15, 2017 (EASA AD 2017–0191R2). EASA AD 2019–0074 followed Airbus Helicopters revising Emergency Alert Service Bulletin (EASB) No. 05A051, Revision 1, dated November 16, 2017, to Revision 2, dated February 26, 2019, to establish a life limit (also called a service life limit) of 12 years for the swashplate and add a reporting requirement if there is a crack or corrosion in a yoke. EASA advises that additional analysis determined that it is necessary to introduce the new life limit for the affected swashplates. Accordingly, EASA AD 2019–0074 retains the requirements of EASA AD 2017–0191R2 and adds a life limit and a reporting requirement.

Actions Since AD 2020–23–05 Was Issued

Since the FAA issued AD 2020–23–05, the FAA has determined that a revised compliance time is necessary for swashplates that have accumulated less than seven years since the date of manufacture. This revised compliance time matches the compliance time specified in EASA AD 2019–0074. The FAA has also determined that paragraphs (g)(3)(i) and (g)(4)(iii)(A) of this AD need clarification regarding when it is necessary to do a dye penetrant inspection of the yoke.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA 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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed one document that co-publishes two Airbus Helicopters EASB identification numbers: EASB No. 05A051 for Model EC225LP helicopters and EASB No. 05A046 for non-FAA type-certificated Model EC725AP helicopters, each Revision 2 and dated February 26, 2019. This service information specifies inspections for swashplate part number (P/N) 332A31–3074–00 and P/N 332A31–3074–01. This service information specifies procedures for a repetitive inspection of the yokes for a crack and a one-time inspection of the stripped yokes for corrosion and a crack. If in doubt about whether there is a crack, this service information specifies performing a nondestructive inspection. This service information also specifies touching up the swashplate with varnish if there is corrosion, removing any damage within allowable limits, and refinishing the yokes. If there is a crack in a yoke, this service information specifies replacing the swashplate. This service information also specifies a life limit of 12 years since the date of manufacture for the swashplates and reporting requirements if a crack or corrosion is discovered. The Director of the Federal Register approved EASB No. 05A051, Revision 2, dated February 26, 2019, for incorporation by reference as of December 24, 2020 (85 FR 73604, November 19, 2020). EASB No. 05A046, Revision 2, dated February 26, 2019, is not incorporated by reference in this AD.

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2020–23–05. This proposed AD would require inspecting the yokes of certain swashplates, compliance with the established life limit, and a one-time inspection of stripped yokes. This proposed AD would also include a revised compliance time for the initial visual inspection of the yokes on swashplates that have accumulated less than seven years since the date of manufacture; and clarification that dye penetrant inspection of the yoke is required before further flight if no cracks are detected visually during the visual inspection. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the EASA AD or Service Information.''

Differences Between This Proposed AD and the EASA AD or Service Information

EASB No. 05A051, Revision 2, dated February 26, 2019 requires performing a non-destructive inspection only if there is doubt whether there is a crack. Instead, this proposed AD would require a visual inspection and if no cracks are visually detected, would require a non-destructive inspection.

The EASA AD specifies instructions for reporting inspection results; this proposed AD would not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 28 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. The new requirements of this proposed AD add no additional economic burden.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Determination of the manufacture date of the swashplate.	0.5 work-hour × $85 per hour = $43	$0	$43	$1,204.
Inspecting the yokes	0.25 work-hour × $85 per hour = $21 per inspection cycle.	0	$21 per inspection cycle.	$588 per inspection cycle.
Removing grease, stripping the yokes, and inspecting the stripped yokes.	8 work-hours × $85 per hour = $680	0	$680	$19,040.
Creating a life limit record	1 work-hour × $85 per hour = $85	0	$85	$2,380.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Removing any corrosion or repairing damage within the allowable limit.	3 work-hours × $85 per hour = $255	$0	$255
Replacing the swashplate	6 work-hours × $85 per hour = $510	85,661	86,171
Dye-penetrant inspection	6 work-hours × $85 per hour = $510	50	560

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:

■ a. Removing Airworthiness Directive 2020–23–05, Amendment 39–21321 (85 FR 73604, November 19, 2020); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2022–0015; Project Identifier AD–2021–00832–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by March 14, 2022.

(b) Affected ADs

This AD replaces AD 2020–23–05, Amendment 39–21321 (85 FR 73604, November 19, 2020) (AD 2020–23–05).

(c) Applicability

This AD applies to Airbus Helicopters Model EC225LP helicopters, certificated in any category, with a main rotor (M/R) rotating swashplate (swashplate) part number

(P/N) 332A31–3074–00 or P/N 332A31–3074–01 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

(e) Unsafe Condition

This AD was prompted by a crack in a swashplate control rod attachment yoke (yoke). The FAA is issuing this AD to detect and correct a crack in a yoke. The unsafe condition, if not addressed, could result in failure of the yoke, loss of M/R control, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Before further flight, review Appendix 4.A. of Airbus Helicopters Emergency Alert Service Bulletin No. 05A051, Revision 2, dated February 26, 2019 (EASB 05A051) to determine the date of manufacture of the swashplate.

(1) If the swashplate has accumulated 12 or more years since the date of manufacture, remove from service the swashplate.

(2) If the swashplate has accumulated less than 12 years since the date of manufacture, create a component history card or equivalent record indicating a life limit of 12 years since the date of manufacture. Thereafter, continue to record the life limit of the swashplate on its component history card or equivalent record and remove from service any swashplate before accumulating 12 years since the date of manufacture.

(3) For each swashplate that has accumulated less than 7 years since the date of manufacture, within 15 hours time-in-service (TIS) or 7 days, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 15 hours TIS or 7 days, whichever occurs first, until the swashplate accumulates 7 years since the date of manufacture, visually inspect each yoke for a crack, paying particular attention to the areas shown in Details B, C, and D of Figure 1 of EASB 05A05.

(i) If no cracks are visually detected, before further flight, perform a dye penetrant inspection of the yoke for a crack.

(ii) If there is a crack on a yoke, before further flight, remove from service the swashplate.

(4) For each swashplate that has accumulated 7 or more years, but less than 12 years, since the date of manufacture, within 100 hours TIS:

(i) Remove the grease from areas (E), (F), (G), (H), (J), and (K) of each yoke as shown in Details B, C, and D of Figure 1 of EASB 05A051. Using a plastic spatula, strip areas (E), (F), (G), (H), (J), and (K) of each yoke as shown in Details B, C, and D of Figure 1 of EASB 05A051. Do not use a metal tool to strip any area of a yoke.

(ii) Inspect areas (E), (F), (G), (H), (J) and (K) of each yoke as shown in Details B, C, and D of Figure 1 of EASB 05A051 for corrosion, pitting, and loss of material.

(A) If there is any corrosion less than 0.0078 in. (0.2 mm), before further flight, remove the corrosion and apply varnish (Vernelec 43022 or equivalent) to the surface of areas (E), (F), (G), (H), (J) and (K).

(B) If there is any pitting or loss of material of less than 0.0078 in. (0.2 mm), before further flight, remove the damage by sanding with sandpaper 200/400 or 330.

(C) If there is any corrosion, pitting, or loss of material of 0.0078 in. (0.2 mm) or greater, before further flight, remove from service the swashplate.

(iii) Visually inspect each yoke for a crack, paying particular attention to the areas shown in Details B, C, and D of Figure 1 of EASB 05A051.

(A) If there are no cracks, before further flight, perform a dye penetrant inspection of the yoke for a crack.

(B) If there is a crack on a yoke, before further flight, remove from service the swashplate.

(h) Credit for Previous Actions

If you performed the actions in paragraph (g)(4) of this AD before the effective date of this AD using Airbus Helicopters Emergency Alert Service Bulletin No. 05A051, Revision 1, dated November 16, 2017, you have met the requirements of paragraph (g)(4) of this AD.

(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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov*.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone: (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019–0074, dated March 28, 2019 (EASA AD 2019–0074). You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2022–0015.

Issued on January 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01440 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1169; Project Identifier AD–2021–01011–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–800 series airplanes. This proposed AD was prompted by the determination that insufficient sealing may allow water to enter the lower lobe electronic equipment (EE) bay through the main deck floor structure at the rigid cargo barrier (RCB), which could cause damage to EE bay line replacement units (LRUs) in the E5 rack. This proposed AD would require detailed inspections for the presence and condition of sealant at certain locations and applicable on-condition actions. This proposed AD would also require replacing the moisture barrier tape at a certain location, replacing the weather seal at a certain location, and installing seat track fillers. 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 March 14, 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 above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1169.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1169; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.k.tuck@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–2021–1169; Project Identifier AD–2021–01011–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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 Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.k.tuck@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report that an aircraft failed to depart when it was not possible to align the inertial reference units (IRUs) during a pre-flight check. Findings from a subsequent investigation by Boeing indicate there is insufficient sealing at the main deck floor structure and the bottom of the RCB, which allows water ingress into the lower lobe EE bay. Boeing indicated there may also be insufficient sealing in the following areas: Floor panel to floor panel, floor panel to seat track joints, and drain trough installation. The lower lobe EE bay houses the LRUs in the E5 rack, which house the air data inertial reference units (ADIRUs) and flight management computers (FMCs). The E5 rack has a moisture shroud and a drip shield, but these provide inadequate protection to the LRUs for this amount of water ingression. Boeing reported that the source of water was found to be water or snow accumulated on cargo and pallets prior to loading, or through an open cargo door during inclement weather. A later report also indicated that the weather seal of the main deck cargo door may have an incorrect orientation, which may allow water to enter the main deck cargo compartment. These conditions, if not addressed, could result in water damage to the ADIRUs and FMCs during flight, leading to a complete loss of data to primary flight displays and electronic navigation functions, which could prevent continued safe flight and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021. This service information specifies procedures for detailed inspections of the forward main deck cargo compartment floor to RCB, floor panel joints, drain troughs, seat track splices, and, for some airplanes, the lower lobe E5 rack drain pan shroud for sealant condition and application, and applicable on-condition actions. This service information also specifies procedures for replacing the main deck cargo door weather seal, replacing the moisture barrier tape on the forward main deck cargo compartment floor, and installing seat track fillers in the EE bay. On-condition actions include repair, removing existing sealant, and applying new sealant. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1169.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect sealant	Up to 12 work-hours × $85 per hour = Up to $1,020	$0	Up to $1,020	Up to $7,140.
Remove/reinstall drain trough.	Up to 15 hours × $85 per hour = Up to $1,275	Negligible	Up to $1,275	Up to $8,925.
Replace weather seal	Up to 7 work-hours × $85 per hour = Up to $595	$9,680	Up to $10,275	Up to $71,925.
Replace barrier tape	Up to 20 work-hours × $85 per hour = Up to $1,700	Negligible	Up to $1,700	Up to $11,900.
Install seat track filler	Up to 2 work-hours × $85 per hour = Up to $170	Negligible	Up to $170	Up to $1,190.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install or replace sealant	26 work-hours × $85 per hour = $2,210	Negligible	$2,210

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2021–1169; Project Identifier AD–2021–01011–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–800 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the determination that insufficient sealing may allow water to enter the lower lobe electronic equipment (EE) bay through the main deck floor structure at the rigid cargo barrier, which could cause damage to EE bay line replacement units in the E5 rack. The FAA is issuing this AD to address water ingress in the lower lobe EE bay, which could result in water damage to the air data inertial reference units and flight management computers during flight, leading to a complete loss of data to primary flight displays and electronic navigation functions, which could prevent continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service

Bulletin 737–53A1401, dated April 27, 2021, which is referred to in Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1401 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.k.tuck@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on December 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01408 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. FDA–2021–N–0403]

RIN 0910–AI01

Food Additives: Food Contact Substance Notification That Is No Longer Effective

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend its regulations relating to the procedures by which we determine that a premarket notification for a food contact substance (FCN) is no longer effective. The proposed rule, if finalized, would, among other things, ensure that manufacturers or suppliers have the opportunity to provide input before we could determine that an FCN is no longer effective. The proposed rule also would provide additional reasons that could be the basis for FDA to determine that an FCN is no longer effective. We are proposing these changes to better enable FDA to respond to new information on the safety and use of food contact substances, as well as manufacturers' business decisions, which would also improve our FCN program's efficiency.

DATES: Submit either electronic or written comments on the proposed rule by April 11, 2022. Submit written comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 by March 28, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 11, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 11, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0403 for ''Food Additives: Food Contact Substance Notification That Is No Longer Effective.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on information collection issues under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this proposed collection is Food Contact Substance Notification Program.

FOR FURTHER INFORMATION CONTACT:

With regard to the proposed rule: Paulina Piotrowski, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301–796–8649, *paulina.piotrowski@fda.hhs.gov;* or Lauren Baham, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose of the Proposed Rule

We are proposing to amend our regulations at § 170.105 (21 CFR 170.105) to provide additional reasons which may be the basis for FDA to determine that a FCN is no longer effective and to provide the manufacturer or supplier of the substance an opportunity to provide input before we could make such a determination. These changes to § 170.105 would create administrative mechanisms to improve the efficiency of the premarket notification program for food contact substances.

We also are proposing to clarify our confidentiality of information regulation at § 170.102 (21 CFR 170.102).

B. Summary of the Major Provisions of the Proposed Rule

FDA's current regulations at § 170.105 provide the process by which we may determine that an FCN is no longer effective based on data or other information available to us that demonstrate that the intended use of the food contact substance is no longer safe. The proposed rule, if finalized, would include reasons other than safety as the basis on which we may determine that an FCN is no longer effective and the process under which we would make determinations based on these other reasons. These reasons would include instances in which the production, supply, or use of the food contact substance for its intended use has ceased or will cease, or the use of a food contact substance identified in an FCN is authorized by a food additive regulation or covered by a threshold of regulation exemption. We also propose to provide the manufacturer or supplier who submitted an FCN the opportunity to address our safety concerns or to otherwise show why an FCN should continue to be effective before we could determine that an FCN is no longer effective, resulting in this use no longer being authorized.

C. Legal Authority

FDA is proposing to modify the procedures by which FDA determines that an FCN is no longer effective. These modifications would include additional reasons as the basis for FDA to determine that an FCN is no longer effective and to amend the regulation pertaining to confidentiality of information to address, among other things, data and information related to FDA's determination that an FCN is no longer effective. These changes are consistent with our authority in sections 201, 409, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 348, and 371(a)). We discuss our legal authority in greater detail in part III below.

D. Costs and Benefits

The proposed changes to § 170.105 are expected to result in cost savings and other benefits to manufacturers and suppliers of food contact substances, as well as to FDA. We expect the costs of the proposed rule to be minimal and, therefore, do not believe that the proposed rule will have a significant economic impact on a substantial number of small entities. For further discussion, see Section VI, ''Economic Analysis of Impacts.''

II. Background

A. Need for the Regulation

Our regulations at § 170.105 set forth the process by which FDA may determine that an FCN is no longer effective. This determination currently only applies when data or other information demonstrating the intended use of a food contact substance is no longer safe. Our regulations currently do not provide reasons other than safety as the basis for FDA to determine that an FCN is no longer effective, nor do our regulations provide manufacturers or suppliers the opportunity to show why an FCN should continue to be effective before we make our determination. The proposed rule would establish new procedures to address these issues, which would better enable FDA to respond to new information on the safety and use of food contact substances. The proposed rule would ensure that a manufacturer or supplier has the opportunity to provide information relevant for FDA to make a safety determination before we could make such a determination. The proposed rule would also permit FDA to make a determination that an FCN is no longer effective for reasons other than safety. For example, FDA could reduce confusion created by duplicative authorizations by removing effective FCNs for intended uses authorized by food additive regulations or covered by a Threshold of Regulation (TOR) exemption. In addition, the proposed rule would allow a manufacturer or supplier to request that an FCN be determined to no longer be effective because it has ceased (or intends to cease) producing, supplying, or using a food contact substance for the intended use. This may be less burdensome for both FDA and the manufacturer or supplier than addressing potential safety concerns. We may decline this request if we determine there is a safety issue that serves as the basis for FDA's determination. This would improve the efficiency of the FCN program, which in turn may reduce the burden on manufacturers or suppliers, as well as FDA. The proposed rule will also improve the transparency of the FCN program.

B. FDA's Current Regulatory Framework for Food Contact Substances

A food additive (see section 201(s) of the FD&C Act for the definition of a food additive) is subject to premarket review by FDA (see section 409 of the FD&C Act). The use of a food additive not in compliance with section 409 of the FD&C Act is deemed unsafe (section 409(a) of the FD&C Act). A food is deemed to be adulterated if it is or if it bears or contains an unsafe food additive (section 402(a)(2)(C) of the FD&C Act).

A food additive may be a food contact substance. A food contact substance is any substance that is intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use of the substance is not intended to have any technical effect in such food (see section 409(h)(6) of the FD&C Act and § 170.3(e)(3)). Accordingly, food contact substances that are food additives require FDA premarket authorization (id.).

Certain uses of food contact substances (often described as indirect food additives) are authorized through FDA's food additive regulations (see 21 CFR parts 173 through 177, and 180). FDA has also established procedures set forth in § 170.39 to exempt from regulation as food additives certain substances used in food-contact articles that migrate or may be expected to migrate into food at levels that are below the threshold of regulation. Manufacturers and suppliers can review our food additive regulations and TOR exemptions to determine which food contact substances are already authorized by regulation or exempted from regulation for a specific food-contact use.

Section 409 of the FD&C Act (21 U.S.C. 348) establishes a premarket FCN process as the primary method by which FDA reviews the use of food additives that are food contact substances and by which such uses are authorized as safe. Our regulations in part 170, Subpart D, set forth the procedures for the FCN process. The FD&C Act establishes that a manufacturer or supplier of a food contact substance may, at least 120 days before introducing or delivering into interstate commerce, notify us of the identity and intended use of the substance and of the manufacturer's determination that it is safe for such intended use (see section 409(h) of the FD&C Act and § 170.100). An FCN is effective only for the substance, its intended use, and the manufacturer or supplier identified in the FCN submission (see section 409(h)(1)(C) of the FD&C Act and § 170.100(a)). If another manufacturer or supplier wishes to market the same food contact substance for the same use, they must submit an FCN to FDA (see § 170.100(a)).

Our regulations, at § 170.105, establish the process by which we may determine that an FCN is no longer effective. We may determine that the FCN is no longer effective if data or other information available to us, including data not submitted by the manufacturer or supplier, demonstrate that the intended use of the food contact substance is no longer safe (see § 170.105(a)). Further, if we determine that an FCN is no longer effective, we inform the manufacturer or supplier in writing of the basis for that determination and provide a time by which the manufacturer or supplier may show why the FCN should continue to be effective (see § 170.105(b)). Finally, if the manufacturer or supplier fails to respond adequately to the safety concerns regarding the notified use, we will publish a notice of our determination that the FCN is no longer effective in the **Federal Register** (see § 170.105(c)). The notice states that a detailed summary of the basis for our determination that the FCN is no longer effective has been placed on public display and that copies are available upon request (id.). The date that the notice publishes in the **Federal Register** is the date on which the notification is no longer effective (id.). Our determination that an FCN is no longer effective constitutes final agency action that is subject to judicial review (see § 170.105(d)).

Currently, our regulations do not provide reasons other than safety as the basis for FDA to determine that an FCN is no longer effective, nor do our regulations provide manufacturers or suppliers the opportunity to show why an FCN should continue to be effective before we make our determination.

III. Legal Authority

FDA is proposing to modify the procedures by which FDA determines that an FCN is no longer effective and to include additional reasons as the basis for FDA to determine that an FCN is no longer effective. Given these proposed changes, FDA also is proposing to amend the regulation pertaining to confidentiality of information. These changes are consistent with our authority in sections 201, 409, and 701(a) of the FD&C Act.

The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized by

experts as safe under its intended use (section 201(s) of the FD&C Act). Food additives include ''food contact substances,'' which are defined as any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food (section 409(h)(6) of the FD&C Act).

A food additive is deemed unsafe unless that substance and its use conform with a regulation issued under section 409 of the FD&C Act or unless there is an FCN submitted under section 409(h) that is effective (section 409(a) of the FD&C Act)). Section 409(h) of the FD&C Act sets forth the procedure for FCNs.

Under section 409(i) of the FD&C Act, FDA must prescribe by regulation the procedure by which FDA may deem an FCN to no longer be effective (sections 409(i) and 1003(d) of the FD&C Act) (21 U.S.C. 348(i) and 393(d)). Section 701(a) of the FD&C Act gives us the authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Description of the Proposed Rule

Our regulations, at § 170.105, provide safety as the only basis for FDA to determine that an FCN is no longer effective and provides an opportunity for the manufacturer or supplier to respond to our safety concerns only after we have made our determination. Based on our experience in administering the FCN program, we have concluded that FDA could better respond to new information about the safety and use of food contact substances if FDA were not limited only to determining that an FCN is no longer effective based on safety. The proposed rule would amend § 170.105 by including additional reasons which may be the basis for us to determine that an FCN is no longer effective. The proposed rule also would give the manufacturer or supplier the opportunity to respond to our safety concerns or to otherwise show why an FCN should continue to be effective before we could determine that an FCN is no longer effective.

We are proposing to provide additional reasons which may be the basis for FDA to determine that an FCN is no longer effective. These additional reasons include: (1) Information available to FDA that demonstrate that the manufacturer or supplier specified in the FCN has stopped or intends to stop producing, supplying, or using a food contact substance for the intended use; (2) the intended use of the food contact substance identified in the FCN is authorized by a food additive regulation; or (3) the intended use of the food contact substance identified in the FCN is covered by a TOR exemption. After FDA has determined that an FCN is no longer effective, a manufacturer or supplier would not be precluded from submitting a new FCN for the same food contact substance, including for the same intended use, unless the intended use of the food contact substance is authorized by a food additive regulation or covered by a TOR exemption.

We also are proposing to amend our confidentiality of information regulation at § 170.102 to address the data and information that is related to a notification, including data and information related to FDA's determination that an FCN is no longer effective.

A. Data or Other Information Demonstrate That the Intended Use of the Food Contact Substance Is No Longer Safe

Our current regulations state that if data or other information available to us, including data not submitted by a manufacturer or supplier, demonstrate that the intended use of a food contact substance is no longer safe, we may determine that the FCN is no longer effective (see § 170.105(a)). This regulation also sets forth the process whereby we will inform a manufacturer or supplier of our determination and give the manufacturer or supplier an opportunity to show why the FCN should continue to be effective for that use and specifies the time for the manufacturer or supplier to respond (see § 170.105(b)).

The proposed rule would change the process for determining that an FCN is no longer effective based on safety concerns in one key respect. Under the proposed rule, we would make a determination that the FCN is no longer effective only *after* we have given the manufacturer or supplier an opportunity to provide data or other information to respond to our safety concerns. We could determine an FCN is no longer effective if a manufacturer or supplier fails to respond by the specified date, or to provide the data and information that is necessary to address the safety concerns regarding the notified use. Giving manufacturers and suppliers the opportunity to provide data and information will help inform our safety reviews before we make a determination.

In brief, the proposed rule, at § 170.105(a)(1)(i), would state that we will inform the manufacturer or supplier specified in the FCN, in writing, of our concerns regarding the safety of the intended use of the food contact substance. FDA will specify a date by which the manufacturer or supplier must provide data or other information to address the safety concerns (see proposed § 170.105(a)(1)(i)). Under proposed § 170.105(a)(1)(ii), if the manufacturer or supplier fails, by the specified date, to supply the data or other information necessary to address the safety concerns regarding the notified use, we may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

In response to our potential safety concerns with the intended use of a food contact substance, we have received voluntary commitment letters from certain manufacturers that they have ceased or intend to cease the introduction into interstate commerce of food contact substances for food contact use in the United States; however, these FCNs remain effective. (See ''Market Phase-Out of Certain Short-Chain PFAS'' and also at ''Market Phase-Out and Revocation of Authorization of Long-Chain PFAS'' at *https://www.fda.gov/food/chemicals/authorized-uses-pfas-food-contact-applications*.) Accordingly, we also propose allowing a manufacturer or supplier to respond to FDA, by the date specified for providing data or other information, by requesting that we determine that an FCN is no longer effective because the manufacturer or supplier no longer produces, supplies, or uses the food contact substance for the intended use in the United States, or intends to stop producing, supplying, or using a food contact substance for the intended use in the United States by a specified date (see proposed § 170.105(a)(2)(i)(A)).

Depending on the circumstances, we may deny such a request if it is insufficient to protect the public health, for example, because of the public health risk from continued exposure to the food contact substance. If FDA denies such a request, and we had previously informed the manufacturer or supplier of our concerns regarding the safety of the intended use of the food contact substance, we may determine that an FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe (see proposed § 170.105(a)(1)(iii)). Alternatively, FDA may provide the manufacturer or supplier with additional time to provide us with data or other information to respond to the safety concerns (id.). If the manufacturer or supplier fails, by the specified date, to supply the data or

other information necessary to address the safety concerns regarding the notified use, we may determine that the FCN is no longer effective because there is no longer a basis to conclude that the notified use is safe (id.).

B. Manufacturer or Supplier No Longer Produces, Supplies, or Uses the Food Contact Substance for the Intended Use

Our current regulations do not provide a basis for determining that an FCN is no longer effective for reasons other than safety. Based on our experience, manufacturers have stopped manufacturing certain food contact substances that are authorized for use under effective FCNs; however, there is no provision for the manufacturers to request that an FCN be determined to be no longer effective based on reasons other than safety. For example, a manufacturer may choose, for business reasons, to stop production of the food contact substance to the specifications in the FCN and sale of the food contact substance into food contact applications, while continuing to sell the same substance for use in non-food contact applications.

The proposed rule would provide that a manufacturer or supplier may request in writing that FDA determine that an FCN is no longer effective on the basis that it has stopped, or intends to stop by a specified date, producing, supplying, or using a food contact substance for the intended food contact use in the United States (see proposed § 170.105(a)(2)(i)(A)). As detailed above, the manufacturer or supplier also may provide this information when given the opportunity to respond to our safety concerns (see proposed § 170.105(a)(1)(ii)). We would then notify the manufacturer or supplier whether we are granting this request (see proposed § 170.105(a)(2)(i)(A)).

If FDA grants the request, we may determine that the FCN is no longer effective on the basis that the manufacturer or supplier has stopped producing, supplying, or using a food contact substance for the intended use in the United States or that it intends to stop producing, supplying, or using a food contact substance for the intended use in the United States by a specified date (see proposed § 170.105(a)(2)(i)(B)). When such a request is based on the intent to stop producing, supplying, or using a food contact substance for the intended use in the United States at a future date, FDA will include the date specified in the request (*i.e.,* the date by which the manufacturer or supplier intends to stop producing, supplying, or using a food contact substance) as the compliance date to stop producing, supplying, or using the food contact substance for the intended use in the United States (id.).

The proposed rule also would provide that if other data or information available to FDA demonstrate that a manufacturer or supplier no longer produces, supplies, or uses a food contact substance for the intended use in the United States, we will inform, in writing, the manufacturer or supplier specified in the FCN before we could determine that the FCN is no longer effective (see proposed § 170.105(a)(2)(ii)(A)). For example, we may learn from persons other than the manufacturer or supplier listed in the FCN that the manufacturer or supplier is no longer producing, supplying, or using the food contact substance for its intended use in the United States, such as when the listed manufacturer or supplier has ceased operations and has not been acquired by another company. The proposal also would state that we will include a specified time period by which the manufacturer or supplier must provide us with data or other information that demonstrate that the manufacturer or supplier continues to produce, supply, or use a food contact substance for the intended use in the United States (id.).

If the manufacturer or supplier fails, by the specified date, to provide data or other information that demonstrate that the manufacturer or supplier continues to produce, supply, or use a food contact substance for the intended use in the United States, or if the manufacturer or supplier confirms that it has stopped producing, supplying, or using the food contact substance for the intended food contact use in the United States, FDA may determine that the FCN is no longer effective (see proposed § 170.105(a)(2)(ii)(B)).

C. The Intended Use of the Food Contact Substance Is Authorized by a Food Additive Regulation

The proposed rule would create a new provision by which we may determine that an FCN is no longer effective because the intended use of the food contact substance is authorized by a food additive regulation (see proposed § 170.105(a)(3)). Issuing a food additive regulation can be more efficient than reviewing multiple FCNs for the same food contact substance and for the same use. FCNs are effective only for a specific manufacturer or supplier to produce, supply, or use the subject food contact substance for the intended use described in the FCN notification. Multiple manufacturers or suppliers often request FCNs for the same intended use of a food contact substance. In contrast, a food additive regulation can authorize the use of a food contact substance for any manufacturer or supplier who meets the provisions of the relevant food additive regulation (see section 409(a)(3) of the FD&C Act).

Therefore, if a food additive regulation exists for a substance that is the subject of an FCN for the same intended use, proposed § 170.105(a)(3) would enable us to determine that this FCN is no longer effective because the food contact substance is authorized by a food additive regulation. This would enable us to remove the duplicative authorization specific to the manufacturer or supplier listed in each FCN. Removing these FCNs from the inventory of effective FCNs when such authorization is unnecessary because the intended use of the food contact substance is authorized under a food additive regulation may avoid confusion by other manufacturers and suppliers on whether they would also need to obtain authorization through an FCN for that use.

The proposed rule also would state that, before we could determine that an FCN is no longer effective, we would inform the manufacturer or supplier specified in the FCN, in writing, that the intended use of the food contact substance identified in the FCN is authorized by a food additive regulation (see proposed § 170.105(a)(3)(i)). FDA would include a specified time period by which the manufacturer or supplier must provide FDA with data or other information about whether the intended use of the food contact substance is authorized by a food additive regulation, and we would not make a determination until after the time period expires (id). If the manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrate that the intended use of the food contact substance is not authorized by a food additive regulation, FDA may determine that the FCN is no longer effective (see proposed § 170.105(a)(3)(ii)).

D. The Intended Use of the Food Contact Substance Is Covered by a Threshold of Regulation Exemption

The proposed rule would create a new provision by which we may determine that an FCN is no longer effective because the intended use of the food contact substance is covered by a TOR exemption (see proposed § 170.105(a)(4)). As noted earlier, FCNs are effective only for a specific manufacturer or supplier, and multiple manufacturers or suppliers often request FCNs for the same intended use of a

food contact substance. In contrast, a TOR exemption can cover the use of a food contact substance for any manufacturer or supplier who meets the requirements of the TOR. FDA will grant a TOR exemption only if the likelihood or extent of migration to food of a substance used in a food-contact article (*e.g.,* food-packaging or food-processing equipment) is so trivial as not to require regulation of the substance as a food additive (see § 170.39). As such, the substance used in a food-contact article becomes a component of food at levels that are below the threshold of regulation. FDA may grant a TOR exemption only if: (1) The substance is not, or is not suspected to be, a carcinogen in humans or animals; (2) the substance presents no other health or safety concern because the use results in a dietary concentration of 0.5 parts per billion or less or a dietary exposure of 1 percent or less of the acceptable daily intake for the substance and the substance is currently regulated for direct addition to food; (3) the substance has no technical effect in or on the food itself; and (4) the substance use has no significant adverse impact on the environment (see § 170.39(a)). We list current TOR exemptions on our website (see *https://www.fda.gov/food/packaging-food-contact-substances-fcs/threshold-regulation-exemptions-substances-used-food-contact-articles*).

If there is an FCN for a use of a food contact substance that is also covered by a TOR exemption, the proposed rule would enable us to remove an FCN for that same substance for the same intended use. Removing these FCNs from the inventory of effective FCNs may avoid confusion by other manufacturers and suppliers on whether they need to obtain authorization under the FCN process for the use of a food contact substance that is covered under a TOR exemption. Therefore, if a TOR exemption exists for a substance that is the subject of an FCN for the same intended use, proposed § 170.105(a)(4) would enable us to determine that this FCN is no longer effective because the use of the food contact substance is covered by a TOR exemption. This process would enable us to remove the duplicative authorization specific to the manufacturer or supplier listed in each FCN and would increase efficiency for the food industry and FDA.

The proposed rule also would state that, before we determine that an FCN is no longer effective, we would inform the manufacturer or supplier specified in the FCN, in writing, that the intended use of the food contact substance identified in the FCN is covered by a TOR exemption (see proposed § 170.105(a)(4)(i)). FDA would include a specified time period by which the manufacturer or supplier must provide FDA with data or other information about whether the intended use of the food contact substance is covered by a TOR exemption, and we would not make a determination until after the time period expired (id).

If a manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrate that the intended use of the food contact substance identified in the FCN is not covered by a TOR exemption, FDA may determine that the FCN is no longer effective on the basis that the intended use of the food contact substance is covered under a threshold of regulation exemption (see proposed § 170.105(a)(4)(ii)).

E. Publication of FDA's Determination That an FCN Is No Longer Effective

Our current regulation states that, if the manufacturer or supplier fails to respond adequately to the safety concerns regarding the notified use, FDA will publish a notice of its determination that the FCN is no longer effective (see § 170.105(c)). FDA will publish the notice in the **Federal Register**, stating that a detailed summary of the basis for FDA's determination that the FCN is no longer effective has been placed on public display and that copies are available upon request (id). The date that the notice publishes in the **Federal Register** is the date on which the FCN is no longer effective (see § 170.105(c)).

The proposed rule would retain the provision but renumber it as § 170.105(b) and extend this provision to the proposed provisions in this proposed rule under which FDA will determine an FCN is no longer effective. FDA may include a separate compliance date for the use of the food contact substance in food contact articles, if FDA determines it would be protective of public health, for the time-limited use of the food contact substance (see proposed § 170.105(b)). For example, food contact articles that contain the food contact substance for its intended use may still be in the supply chain after a manufacturer has stopped manufacturing the food contact substance. FDA may set a compliance date in the future for the continued use of the food contact substance if FDA determines that its intended use during this timeframe would not pose a risk to public health.

Additionally, our current regulation, at § 170.105(d), states that our determination that an FCN is no longer effective constitutes final agency action and is subject to judicial review. The proposed rule would renumber the provision as proposed § 170.105(b).

F. Future Submissions Following Determination That an FCN Is No Longer Effective

Currently, § 170.105 does not state that a manufacturer or supplier may submit a new FCN for the same food contact substance for the same intended use. The proposed rule would state that our determination that an FCN is no longer effective does not preclude any manufacturer or supplier from submitting a new FCN for the same food contact substance, including for the same intended use, after we have determined that an FCN is no longer effective, unless the intended use of the food contact substance is authorized by a food additive regulation or is covered by a TOR exemption (see proposed § 170.105(c)). The new submission would be made under §§ 170.100 and 170.101 (id.).

G. Confidentiality of Information

Currently, our regulation at § 170.102 discusses the confidentiality of information in a premarket notification for a food contact substance. The proposed rule would amend our regulation to address the confidentiality of data and information that is related to a notification, including data and information related to FDA's determination that an FCN is no longer effective. Specifically, the proposed rule would amend § 170.102(e) to address the disclosure of certain information related to a notification, including information related to FDA's determination that an FCN is no longer effective. The proposed rule would amend § 170.102(e)(1) to include all safety and functionality data and information submitted with or incorporated by reference into the notification, or submitted in reference to an effective FCN. The proposed rule also would amend § 170.102(e)(5) to include all correspondence and written summaries of oral discussions relating to the notification or to FDA's determination that an FCN is no longer effective.

V. Proposed Effective Date

We intend that any final rule resulting from this rulemaking become effective 60 days after the date of publication of the final rule in the **Federal Register**.

VI. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order

12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits (both quantitative and qualitative) 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, and other advantages; distributive impacts; and equity). We have developed a comprehensive economic analysis of impacts that assesses the impacts of the proposed rule. We believe that the proposed rule will not be an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the minimal costs to manufacturers and suppliers that would be affected by this proposed rule, we propose to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. We do not expect this proposed rule to result in any 1-year expenditure that will meet or exceed this amount.

B. Summary of Benefits and Costs of the Proposed Rule

The proposed rule is expected to lead to benefits in the form of cost savings to manufacturers and suppliers who have effective food contact notifications and to FDA. The proposed rule would revise FDA's current process of determining whether an FCN is no longer effective. The proposed rule would give manufacturers and suppliers the opportunity to demonstrate why an FCN should continue to be effective before we could make a determination. Additionally, the proposed rule would amend § 170.105 to include reasons other than safety as the basis for FDA to determine that an FCN is no longer effective. This would include instances in which the production, supply, or use of the food contact substance for its intended use has ceased or will cease by a specified date, or the use of a food contact substance identified in an FCN is authorized by a food additive regulation or TOR exemption. Cost savings would be accrued by manufacturers and suppliers who may wish to cease manufacturing a food contact substance and to request that FDA determine that an FCN is no longer effective for reasons other than safety. This may enable manufacturers to resolve the regulatory status of a food contact substance without acquiring and submitting data or other information addressing the safety of the intended use. We also would realize cost savings as we would be able to act more efficiently upon an FCN request by the manufacturer or supplier to determine that an FCN is no longer effective for reasons other than safety. Because the proposed rule would reduce the burden for both industry and FDA and would not require significant additional action to be taken, we expect the costs of the proposed rule to be minimal.

The estimated total cost savings of the proposed rule are estimated in 2020 U.S. dollars and range from zero to $0.5 million, with a central estimate of $0.1 million, annualized at 7 percent over 10 years. Discounted at 3 percent, annualized cost savings range from zero to $0.4 million, with a central estimate of $0.1 million. We estimate that the costs of the proposed rule are minimal. The estimated cost savings and costs of the proposed rule are summarized in table 1.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered (years)	
Cost Savings:							
One-time Monetized millions/year							
Annualized	$0.1M	$0	$0.5M	2020	7	10	
Quantified	0.1M	0	0.4M	2020	3	10	
Qualitative							
Costs:							
Annualized							
Monetized millions/year							
Annualized							
Quantified							
Qualitative		0		2020		10	
Transfers:							
Federal Annualized							
Monetized $millions/year							
	From:			To:			
Other Annualized							
Monetized $millions/year							
	From:			To:			

Effects:
State, Local or Tribal Government:
Small Business: Increased cost savings of zero to $144.25 per affected small entity
Wages:
Growth:

The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 1) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Food Contact Substance Notification System; OMB Control Number 0910–0495—Revision

Description: Section 409(h) of the FD&C Act establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food. Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) The Secretary determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) the Secretary and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended use. FDA regulations at part 170 specify the information that a notification must contain.

The proposed rule would amend the procedure by which we determine that an FCN is no longer effective. The information collection would cover situations that entail the potential reporting of additional data or other information by manufacturers or suppliers of food contact substances. This proposal would augment the existing information collection that covers the food contact substance notification program at part 170, subpart D.

Description of Respondents: Respondents to the information collection are manufacturers and suppliers of food contact substances sold in the United States. Respondents are from the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
170.105(a); Manufacturer or supplier responds to FDA by providing additional data or information to demonstrate that the FCN should continue to be effective	2	1	2	75	150
170.105 (a)(2)(i); Manufacturer or supplier requests that FDA determine that the FCN should no longer be effective based on non-safety reasons	5	1	5	2	10
Total					160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates in table 2 are based on our experience with our Food Contact Substance Notification Program.

We will inform the affected manufacturers or suppliers of the specified FCN about data or other information that their food contact substance may: (1) Not be safe for its intended use; or (2) have stopped being produced, supplied, or used as a food contact substance for its intended use; or (3) be authorized by a food additive regulation; or (4) be covered by a TOR exemption. As such, we may determine that the specified FCN may no longer be effective for its intended use unless the affected manufacturer or supplier provides additional data or other information to demonstrate that the FCN should continue to be effective. In row 1, we estimate that, annually, 2 respondents will each spend about 75 hours preparing a response for a total of 150 hours (2 respondents × 75 hours). In the existing information collection for our Food Contact Substance Notification Program (OMB control number 0910–0495; 84 FR 3468), we estimate that it may take up to 150 hours to prepare and submit an FCN depending on the complexity of the submittal. We assume the time to prepare a response will take about half the time of the initial submittal because the manufacturer or supplier should already have compiled and have access to most, if not all the information demonstrating that their FCN should continue to be effective and remains safe for its intended use.

The proposed rule would allow a manufacturer or supplier to request that FDA determine that their FCN is no

longer effective on the basis that the manufacturer or supplier no longer produces, supplies, or uses the food contact substance for the intended use. We believe a manufacturer or supplier will not need much time to prepare such a request as it should already have access to information that it has or intends to no longer produce, supply, or use the food contact substance for the intended use. Based on the Preliminary Regulatory Impact Analysis, we estimate that 5 respondents will voluntarily request that FDA determine that their FCN is no longer effective (Ref. 1). Accordingly, in row 2, we estimate that 5 respondents will each submit 1 request to us per year with each request taking 2 hours to prepare for a total of about 10 hours (2 respondents × 5 hours).

To ensure that comments on information collection are received, OMB recommends that written comments be submitted through *reginfo.gov* (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

IX. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that 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. Accordingly, we conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the proposed rule does not contain policies that would 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. We invite comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, ''Food Additives: Food Contact Substance Notification That Is No Longer Effective, Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis.'' Also available at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 170 be amended as follows:

PART 170—FOOD ADDITIVES

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 2. Amend § 170.102 by revising the section title, paragraph (e) introductory text and paragraphs (e)(1) and (5) to read as follows:

§ 170.102 Confidentiality of information related to premarket notification for a food contact substance (FCN).

* * * * *

(e) The following data and information are available for public disclosure, unless extraordinary circumstances are shown, on the 121st day after receipt of the notification by FDA, except that no data or information are available for public disclosure if the FCN is withdrawn under § 170.103. Data and information related to FDA's determination that an FCN is no longer effective are available for public disclosure as of the date of publication in the **Federal Register** of FDA's determination.

(1) All safety and functionality data and information submitted with or incorporated by reference into the notification, or submitted in reference to an effective FCN. Safety and functionality data include all studies and tests of a food contact substance on animals and humans and all studies and tests on a food contact substance for establishing identity, stability, purity, potency, performance, and usefulness.

* * * * *

(5) All correspondence and written summaries of oral discussions relating to the notification or to FDA's determination that an FCN is no longer effective, except information that is exempt under § 20.61 of this chapter.

* * * * *

■ 3. Revise § 170.105 to read as follows:

§ 170.105 The Food and Drug Administration's (FDA's) determination that a premarket notification for a food contact substance (FCN) is no longer effective.

(a) FDA may determine that an FCN is no longer effective if:

(1) Data or other information available to FDA, including data not submitted by the manufacturer or supplier, demonstrate that the intended use of a food contact substance is no longer safe.

(i) FDA will inform the affected manufacturer or supplier specified in the FCN, in writing, of FDA's concerns regarding the safety of the intended use of the food contact substance. FDA will specify the date by which the manufacturer or supplier must provide FDA with data or other information to respond to FDA's safety concerns.

(ii) If the manufacturer or supplier fails, by the specified date, to supply either the data or other information necessary to address the safety concerns regarding the notified use or a request described in paragraph (a)(2)(i) of this section, FDA may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

(iii) If FDA denies a request described in paragraph (a)(2)(i) of this section, and FDA had previously informed the manufacturer or supplier of FDA's concerns regarding the safety of the intended use of the food contact substance as described in paragraph (a)(1)(i) of this section, FDA may determine that a FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe. Alternatively, FDA may provide the manufacturer or supplier with additional time to provide FDA with data or other information to respond to FDA's safety concerns. If the manufacturer or supplier fails, by the specified date, to supply the data or

other information necessary to address the safety concerns regarding the notified use, FDA may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

(2) Data or other information available to FDA demonstrate that the manufacturer or supplier specified in the FCN has stopped or intends to stop producing, supplying, or using a food contact substance for the intended use. Such data or other information includes but is not limited to:

(i) A request from the manufacturer or supplier.

(A) The manufacturer or supplier specified in the FCN may request in writing that FDA determine that an FCN is no longer effective on the basis that it has stopped producing, supplying, or using a food contact substance for the intended food contact use in the United States or that it intends to stop producing, supplying, or using a food contact substance for the intended food contact use in the United States by a specified date. FDA will notify the manufacturer or supplier whether FDA is granting the request.

(B) If FDA grants the request, FDA may determine that the FCN is no longer effective on the basis that the manufacturer or supplier has stopped producing, supplying, or using a food contact substance for the intended use in the United States or that it intends to stop producing, supplying, or using a food contact substance for the intended food contact use in the United States by a specified date. When such a request is based on the intent to stop producing, supplying, or using a food contact substance for the intended food contact use in the United States at a future date, FDA will include in the notice described in paragraph (b) of this section the date specified in the request as the compliance date by which the manufacturer or supplier will stop producing, supplying, or using the food contact substance for the intended food contact use in the United States.

(ii) Other data or information available to FDA.

(A) If other data or information available to FDA demonstrate that a food contact substance is no longer produced, supplied, or used for an intended food contact use in the United States, FDA will inform the affected manufacturer or supplier specified in the FCN, in writing. FDA will include a specified time period by which the manufacturer or supplier must provide FDA with data or other information that demonstrate that the manufacturer or supplier continues to produce, supply, or use a food contact substance for the intended use in the United States.

(B) If the manufacturer or supplier fails, by the specified date, to provide data or other information that demonstrate that the manufacturer or supplier continues to produce, supply, or use a food contact substance for the intended use in the United States; or if the manufacturer or supplier confirms that it has stopped producing, supplying, or using the food contact substance for the intended food contact use in the United States, FDA may determine that the FCN is no longer effective.

(3) The intended use of the food contact substance identified in the FCN is authorized by a food additive regulation.

(i) FDA will inform the manufacturer or supplier specified in the FCN in writing that the intended use of the food contact substance identified in the FCN is authorized by a food additive regulation. FDA will include a specified time period by which the manufacturer or supplier must respond to FDA with data or other information about whether the intended use of the food contact substance is authorized by a food additive regulation.

(ii) If a manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrate that the intended use of the food contact substance identified in the FCN is not authorized by a food additive regulation, FDA may determine that the FCN is no longer effective on the basis that the intended use of the food contact substance is authorized under a food additive regulation.

(4) The intended use of the food contact substance identified in the FCN is covered by a threshold of regulation exemption.

(i) FDA will inform the manufacturer or supplier specified in the authorizing FCN in writing that the intended use of the food contact substance identified in the FCN is covered by a threshold of regulation exemption. FDA will include a specified time period by which the manufacturer or supplier must respond to FDA with data or other information about whether the intended use of the food contact substance is covered by a threshold of regulation exemption.

(ii) If a manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrate that the intended use of the food contact substance identified in the FCN is not covered by a threshold of regulation exemption, FDA may determine that the FCN is no longer effective on the basis that the intended use of the food contact substance is covered under a threshold of regulation exemption.

(b) If FDA determines that an FCN is no longer effective, FDA will publish a notice of its determination in the **Federal Register** stating that a detailed summary of the basis for FDA's determination that the FCN is no longer effective has been placed on public display and that copies are available upon request. If FDA determines it would be protective of public health, FDA may include a separate compliance date for the use of the food contact substance in food contact articles, including food contact substances that were produced, supplied, or used by the manufacturer or supplier before publication of the notice in the **Federal Register** or before the compliance date described in paragraph (a)(2)(i)(B) of this section. The date that the notice publishes in the **Federal Register** is the date on which the notification is no longer effective. FDA's determination that an FCN is no longer effective is final agency action subject to judicial review.

(c) FDA's determination that an FCN is no longer effective does not preclude any manufacturer or supplier from submitting a new FCN for the same food contact substance, including for the same intended use, after FDA has determined that an FCN is no longer effective, unless the intended use of the food contact substance is authorized by a food additive regulation or covered by a threshold of regulation exemption. The new submission must be made under §§ 170.100 and 170.101.

Dated: January 20, 2022.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

[FR Doc. 2022–01527 Filed 1–25–22; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0932; FRL–9461–01–R7]

Air Plan Approval; Iowa; Determination of Attainment by the Attainment Date for the 2010 1-Hour Sulfur Dioxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Muscatine sulfur dioxide (SO_2) nonattainment area attained the 2010 1-

hour SO_2 primary national ambient air quality standard (NAAQS) by the applicable attainment date of October 4, 2018, based upon a weight-of-evidence analysis using available air quality information. Additional analysis of the attainment determination is provided in a Technical Support Document (TSD) included in the docket to this proposed rulemaking. This action, if finalized, will address the EPA's obligation under a consent decree which establishes a deadline of March 31, 2022 for the EPA to determine under Clean Air Act (CAA) section 179(c) whether the Muscatine SO_2 nonattainment area attained the NAAQS by the October 4, 2018 attainment date.

DATES: Comments must be received on or before February 25, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0932 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jason Heitman, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7664; email address: *heitman.jason@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0932, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. The 2010 SO_2 National Ambient Air Quality Standards

Under section 109 of the CAA, the EPA has established primary and secondary NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined, including a margin of safety, are requisite to protect the public health. The secondary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

Under the CAA, the EPA must establish a NAAQS for SO_2. SO_2 is primarily released to the atmosphere through the burning of fossil fuels by power plants and other industrial facilities. SO_2 is also emitted from industrial processes including metal extraction from ore and heavy equipment that burn fuel with a high sulfur content. Short-term exposure to SO_2 can damage the human respiratory system and increase breathing difficulties. Small children and people with respiratory conditions, such as asthma, are more sensitive to the effects of SO_2. Sulfur oxides at high concentrations can also react with compounds to form small particulates that can penetrate deeply into the lungs and cause health problems.

The EPA first established primary SO_2 standards in 1971 at 0.14 parts per million (ppm) over a 24-hour averaging period and 0.3 ppm over an annual averaging period (36 FR 8186, April 30, 1971). In June 2010, the EPA revised the NAAQS for SO_2 to provide increased protection of public health, providing for revocation of the 1971 primary annual and 24-hour SO_2 standards for most areas of the country following area designations under the new NAAQS. The 2010 NAAQS is 75 parts per billion (ppb) (equivalent to 0.075 ppm) over a 1-hour averaging period (75 FR 35520, June 22, 2010). A violation of the 2010 1-hour SO_2 NAAQS occurs when the annual 99th percentile of ambient daily maximum 1-hour average SO_2 concentrations, averaged over a 3-year period, exceeds 75 ppb.

B. Designations, Classifications, and Attainment Dates for the 2010 SO_2 National Ambient Air Quality Standards

Following promulgation of any new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS.

On August 5, 2013, the EPA finalized its first round of designations for the 2010 primary 1-hour SO_2 NAAQS (78 FR 47191). In the 2013 action, the EPA designated 29 areas in 16 states as nonattainment for the 2010 SO_2 NAAQS, including a portion of Muscatine County in Iowa. The designation was based on air quality monitoring data from 2009–2011 showing violations of the NAAQS. The EPA's initial round of designations for the 2010 SO_2 NAAQS including the Muscatine nonattainment area (NAA) became effective on October 4, 2013. Pursuant to CAA sections 172(a)(2) and 192(a), the maximum attainment date for the Muscatine NAA is October 4, 2018, five years after the effective date of the final action designating the area as nonattainment for the 2010 SO_2 NAAQS.

III. Proposed Determination

A. Applicable Statutory and Regulatory Provisions

Section 179(c)(1) of the CAA requires the EPA to determine whether a nonattainment area attained an applicable standard by the applicable attainment date based on the area's air quality as of the attainment date.

A determination of whether an area's air quality meets applicable standards is generally based upon the most recent three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from ambient air monitors operated by state and local agencies in compliance with the EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix T (for SO_2). In general, for SO_2 EPA does not rely exclusively on monitoring data to determine whether the NAAQS is met unless it has been demonstrated that the monitors were appropriately sited to record expected maximum ambient concentrations of SO_2 in an area.

Under EPA regulations in 40 CFR 50.17 and in accordance with 40 CFR part 50, appendix T, the 2010 1-hour annual SO_2 standard is met at an ambient air quality monitoring site when the design value is less than or equal to 75 ppb. Design values are calculated by computing the three-year average of the annual 99th percentile daily maximum 1-hour average concentrations. When calculating 1-hour primary standard design values, the calculated design values are rounded to the nearest whole number or 1 ppb by convention. An SO_2 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year is considered complete when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days are complete. A sampling day is considered complete if 75 percent of the hourly concentration values are reported; this includes data affected by exceptional events that have been approved for exclusion by the Administrator.

B. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. The EPA's monitoring requirements are specified by regulation in 40 CFR part 58. These requirements are applicable to state, and where delegated, local air monitoring agencies that operate criteria pollutant monitors.

In section 4.4 of appendix D to 40 CFR part 58, the EPA specifies minimum monitoring requirements for SO_2 to operate at SLAMS. SLAMS produce data that are eligible for comparison with the NAAQS, and therefore, the monitor must be an approved Federal reference method (FRM) or Federal equivalent method (FEM) monitor.

The minimum number of required SO_2 SLAMS is described in sections 4.4.2 and 4.4.3 of appendix D to 40 CFR part 58. According to section 4.4.2, the minimum number of required SO_2 monitoring sites is determined by the population weighted emissions index for each state's core based statistical area. Section 4.4.3 describes additional monitors that may be required by an EPA regional administrator.

Under 40 CFR 58.10, states are required to submit annual monitoring network plans (AMNP) for ambient air monitoring networks for approval by the EPA. Within the Muscatine NAA, the State is responsible for assuring that each monitoring site meets air quality monitoring requirements. Iowa submits an AMNP to the EPA that describes the various monitoring sites operated by the State. Each AMNP discusses the status of the air monitoring network as required under 40 CFR 58.10 and addresses the operation and maintenance of the air monitoring network in the previous year. The EPA regularly reviews these AMNPs for compliance with the applicable reporting requirements in 40 CFR part 58. With the EPA's approval of Iowa's most recent AMNP, the State has met the applicable minimum monitoring requirements.[1]

The EPA also conducts regular ''technical systems audits'' (TSAs) during which we review and inspect ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data.

During the 2015–2017 data period, Iowa operated three SO_2 SLAMS in the Muscatine SO_2 NAA: Greenwood Cemetery (AQS ID 19–139–0016); High School East Campus (AQS ID 19–139–0019); and Musser Park (AQS ID 19–139–0020).

[1] EPA's letter approving Iowa's 2021 monitoring network plan dated December 2, 2021 is included in the docket for this action.

C. Data Considerations and Proposed Determination

CAA section 179(c)(1) requires the Agency to ''determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.'' The EPA first assessed what air quality information was available related to making a determination of attainment by the attainment date for the Muscatine area. The EPA chose to employ a weight-of-evidence approach for making this determination because the EPA does not have any analysis (including modeling) associated with the monitor siting to demonstrate that the monitors record maximum ambient SO_2 concentrations in the NAA, nor does EPA have modeling of actual emissions to support a determination based on modeled ambient concentrations whether the area attained the NAAQS by the attainment date. The available modeling of permitted allowable emissions in the area, as discussed later in this document, does not on its own provide a basis for determining whether the area attained by the attainment date. Thus, EPA relied upon SO_2 emissions data and trends, relevant air monitoring data and trends, SO_2 monitoring data incorporated with local meteorological data, as well as available modeling information in order to make its determination under CAA section 179(c)(1). The EPA believes our analysis of multiple types of air-quality related information to support our determination is consistent with section 179(c)(1)'s direction to determine the area's air quality as of the attainment date. Further detail on EPA's weight-of-evidence analysis is contained in the technical support document (TSD) included in the docket for this action.

i. Emissions Information

There are four facilities that emit or have historically emitted SO_2 located in or near the Muscatine NAA. Three are located within the nonattainment area—Grain Processing Corporation (GPC), Muscatine Power and Water (MPW), and Monsanto. Louisa Generating Station (LGS) is located south of the nonattainment area. Table 1 provides the annual emissions from 2011–2020 from each individual source along with the total combined emissions among the four facilities. In the 2011–2015 timeframe, GPC was the largest SO_2 source in the Muscatine area, with the majority of SO_2 emissions attributed to GPC's boilers using coal. A fuel switch at GPC's coal-fired boilers to natural gas occurred on July 14, 2015, and this change led to large reductions of SO_2

emissions at GPC. Prior to 2018, Monsanto was fueled primarily by coal, with SO_2 emissions associated with its main boiler. As required by a construction permit, Monsanto converted its coal-fired boiler to use only natural gas in 2018 which eliminated nearly all SO_2 emissions from Monsanto.

The EPA first evaluated annual SO_2 emissions trends within the Muscatine nonattainment area. By 2017, total annual emissions in the Muscatine area had dropped approximately 72% from 2014 (24,181 tons per year (tpy) in 2014 to 6,781 tpy in 2017). Much of the reduction in emissions can be attributed to GPC's fuel conversion to natural gas in July of 2015, evident by the more than 50% reduction in annual SO_2 emissions at GPC from 2014 (13,075 tpy) to 2015 (6,191 tpy) and further reductions to below 200 tpy in 2016 and 2017. Overall, GPC's annual SO_2 emissions were reduced by 98.7% from 2014 to 2017.

In addition to emissions decreases within the nonattainment area, the EPA also looked at emissions at LGS, the nearby source located outside the nonattainment area. In the Louisa County Data Requirements Rule (DRR) modeling,[2] Iowa modeled LGS using its permitted allowable rate of 4,270.89 lbs/hour,[3] which would correspond to an annual total of 18,706 tpy. Actual annual emissions at LGS during the 2015–2017 timeframe ranged between 5,129 tpy and 6,098 tpy, significantly below the annual total of 18,706 tpy that corresponded with modeled attainment. In addition, the actual maximum hourly emission rate at LGS since 2011, as reported to EPA Clean Air Markets Division (CAMD) database[4] is 4,014.7 lb/hr, which is also below the 1-hour modeled emission rate.

TABLE 1—SO_2 EMISSIONS (TONS) FROM 2011 TO 2019 FOR SOURCES WITHIN AND NEARBY THE MUSCATINE NONATTAINMENT AREA. EMISSIONS ARE FROM EPA'S NATIONAL EMISSIONS INVENTORY (NEI)

Source	2011	2012	2013	2014	2015	2016	2017	2018	2019
GPC	11,970	11,640	12,761	13,075	6,191	187	173	84	89
MPW	2,374	2,015	2,169	1,821	1,714	1,769	1,167	1,458	1,715
Monsanto	537	543	469	502	402	349	208	~0	~0
Louisa	7,306	8,743	8,285	8,783	6,098	5,129	5,233	7,332	5,286
Total	22,187	22,941	23,684	24,181	14,405	7,434	6,781	8,874	7,090

EPA's evaluation of emissions at sources within and outside of the nonattainment area indicate significant reductions in emissions in the 2015–2017 timeframe compared to pre-2015 emissions.

ii. Monitoring Data

Under 40 CFR 58.15, monitoring agencies must certify, on an annual basis, data collected by FRM or FEMs at all SLAMS, including special purpose monitors, that meet EPA quality assurance requirements. In doing so, monitoring agencies must certify that the previous year of ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate to the best of their knowledge. Iowa annually certifies that the data it submits to AQS are quality assured, including data collected at monitoring sites in the Muscatine SO_2 NAA.

For the Muscatine SO_2 NAA the applicable attainment date is October 4, 2018. In accordance with appendix T to 40 CFR part 50, where determinations of SO_2 NAAQS compliance may be made based on well-sited air quality monitors, compliance with the NAAQS is based on three consecutive calendar years of data. The three calendar year period preceding the attainment date for the Muscatine SO_2 NAA is January 1, 2015-December 31, 2017.

The 3-year design values of 1-hour SO_2 from 2011 through 2020 for the three Muscatine area monitors are provided in Table 2 and the annual 99th percentile of 1-hour SO_2 concentrations are shown in Table 3. All monitor violations occur before the 2015–2017 timeframe, with all three monitors showing violations from 2011–2016. No monitor violation of the 3-year design value has occurred since 2016, with the largest of the three 2015–2017 1-hour SO_2 design values of 65 ppb at the Musser Park site. The trends indicated in the monitored design values are consistent with EPA's evaluation of the emissions trends discussed above. As emission reductions were implemented at the sources in the nonattainment area, SO_2 concentrations recorded at the area's air quality monitors decreased. Specifically, coal combustion at GPC ceased in mid-2015 and coal combustion at Monsanto ceased in late 2017. Significant decreases in 1-hour daily maximum SO_2 concentrations at the air quality monitors are consistent with that timeline. While the most recent complete and quality-assured design values (2018–2020) for the Greenwood Cemetery, High School East Campus, and Musser Park sites (15, 18, and 20 ppb, respectively) were recorded after the area's attainment date, they indicate the effectiveness of the area's control measures. These design values are no greater than 27% of the level of the 2010 1-hour SO_2 NAAQS.

TABLE 2—DESIGN VALUES (ppb) FOR THE 2010 1-HOUR SO_2 NAAQS FOR THE MUSCATINE MONITORING SITES

Site name	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020
Greenwood Cemetery (19–139–0016)	.....	101	97	77	45	20	17	15
High School E Campus (19–139–0019)	.....	.....	128	84	42	22	21	18

[2] EPA relied on the DRR modeling submitted by Iowa to designate Louisa County, containing LGS, as attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS in December 2017 (83 FR 1098).

[3] The 1-hour SO_2 modeling rate used for LGS was developed from the current 30-day rolling permit limit and actual emissions following the approach outlined in the EPA's 2014 *Guidance for 1-Hour SO_2 Nonattainment Area State Implementation Plans.*

[4] *https://ampd.epa.gov/ampd/.*

TABLE 2—DESIGN VALUES (ppb) FOR THE 2010 1-HOUR SO_2 NAAQS FOR THE MUSCATINE MONITORING SITES—Continued

Site name	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020
Musser Park (19–139–0020)	217	194	158	113	65	34	25	20

TABLE 3—ANNUAL 99TH PERCENTILE OF 1-HOUR DAILY MAXIMUM SO_2 CONCENTRATIONS (ppb) MUSCATINE MONITORING SITES

Site name	2013	2014	2015	2016	2017	2018	2019	2020
Greenwood Cemetery (19–139–0016)	84	117	91	24	20	15	16	14
High School E Campus (19–139–0019)	147	161	75	30	20	16	25	13
Musser Park (19–139–0020)	179	179	116	45	35	24	16	20

iii. Meteorology

The EPA does not have conclusive evidence to support that the monitors are sited in the area of maximum ambient SO_2 concentrations. EPA would typically rely on the siting analysis performed to originally site the monitors or modeling of actual emissions to demonstrate the monitors are sited in the area of maximum concentrations. There is not a specific analysis associated with the siting of the monitors nor does EPA have access to modeling of actual emissions for sources in or near the nonattainment area to make such a determination. In the absence of that information, EPA has also evaluated local meteorology along with the monitored SO_2 values to evaluate the likelihood of maximum ambient concentrations occurring in locations that the monitors could not record. Hourly wind speeds and direction were collected from the Muscatine Airport, which is located approximately 8 kilometers southwest of GPC and the Musser Park and High School SO_2 monitors. The hourly winds were combined into a dataset with the coinciding one hour monitored SO_2 concentrations and plotted using SO_2 pollution roses. This analysis provides information to help determine from where (and potentially what source) the monitored impacts were coming. In summary, the monitors appear to be positioned in downwind areas of relatively high impacts as indicated by pollution roses. Full details of the local meteorology analysis and pollution roses are provided in the TSD.

iv. Modeling Information

The EPA considered relying on two separate modeling demonstrations for the Muscatine area. Modeling performed by the State of Iowa for purposes of the control strategy and attainment demonstration for the area was submitted to EPA in May 2016. EPA later approved the attainment plan and modeling in a final action in November 2020 (85 FR 73218). That final action has since been remanded without vacatur to EPA.[5] The State of Iowa also submitted modeling pursuant to the SO_2 DRR for LGS in January 2017. This DRR modeling was the basis for EPA's Round 3 designation of Attainment/Unclassifiable for Louisa County (containing LGS) in December 2017 (83 FR 1098). Both sets of modeling rely on permitted allowable emissions rates[6] [7] that were in place by the October 4, 2018, attainment date and were previously found by EPA to demonstrate attainment of the NAAQS as noted above. However, the EPA is not relying on Iowa's attainment demonstration modeling as a basis for our proposed determination, because that modeling may be revisited as part of the EPA's reconsideration action per the D.C. Circuit's remand of EPA's approval of Iowa's attainment plan. Rather, as discussed above, we are relying on the DRR modeling to provide a comparison between the much higher modeled emission rates at the sources and the actual recorded emissions to provide additional evidence that the entire area was attaining the NAAQs as of October 4, 2018.

[5] The final approval action was challenged in the D.C. Cir. on January 15, 2021 and was placed in abeyance on February 3, 2021. *Sierra Club* v. *EPA,* No. 21–1022 (D.C. Cir.). EPA filed an unopposed motion to the court for a voluntary remand without vacatur and indicated that EPA would take a final reconsideration action no later than December 1, 2023. The D.C. Circuit granted EPA's motion on December 17, 2021.

[6] The permits containing the emissions limits also contain exemptions for periods of startup, shutdown, and cleaning.

[7] Monsanto was modeled with actual emissions for the Louisa County DRR modeling demonstration.

v. Conclusion

In sum, and as discussed further in the TSD, we propose to find that the weight of the available evidence indicates that the Muscatine area attained the 2010 1-hour SO_2 NAAQS in the 2015–2017 timeframe by the October 4, 2018 attainment date. Specifically, the significant reductions in emissions during the relevant time period from sources within the nonattainment area and a nearby source outside the nonattainment area, coupled with corresponding decreased monitored SO_2 concentrations within the nonattainment area during that same time period lead us to our proposed determination that the area attained by its attainment date. Local meteorological data help confirm that the air quality monitors are unlikely to have missed high concentrations, and the available modeling information and emissions data of the nearby LGS source (which may not be reflected in the air quality monitoring data from within the nonattainment area) also supports the EPA's determination, as actual historical emissions from that source during the relevant time period were significantly below the emissions that were modeled to be consistent with attainment of the NAAQS.

IV. Proposed Action and Request for Public Comment

The EPA conducted a weight-of-evidence analysis, described in detail above and in the TSD, to determine if the Muscatine SO_2 nonattainment area attained the 2010 1-hour SO_2 NAAQS by the October 4, 2018 attainment date by evaluating all available technical information and data relevant to the SO_2 air quality (*e.g.,* emissions, monitoring, meteorological data, and modeling) in the Muscatine, Iowa, area. Based on the analysis and information presented in this document and the TSD contained in

the docket for this action, the EPA proposes to determine that the Muscatine SO_2 NAA attained the 2010 1-hour SO_2 standard by the applicable attainment date of October 4, 2018, consistent with CAA section 179(c)(1).

In addition, this action, if finalized, will address EPA's obligation under a consent decree in *Center for Biological Diversity, et al.* v. *Regan,* which establishes a deadline of March 31, 2022 for the EPA to determine under CAA section 179(c) whether the Muscatine County SO_2 nonattainment area attained the NAAQS by the October 4, 2018 attainment date.[8]

This proposed action does not constitute a redesignation of the Muscatine SO_2 NAA to attainment for the 2010 1-hour SO_2 NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA and have not determined that the area has met the other CAA section 107(d)(3)(E) requirements for redesignation. The classification and designation status in 40 CFR part 81 will remain nonattainment until the EPA has determined that Iowa has met the CAA requirements for redesignation to attainment for the Muscatine SO_2 NAA.

This is a proposed action and we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within the area. The tool outputs report is contained in the docket for this action. While the EPA's EJSCREEN tool demonstrates that demographic indicators are consistent or lower than national averages, there are vulnerable populations in the area including low-income populations and persons over 64 years of age.

This action addresses EPA's determination, as required by the CAA, of whether the Muscatine County, Iowa, area attained the 2010 1-hour SO_2 NAAQS by the relevant attainment date. This action proposes to determine an area has attained the NAAQS by the relevant attainment date, but it does not change the geographic status of the area nor does it impose additional or modify existing requirements on sources. Based on the information presented in this document and the associated technical support document, the EPA is proposing to determine that the air quality in the Muscatine County area is attaining the NAAQS. For these reasons, this proposed action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

VI. Statutory and Executive Order Reviews

This action proposes to determine an area has attained the NAAQS by the relevant attainment date and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- This action does not 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). The basis for this determination is contained in section V of this action, ''Environmental Justice Concerns.''

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 20, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. Revise § 52.834 to read as follows:

§ 52.834 Control strategy: Sulfur dioxide.

(a) *Approval.* On April 21, 1997, the Iowa Department of Natural Resources (IDNR) submitted a maintenance plan and redesignation request for the Muscatine County nonattainment area for the 1971 SO_2 national ambient air quality standard (NAAQS). The maintenance plan and redesignation request satisfy all applicable requirements of the Clean Air Act.

(b) *Determination of attainment by the attainment date.* As of [date 30 days after date of publication of the final rule in the **Federal Register**], the EPA has determined that the Muscatine, Iowa, SO_2 nonattainment area has attained the 2010 1-hour SO_2 primary NAAQS by the applicable attainment date of October 4, 2018.

[FR Doc. 2022–01497 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

[8] *Center for Biological Diversity, et al.* v. *Regan, No. 3:20–cv–05436–EMC (N.D. Cal. June 25, 2021).*

Notices

Federal Register

Vol. 87, No. 17

Wednesday, January 26, 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

Office of the Secretary

Notice of Request for Extension and Revision of a Currently Approved Information Collection: Advisory Committee and Research and Promotion Background Information.

AGENCY: Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the U.S. Department of Agriculture's (USDA) intention to request an extension and a revision to the currently approved Advisory Committee and Research and Promotion Background Information AD–755 Supplemental List—Agricultural Marketing Service (AMS) Commodity Specific Questionnaire. The revised form allows applicants to answer whether the individual is a veteran, has a disability/impairment; further defines current membership terms with the term start and end dates when serving on a USDA federal advisory committee, council, or board; rearranged the preferred name on official correspondence to legal name section; requires an applicant to print name; provides an update to the most recent USDA equal employment opportunity statement; and adds a reset button to the form. The primary objective is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards.

DATES: Comments on this notice must be received by *March 28, 2022* to be assured of consideration.

ADDRESSES: USDA invites interested persons to submit comments on this notice. Comments may be submitted through one of the following methods:

☐ *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

☐ *Mail, including CD–ROMs, etc.:* White House Liaison Office, U.S. Department of Agriculture, 1400 Independence Avenue SW, the Whitten Building, Room 536–A, Washington, DC 20250–3700.

☐ *Hand- or courier-delivered submittals:* Deliver to White House Liaison Office, U.S. Department of Agriculture, 1400 Independence Avenue SW, the Whitten Building, Room 536–A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number. Comments received in response to this notice will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Cikena Reid, Committee Management Officer, Office of the Secretary, U.S. Department of Agriculture, 1400 Independence Ave. SW, the Whitten Building, Room 536–A, Washington, DC 20250; office phone: 202–720–2406; email: *cikena.reid@usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the U.S. Department of Agriculture's (USDA) intention to request an extension for—and a revision to the Advisory Committee and Research and Promotion Background Information collection form. The primary objective is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards.

Title: Advisory Committee and Research and Promotion Background Information.

OMB Number: 0505–0001.

Expiration Date of Approval: March 31, 2022.

Type of Request: Extension and revision of a currently approved information collection form document.

Abstract: The primary objective is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances on the candidates and to compile annual reports regarding membership.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 5,500.

Estimated Number of Responses per Respondent: One (1).

Estimated Total Annual Burden on Respondents: 5,500.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Ms. Cikena Reid, Committee Management Officer, the White House Liaison Office, 1400 Independence Avenue SW, the Whitten Building, Room 536–A, Washington, DC 20250; fax: 202–720–9286; or by email: *cikena.reid@usda.gov.* Comments must be postmarked 10 business days prior to the deadline to ensure timely receipt.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 21, 2022.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2022–01525 Filed 1–25–22; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

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

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

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

SUPPLEMENTARY INFORMATION:

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

[12/1/2021 through 1/19/2022]

Firm name	Firm address	Date accepted for investigation	Product(s)
Kerber Sheetmetal Works, Inc. d/b/a KSM Metal Fabrication.	104 Foss Way, Troy, OH 45373.	1/13/2022	The firm manufactures miscellaneous metal parts and assemblies.
Precise Tool & Die, Inc	1711 Piper Road, Leechburg, PA 15656.	1/13/2022	The firm manufactures tools for pressing, stamping, or punching metal.
Chicago Boiler Company	1300 Northwestern Avenue, Gurnee, IL 60031.	1/18/2022	The firm manufactures steel tanks.
RamRod Industries, LLC	800 South Monroe Street, Spencer, WI 54479.	1/18/2022	The firm manufactures miscellaneous metal parts.

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

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–01505 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–904, A–542–804, A–549–844, A–489–846]

Certain Steel Nails From India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable January 19, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren at (202) 482–1671 (India); Allison Hollander at (202) 482–2805 (Sri Lanka); Laurel LaCivita at (202) 482–4243 (Thailand); Tara Moran at (202) 482–3619 (Turkey); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Petitions

On December 30, 2021, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of certain steel nails (steel nails) from India, Sri Lanka, Thailand, and the Republic of Turkey (Turkey) filed in proper form on behalf of Mid Continent Steel & Wire, Inc. (the petitioner), a domestic producer of steel nails.[1] The Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of steel nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and Turkey.[2]

Between January 4 and 13, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires and phone calls.[3] The petitioner filed responses to

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey,'' dated December 30, 2021 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey and Countervailing Duties on Imports from the Sultanate of Oman: Supplemental Questions,'' dated January 4, 2022 (General Issues Questionnaire); *see also* Country-Specific Supplemental Questionnaires: India Supplemental, Sri Lanka Supplemental, Thailand Supplemental, and Turkey Supplemental, dated January 4, 2022; Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey and Countervailing Duties on Imports from the Sultanate of Oman: Phone Call with Counsel to the Petitioner,'' dated January 7, 2022 (First Scope Call Memorandum); and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey and Countervailing Duties on Imports from the Sultanate of Oman: Phone Call with Counsel to the Petitioner,'' dated January 13, 2022 (Second Scope Call Memorandum).

the supplemental questionnaires on January 10 and 14, 2022.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of steel nails from India, Sri Lanka, Thailand, and Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the steel nail industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[5]

Periods of Investigation

Because the Petitions were filed on December 30, 2021, the period of investigation (POI) for these LTFV investigations is October 1, 2020, through September 30, 2021, pursuant to 19 CFR 351.204(b)(1).

Scope of the Investigations

The products covered by these investigations are steel nails from India, Sri Lanka, Thailand, and Turkey. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On January 4, 7, and 13, 2022, Commerce requested further information from the petitioner regarding the proposed scope, to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On January 10 and 14, 2022, the petitioner revised the scope.[7] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on February 8, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 18, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date on which it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of steel nails to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe steel nails, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on February 8, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on February 18, 2021, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

[4] *See* Petitioner's Letter, ''Response to Supplemental Questions for the Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey,'' dated January 10, 2022 (General Issues Supplement); *see also* Petitioner's Country-Specific Supplemental Responses, dated January 10, 2022; and Petitioner's Letter, ''Response to Scope Questions for the Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey,'' dated January 14, 2022 (Scope Supplement).

[5] *See infra,* section titled ''Determination of Industry Support for the Petitions.''

[6] *See* General Issues Questionnaire; *see also* First Scope Call Memorandum; and Second Scope Call Memorandum.

[7] *See* General Issues Supplement at Exhibit GEN–21; *see also* Second General Issues Supplement at Exhibit GEN–24.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that steel nails, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided the 2020 production of the domestic like product for the U.S. producers that support the Petitions.[15] The petitioner estimated the production of the domestic like product for the remaining U.S. producers of steel nails based on its knowledge of the industry and production capabilities and market shares of U.S. producers.[16] The petitioner then compared the total production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[19] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[22] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[23]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; decline in U.S. shipments and production and low level capacity utilization; underselling and price depression and/or suppression; adverse impact on employment variables; lost sales and revenues; and declining profitability.[25] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* Petitions at Volume I at 13–15 and Exhibit GEN–3; *see also* General Issues Supplement at 7–10.

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklists: Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[15] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1.

[16] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1; *see also* General Issues Supplement at 6.

[17] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1.

[18] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1; *see also* General Issues Supplement at 6. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[19] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[20] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[21] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[22] *Id.*

[23] *Id.*

[24] *See* Petitions at Volume I at 17–19 and Exhibit GEN–9.

[25] *See* Petitions at Volume I at 19–21, 25–40 and Exhibits GEN–1, GEN–3, GEN–8, and GEN–11 through GEN–20.

supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate these LTFV investigations of imports of steel nails from India, Sri Lanka, Thailand, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

U.S. Price

For India, Sri Lanka, Thailand, and Turkey, the petitioner established export prices (EPs) based on the average unit value of publicly available import data. To calculate an ex-factory, net EP, the petitioner then deducted expenses associated with inland freight and brokerage and handling costs incurred within each respective country.[27]

Normal Value Based on Constructed Value [28]

For India, Sri Lanka, Thailand, and Turkey, the petitioner stated it was unable to obtain home-market or third-country prices for steel nails to use as a basis for NV. Therefore, for each country, the petitioner calculated NV based on constructed value (CV).[29]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[30] For India, Sri Lanka, Thailand, and Turkey, in calculating the cost of manufacturing, the petitioner relied on its own production experience and input consumption rates as a U.S. steel nail producer, valued using publicly available information applicable to each respective subject country.[31] With respect to India and Sri Lanka, in calculating selling, general, and administrative expenses, financial expenses, and profit ratios (where applicable), the petitioner relied on the 2020 financial statements of an Indian steel nails producer.[32] For Thailand and Turkey, in calculating selling, general, and administrative expenses, financial expenses, and profit ratios (where applicable), the petitioner relied upon the 2020 financial statements of producer of comparable merchandise domiciled in each respective subject country.[33]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of steel nails from India, Sri Lanka, Thailand, and Turkey are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to CV in accordance with section 773 of the Act, the estimated dumping margins for steel nails concerning each of the countries covered by this initiation are as follows: (1) India—66.53 to 99.43 percent; (2) Sri Lanka—35.50 to 104.13 percent; (3) Thailand—64.44 to 65.87 percent; and (4) Turkey—28.94 to 33.03 percent.[34]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of steel nails from India, Sri Lanka, Thailand, and Turkey are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioner identified 11 companies in India, five companies in Sri Lanka, five companies in Thailand, and six companies in Turkey, as producers and/or exporters of steel nails.[35]

Following standard practice in LTFV investigations involving market economy countries, in the event that Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix.

On January 14, 2022, Commerce released CBP data on imports of steel nails from India, Sri Lanka, Thailand, and Turkey under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days after the publication date of the notice of initiation of these investigations.[36] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.*

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of India, Sri Lanka, Thailand, and Turkey via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that

[26] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey (Attachment III).

[27] *See* Country-Specific AD Initiation Checklists.

[28] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[29] *See* Country-Specific AD Initiation Checklists.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *See* Petitions at Volume I at Exhibit GEN–6.

[36] *See* Memoranda, ''Antidumping Duty Petition on Imports of Certain Steel Nails from India: Release of U.S. Customs and Border Protection Data''; ''Antidumping Duty Petition on Imports of Certain Steel Nails from Sri Lanka: Release of U.S. Customs and Border Protection Data''; ''Antidumping Duty Petition on Imports of Certain Steel Nails from Thailand: Release of U.S. Customs and Border Protection Data''; and ''Antidumping Duty Petition on Imports of Certain Steel Nails from Turkey: Release of U.S. Customs and Border Protection Data,'' dated January 14, 2022.

imports of steel nails from India, Sri Lanka, Thailand, and/or Turkey are materially injuring, or threatening material injury to, a U.S. industry.[37] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[38] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [39] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[40] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in these investigations.[41]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[42] Parties must use the certification formats provided in 19 CFR 351.303(g).[43] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by the filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[44]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include,

[37] *See* section 733(a) of the Act.

[38] *Id.*

[39] *See* 19 CFR 351.301(b).

[40] *See* 19 CFR 351.301(b)(2).

[41] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[42] *See* section 782(b) of the Act.

[43] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

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

but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of these investigations are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of these investigations are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of these investigations are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of these investigations are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to these investigations are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to these investigations also may be classified under HTSUS subheadings 7318.15.5060, 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2022–01494 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–905, C–523–817, C–542–805, C–549–845, C–489–847]

Certain Steel Nails From India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Countervailing Duty Investigations

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

DATES: Applicable January 19, 2022.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen (India); Thomas Martin (the Sultanate of Oman); Nathan James (Sri Lanka); Charles Doss (Thailand); or Benjamin Luberda (the Republic of Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251; (202) 482–3936; (202) 482–5305; (202) 482–4474; or (202) 482–2185, respectively.

SUPPLEMENTARY INFORMATION:

Petitions

On December 30, 2021, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of certain steel nails (steel nails) from India, the Sultanate of Oman (Oman), Sri Lanka, Thailand, and the Republic of Turkey (Turkey), filed in proper form on behalf of Mid Continent Steel & Wire, Inc. (the petitioner), a domestic producer of steel nails.[1] The Petitions were accompanied by antidumping duty (AD) petitions concerning imports of steel nails from India, Sri Lanka, Thailand, and Turkey.[2]

Between January 4 and 18, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] The petitioner filed responses to these requests between January 10 and 19, 2022.[4]

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[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended, on Behalf of Mid Continent Steel & Wire, Inc.,'' dated December 30, 2021 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Supplemental Questions,'' dated January 4, 2022 (General Issues Questionnaire); ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from India: Supplemental Questions,'' dated January 4, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Sri Lanka: Supplemental Questions,'' dated January 4, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from the Republic of Turkey: Supplemental Questions,'' dated January 4, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Oman: Supplemental Questions,'' dated January 5, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand: Supplemental Questions,'' dated January 5, 2022; ''Phone Call with Counsel to the Petitioner,'' dated January 7, 2022 (First Scope Call Memorandum); ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand: Second Supplemental Questionnaire,'' dated January 7, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from the Republic of Turkey: Supplemental Questions,'' dated January 10, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Sri Lanka: Additional Supplemental Questions,'' January 12, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand: Third Supplemental Questionnaire,'' dated January 12, 2022; ''Phone Call with Counsel to the Petitioner,'' dated January 13, 2022 (Second Scope Call Memorandum); and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from the Republic of Turkey: Supplemental Questions,'' dated January 18, 2022.

[4] *See* Petitioner's Letters, ''Response to Supplemental Questions for the Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey,'' dated January 10, 2022 (First General Issues Supplement); ''Response to Supplemental Questions—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from India,'' dated January 10, 2022; ''Response to Supplemental Questions—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Turkey,'' dated January 10, 2022; ''Response to Supplemental Questions—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand,'' dated January 10, 2022; ''Response to Second Supplemental Questions—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand,'' dated January 11, 2022; ''Response to Third Supplemental Questionnaire—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand,'' dated January 13, 2022; ''Response to Second Supplemental Questionnaire—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Turkey,'' dated January 13, 2022; ''Response to Scope Questions for the Petition for the Imposition of Antidumping and Countervailing

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of India (GOI), the Government of Oman (GSO), the Government of Sri Lanka (GSL), the Royal Thai Government (RTG), and the Government of Turkey (GOT) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of steel nails in India, Oman, Sri Lanka, Thailand, and Turkey, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing steel nails in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[5]

Period of Investigation

Because the Petitions were filed on December 30, 2021, the period of investigation (POI) for these CVD investigations is January 1, 2020, through December 31, 2020.[6]

Scope of the Investigations

The merchandise covered by these investigations is steel nails from India, Oman, Sri Lanka, Thailand, and Turkey. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on Scope of the Investigations

On January 4, 7, and 13, 2022, Commerce requested further information from the petitioner regarding the proposed scope, to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On January 10 and 14, 2022, the petitioner revised the scope.[8] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on February 8, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 18, 2022, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[12] Commerce held consultations with the RTG on January 11, 2022, the GOT, GSL, and GSO on January 14, 2022, and the GOI on January 18, 2022.[13]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

Duties on Imports of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey,'' dated January 14, 2022 (Scope Supplement); ''Response to Second Supplemental Questionnaire—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Sri Lanka,'' dated January 14, 2022; and ''Response to Third Supplemental Questions—the Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Turkey,'' dated January 19, 2022.

[5] *See* ''Determination of Industry Support for the Petitions'' section, *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* General Issues Questionnaire; *see also* First Scope Call Memorandum; and Second Scope Call Memorandum.

[8] *See* General Issues Supplement at Exhibit GEN–21; *see also* Scope Supplement at Exhibit GEN–24.

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* Commerce's Letters, ''Countervailing Duty Petition on Certain Steel Nails from Sri Lanka; Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 4, 2022; ''Countervailing Duty Petition on Certain Steel Nails from the Republic of Turkey; Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 4, 2022; ''Countervailing Duty Petition on Certain Steel Nails from India; Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 5, 2022; ''Countervailing Duty Petition on Certain Steel Nails from Thailand,'' dated January 5, 2022; and ''Countervailing Duty Petition on Certain Steel Nails from the Sultanate of Oman: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 10, 2022.

[13] *See* Memoranda, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand: Teleconference Consultations with the Royal Thai Government,'' dated January 12, 2022; ''Countervailing Duty Petition on Certain Steel Nails from the Sultanate of Oman: Consultations with Officials from the Government of the Sultanate of Oman,'' dated January 14, 2022; ''Certain Steel Nails from Turkey: Government of Turkey Consultations,'' dated January 14, 2022; ''Consultations with the Government of Sri Lanka on the Countervailing Duty Petition Regarding Certain Steel Nails from Sri Lanka,'' dated January 14, 2022; and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from India: Consultations with Officials from the Government of India,'' dated January 18, 2022.

more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[16] Based on our analysis of the information submitted on the record, we have determined that steel nails, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided the 2020 production of the domestic like product for the U.S. producers that support the Petitions.[18] The petitioner estimated the production of the domestic like product for the remaining U.S. producers of steel nails based on its knowledge of the industry and production capabilities and market shares of U.S. producers.[19] The petitioner then compared the total production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.[20] We relied on data provided by the petitioner for purposes of measuring industry support.[21]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[22] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as a result, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[26]

Injury Test

Because India, Oman, Sri Lanka, Thailand, and Turkey are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from India, Oman, Sri Lanka, Thailand, and/or Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27]

In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing countries must exceed the negligibility threshold of four percent. Because Sri Lanka has been designated as a developing country under section 771(36)(A) of the Act,[28] the four percent negligibility threshold applies to imports from Sri Lanka. While the allegedly subsidized imports from Sri Lanka may not meet the statutory negligibility threshold of four percent,[29] the petitioner alleges and provides supporting evidence that: (1) There is a reasonable indication that data obtained in the ITC's investigation will establish that imports exceed the negligibility

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Petitions at Volume I at 13–15 and Exhibit GEN–3; *see also* General Issues Supplement at 7–10.

[17] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklists: Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey (Country-Specific CVD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[18] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1.

[19] *Id.; see also* General Issues Supplement at 6.

[20] *See* Petitions at Volume I at 3–4 and Exhibit GEN–1.

[21] *Id.; see also* General Issues Supplement at 6. For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[22] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[23] *Id.; see also* section 702(c)(4)(D) of the Act.

[24] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[25] *Id.*

[26] *Id.*

[27] *See* Petitions at 17–19 and Exhibit GEN–9.

[28] *See Designations of Developing and Least-Developed Countries under the Countervailing Duty Law,* 85 FR 7613, 7615–7616 (February 10, 2020).

[29] When calculated to the hundredth decimal point, imports from Sri Lanka account for 3.96 percent of the volume of total imports during the most recent 12-month period for which data are available. *See* Petitions at Volume I at 17–18 and Exhibit GEN–9.

threshold;[30] and (2) there is the potential that imports from Sri Lanka will imminently exceed the negligibility threshold and, therefore, they are not negligible for purposes of a threat determination.[31] The petitioner's arguments regarding the reasonable indication that information obtained in the ITC's investigation will exceed the negligibility threshold are consistent with the SAA. Furthermore, the petitioner's arguments regarding the potential for imports to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; decline in U.S. shipments and production and low level of capacity utilization; underselling and price depression and/or suppression; adverse impact on employment variables; lost sales and revenues; and declining profitability.[32] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, and negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[33]

Initiation of CVD Investigations

Based upon our examination of the Petitions on steel nails from India, Oman, Sri Lanka, Thailand, and Turkey, including supplemental information provided by the petitioner, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of steel nails from India, Oman, Sri Lanka, Thailand, and Turkey benefit from countervailable subsidies conferred by the Governments. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the publication date of these initiations.

India

Based on our review of the Petition on Indian steel nails, we find that there is sufficient information to initiate a CVD investigation on 32 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Oman

Based on our review of the Petition on Omani steel nails, we find that there is sufficient information to initiate a CVD investigation on 11 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Oman CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Sri Lanka

Based on our review of the Petition on Sri Lankan steel nails, we find that there is sufficient information to initiate a CVD investigation on 11 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Sri Lanka CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Thailand

Based on our review of the Petition on Thai steel nails, we find that there is sufficient information to initiate a CVD investigation on 13 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Thailand CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Turkey

Based on our review of the Petition on Turkish steel nails, we find that there is sufficient information to initiate a CVD investigation on 26 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Turkey CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner named 11 companies in India; four in Oman; five in Sri Lanka; five in Thailand; and six in Turkey as producers/exporters of steel nails.[34] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations.

In the event that Commerce determines that the number of companies in India, Oman, Sri Lanka, Thailand, or Turkey is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of steel nails from India, Oman, Sri Lanka, Thailand, and Turkey during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix.

From January 11 through 13, 2022, Commerce released CBP data for U.S. imports of steel nails from India, Oman, Sri Lanka, Turkey, and Thailand under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.[35] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by

[30] *See* Petitions at Volume I at 17–18 and Exhibit GEN–9; *see also* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (SAA) at 857.

[31] *See* Petitions at Volume I at 19 and Exhibit GEN–8; *see also* section 771(24)(A)(iv) of the Act.

[32] *See* Petitions at Volume I at 19–21, 25–41 and Exhibits GEN–1, GEN–3, GEN–8 and GEN–11 through GEN–20.

[33] *See* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Steel Nails from India, the Sultanate of Oman, Sri Lanka, Thailand, and the Republic of Turkey (Attachment III).

[34] *See* Petitions at Volume I at Exhibit GEN–6.

[35] *See* Memoranda, ''Countervailing Duty Petition on Certain Steel Nails from the Republic of Turkey: Release of Customs Data from U.S. Customs and Border Protection,'' dated January 11, 2022; ''Countervailing Duty Petition on Certain Steel Nails from India: Release of Customs Data from U.S. Customs and Border Protection,'' dated January 13, 2022; ''Countervailing Duty Petition on Certain Steel Nails from the Sultanate of Oman: Release of Customs Data from U.S. Customs and Border Protection,'' dated January 13, 2022; ''Countervailing Duty Petition on Certain Steel Nails from Sri Lanka: Release of Customs Data from U.S. Customs and Border Protection,'' dated January 13, 2022; and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Steel Nails from Thailand: Release of U.S. Customs and Border Protection Data,'' dated January 13, 2022.

ACCESS no later than 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the Governments via ACCESS. To the extent practicable, Commerce will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of steel nails from India, Oman, Sri Lanka, Thailand, and/or Turkey are materially injuring or threatening material injury to a U.S. industry.[36] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[37] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[38] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301 or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits prior to submitting extension requests in these investigations.[39]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.* Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[42]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: January 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

[36] *See* section 733(a) of the Act.

[37] *Id.*

[38] *See* 19 CFR 351.301(b).

[39] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

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

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of these investigations are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of these investigations are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of these investigations are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of these investigations are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to these investigations are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to these investigations also may be classified under HTSUS subheadings 7318.15.5060, 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2022–01509 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; SURF Fellow Housing Application

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of Information Collection, request for comment.

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

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST, by email to *PRAcomments@doc.gov*. Please reference OMB Control Number 0693–0084 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Brandi Toliver, NIST, 100 Bureau Drive, Stop 1090, Gaithersburg, MD 20899–1090, tel. (301)972–2371, or *brandi.toliver@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information requested on behalf of the NIST Summer Undergraduate Research Fellowship (SURF) Program for both Gaithersburg and Boulder locations. Students participating in the program receive a fellowship which includes lodging arranged by the agency. To coordinate the lodging, information is submitted by accepted students which require lodging during the program dates. The student information is utilized for roommate matching based on gender and common interests. The information includes: Identification of accepted laboratory, housing requirement (yes or no), first name, last name, dates requesting housing, gender, roommate identification, name of academic institution of enrollment, preferences (night owl, early bird, neatness, smoking,), and special requests.

II. Method of Collection

The information will be collected electronically. Accepted students will receive a link to the Housing Application administered on Google Documents (NIST approved platform). The application must be completed by a required deadline. The provided link will be inactive after the deadline.

III. Data

OMB Control Number: 0693–0084.

Form Number(s): None.

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

Affected Public: Individuals or households.

Estimated Number of Respondents: 220.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 110 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Required to obtain benefits.

Legal Authority:

IV. Request for Comments

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

Comments that you submit in response to this notice are a matter of public record. We will include or

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

Sheleen Dumas,

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

[FR Doc. 2022–01518 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB731]

Marine Mammals; File No. 22260

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Allyson Hindle, Ph.D., University of Nevada Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, has applied in due form for a permit to conduct research on Weddell seals (*Leptonychotes weddellii*).

DATES: Written, telefaxed, or email comments must be received on or before February 25, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 22260 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 22260 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes multiple studies to investigate how physiology supports and limits hypoxia tolerance in diving marine mammals. The applicant proposes to take 30 adult Weddell seals at an isolated dive hole and 36 free-ranging adult Weddell seals in Erebus Bay, Antarctica over two field seasons, with up to two unintentional mortalities proposed annually. Animals may be taken via capture, restraint, transport, anesthesia and sedation, external and internal instrumentation, biological sampling, marking, weighing, and ultrasound. The number of times an animal may receive a specific procedure is dependent on which of the four experimental groups it is assigned. Animals transported to remote breathing holes for dive tests will be held at the location for approximately six days before being returned to their original location of capture. Samples collected during these studies may be exported to the United States for analysis. While only 2 years of field study would be authorized, the permit would remain valid for 5 years to allow additional time for sample importation.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 20, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–01491 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB562]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the United States Department of the Navy (Navy) for authorization to take marine mammals incidental to the replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 25, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Corcoran@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying

information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On July 15, 2021 NMFS received a request from the Navy for an IHA to take marine mammals incidental to the reconstruction of Pier 3 at Naval Station Norfolk in Norfolk, Virginia. The application was deemed adequate and complete on October 27, 2021. Subsequently, the Navy provided a revised and updated version of the application, which was determined to be adequate and complete on January 10, 2022. The Navy's request is for take of a small number of five species by Level B harassment and Level A harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. NMFS previously issued IHAs to the Navy for similar work (86 FR 48986; September 1, 2021; 85 FR 33139; June 01, 2020; 83 FR 30406; June 28, 2018). This proposed IHA would cover one year of a larger project for which the Navy plans to submit a request for a Letter of Authorization (LOA) for additional work occurring from April 1, 2023 through December 30, 2026. The larger 4-year project involves the demolition and reconstruction of a submarine pier at Naval Station Norfolk.

Description of Proposed Activity

Overview

The Navy is proposing the replacement of Pier 3 at Naval Station (NAVSTA) Norfolk in Norfolk, VA. The existing Pier 3 would be completely demolished and a new Pier 3 will be constructed immediately north of the existing location (See Figure 1). Work at Pier 4, Pier 3T and the bulkheads associated with Pier 3 and 3T (CEP–175, CEP–176, and CEP–102) will also occur (See Figure 1). The proposed project includes impact and vibratory pile driving and vibratory pile removal and drilling. Drilling is considered a continuous noise source, similar to vibratory pile driving. Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment. The in-water construction period for the proposed action will occur over 12 months.

Dates and Duration

The proposed IHA would be effective from April 1, 2022 to March 31, 2023. Approximately 280 days will be required for the project. The Navy plans to conduct all work during daylight hours.

Specific Geographic Region

Pier 3 at NAVSTA Norfolk is located at the confluence of the Elizabeth River, James River, Nansemond River, LaFeyette, Willoughby Bay, and Chesapeake Bay (Figure 2).

Human generated sound is a significant contributor to the ambient acoustic environment surrounding NAVSTA Norfolk, as it is located in close proximity to shipping channels as well as several Port of Virginia facilities with frequent, noise-producing vessel traffic that, altogether, have an annual average of 1,788 vessel calls (Port of Virginia, 2021). Other sources of human-generated underwater sound not specific to naval installations include sounds from echo sounders on commercial and recreational vessels, industrial ship noise, and noise from recreational boat engines. Additionally, on average, maintenance dredging of the navigation channel occurs every 2 years (USACE and Port of Virginia, 2018).

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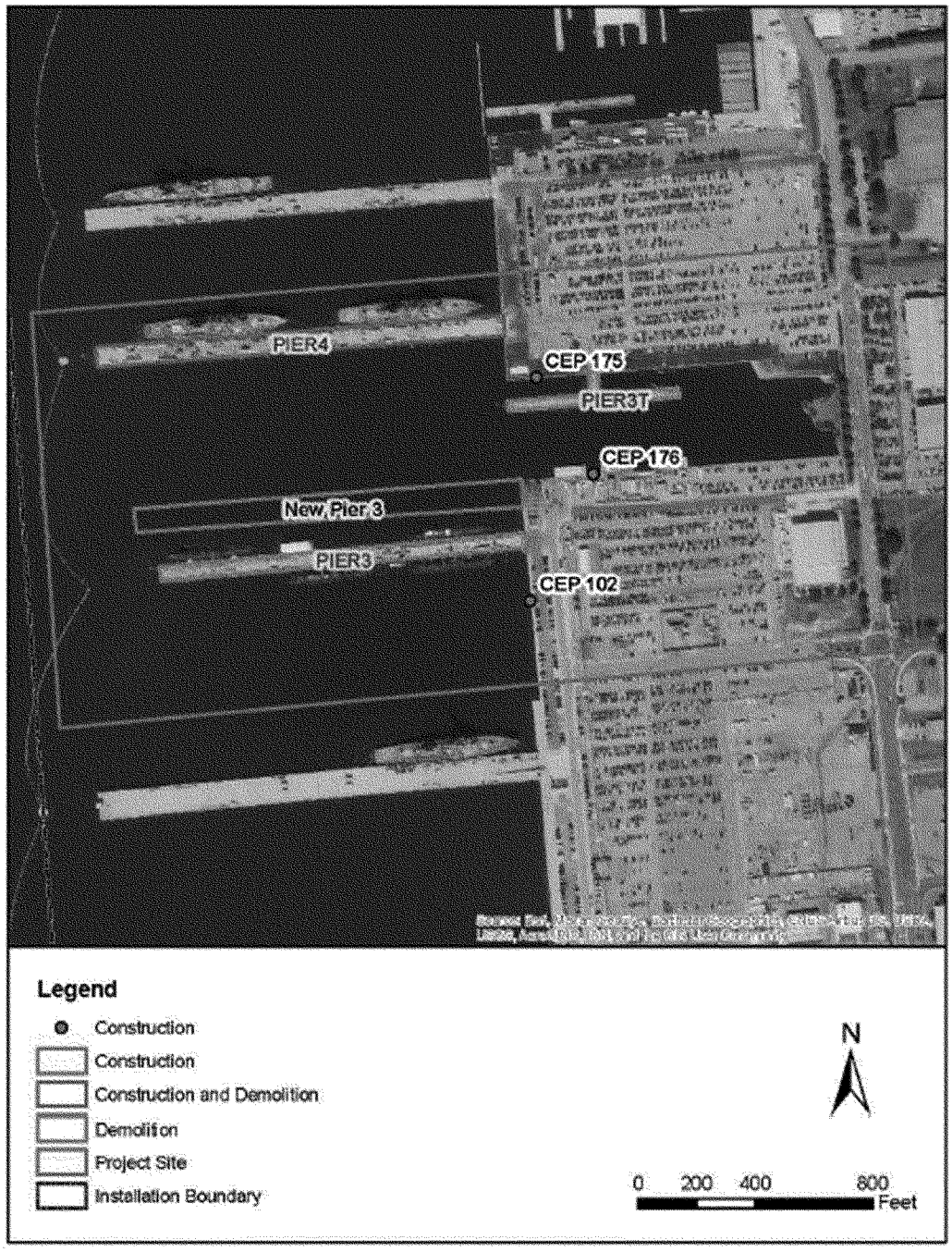

Figure 1. Project Site Map, location of existing and proposed Pier 3.

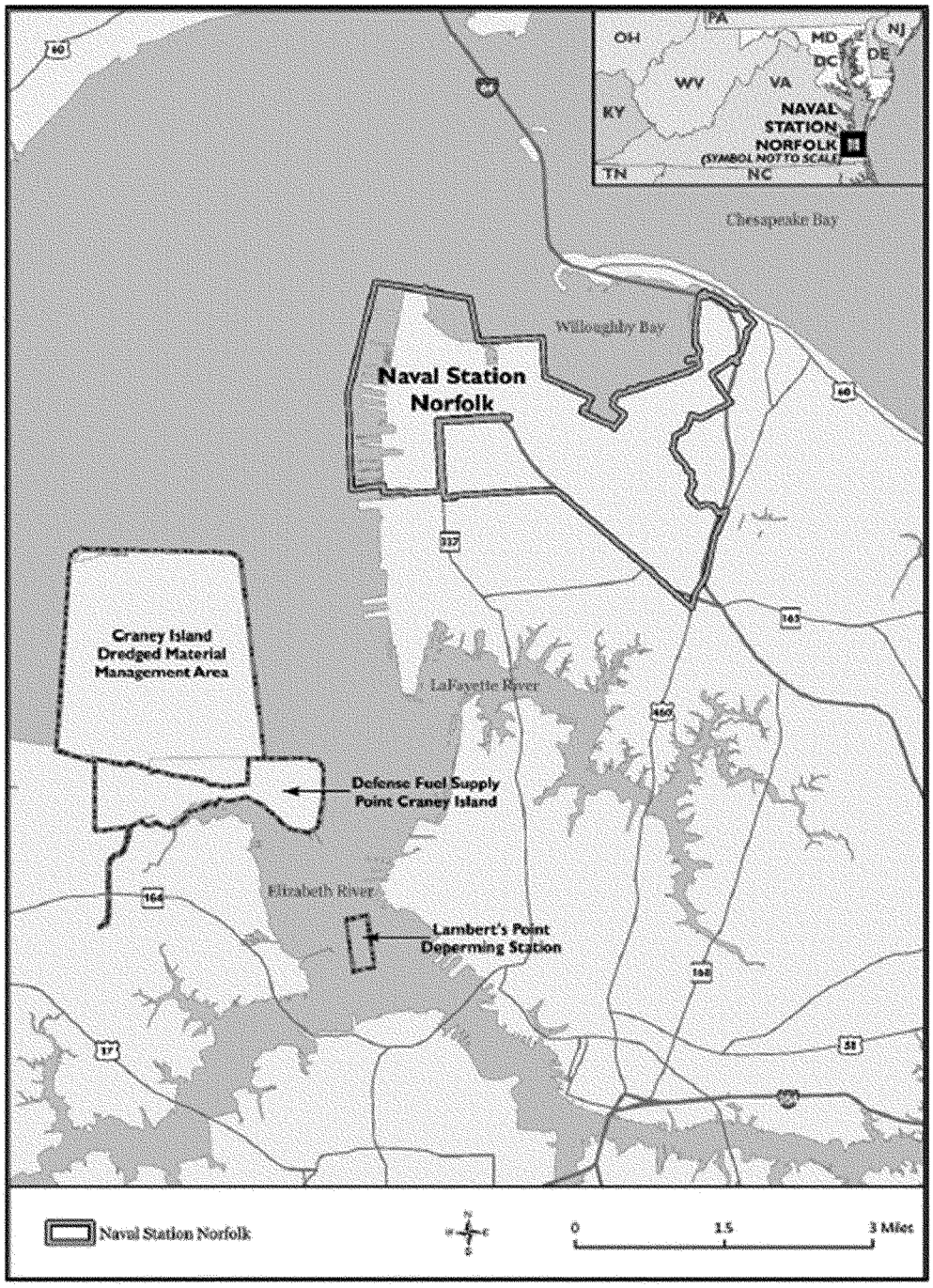

Figure 2. Project location Map, Naval Station Norfolk.

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Detailed Description of Specific Activity

The proposed project involves the replacement of Pier 3 at the NAVSTA waterfront. The existing Pier 3 would be completely demolished and a new Pier 3 would be constructed immediately north of the existing location. Additional work associated with the replacement of Pier 3 includes the outfitting of Pier 4 for temporary submarine berthing, demolition of Pier 3T, construction at the CEP–176 and the CEP–175 bulkheads, and beginning of construction of the CEP–102 bulkhead and relieving platform. The project includes six phases that will be completed under this proposed IHA and the future requested LOA. A preliminary work schedule and activity details for the work under this proposed IHA are provided in Table 1. In water construction activities and specific project phases that would occur under this IHA are described in more detail below:

Pile Removal—Piles are anticipated to be removed with a vibratory hammer, however direct pull or clamshell removal may be used depending on site conditions. Since vibratory removal is the loudest activity, to be precautionary, we assume all piles will be removed with a vibratory hammer. Pile removal methods are described as follows:

• Vibratory Extraction—This method uses a barge-mounted crane with a vibratory driver to remove all pile types. The vibratory driver is suspended from a crane by a cable and positioned on top of the pile to loosen the pile from the sediment. Once the pile is released from the sediments, the crane continues to raise the driver and pull the pile from the sediment and place it on a barge;

• Clamshell—In cases where a vibratory driver is not possible (*e.g.,* when the pile may break apart from clamp force and vibration), a clamshell apparatus may be lowered from the crane in order to remove pile stubs. The use and size of the clamshell bucket would be minimized to reduce the potential for generating turbidity during removal; and

• Direct Pull—Pile may also be removed by wrapping piles with a cable or chain and pulling them directly from the sediment with a crane. This method is based on site conditions.

Pile Installation—The proposed pile installation/removal would occur using land-based or barge-mounted cranes and vary in method based on pile type. Concrete piles would be installed using an impact hammer. Steel piles and polymeric piles would be installed using an impact hammer or vibratory hammer. Drilling may also occur for the installation of concrete bearing piles at CEP–102, concrete fender piles, and polymeric fender piles. No concurrent activity will occur.

Outfitting Pier 4—In order to support the temporary berthing of submarines, Pier 4 fender support piles will be replaced with stronger, more structurally sound fender piles. On the south side of Pier 4 (see Figure 1), 36, 14-inch timber piles will be removed with a vibratory hammer and 36, 24-inch precast square concrete piles will be installed with an impact hammer with drilling used as necessary.

Demolition of Pier 3T—The existing Pier 3T will be completely demolished and will not be replaced. Demolition of Pier 3T will include the removal of 286, 18-inch square concrete piles and 87, 14-inch timber piles using a vibratory hammer.

CEP–175 Bulkhead—Once Pier 3T is demolished, a new fender system will be constructed at CEP–175 where Pier 3T previously abutted the bulkhead (see Figure 1). To accomplish this, nine, 13-inch polymeric fender piles would be installed to align with the existing fender system. Piles will be installed with either impact or vibratory hammers, with drilling used as necessary.

Pier 3 Construction—The new Pier 3 will be constructed immediately north of and adjacent to the current Pier 3 (see Figure 1). The new pier will consist of a cast in place concrete deck supported by 530, 24-inch square concrete bearing piles. A fender system will be constructed on the north and south sides of the pier consisting of 392, 24-inch square concrete and 18, 18-inch steel pipe fender piles for berthing submarines. The fender system piles would not be installed in year one and therefore are not analyzed in this proposed IHA.

CEP–176 Bulkhead—The wharf upgrade will consist of a new steel combi-wall bulkhead and relieving platform on the landside of the bulkhead that serves as the bulkhead anchoring system. The bulkhead will be constructed using 109, 42-inch steel pipe bearing piles and 221, 28-inch steel sheet piles. The steel pipe pile/steel sheet pile combination will be driven waterside of the existing deteriorated concrete bulkhead and will be installed with either an impact or vibratory hammer. Once Pier 3T is demolished and the new CEP–176 bulkheads are completed, dredging would occur along the face of CEP–176 bulkhead to allow for safe berthing and maneuvering. As described above, the project area is a noisy, industrial area. Noise created during dredging operations may exceed harassment thresholds, but is similar to noise produced through other common activities occurring at the project location and is unlikely to be distinguishable from the background noise created by ongoing industrial activity. Therefore, the likelihood of harassing marine mammals is reduced and no incidental takes are expected as a result of the dredging activity. Dredging and disposal activities are not discussed further in this document.

CEP–102 Bulkhead—Repairs to the CEP–102 bulkhead will begin with the demolition of a portion of the existing fender pile system prior to new construction of Pier 3 and the CEP–176 bulkhead. Fender piles to be removed include: 22, 18-inch square concrete fender piles, 9, 14-inch timber fender piles, and 4, 13-inch polymeric piles. All piles will be removed by use of a vibratory hammer. A steel combi-wall bulkhead and a reinforced concrete relieving platform would then be constructed in two phases, with a small, approximately 50-foot portion, constructed concurrently with construction of the new Pier 3. Noise producing sources will not be used simultaneously, however. The portion of the CEP–102 combi-wall that will be constructed under this proposed IHA consists of 4, 42-inch steel pipe bearing piles and 8, 28-inch steel sheet piles that will be installed with either an impact or vibratory hammer. Eleven, 24-inch precast concrete fender piles will also be installed using an impact hammer. Drilling may be utilized as needed prior to the use of the impact hammer.

Table 1 outlines a preliminary work schedule for the demolition and reconstruction of Pier 3 at NAVSTA. Some project elements will use only one method of pile installation (*e.g.,* vibratory OR drilling/impact OR impact only), but all methods have been analyzed. The method of installation will be determined by the construction crew once demolition and installation has begun. Therefore, the total take estimate reflects the worst case scenario for the proposed project.

TABLE 1—PRELIMINARY ESTIMATED IN-WATER CONSTRUCTION SCHEDULE FOR YEAR 1

Location	Activity	Amount and schedule	Type and size	Method [1]	Daily production rate (piles/day)	Strikes/duration per pile	Total production days
Pier 4	Demolition of Existing Fender Piles.	36 fender piles June 2022–September 2022.	14-inch timber	Vibratory Hammer	4	60 minutes	9
	Installation of Fender Piles.	36 fender piles June 2022–September 2022.	24-inch precast concrete square.	Drilling with Impact Hammer OR.	6	6 hours	6
				Impact Hammer	12	450 strikes	3

TABLE 1—PRELIMINARY ESTIMATED IN-WATER CONSTRUCTION SCHEDULE FOR YEAR 1—Continued

Location	Activity	Amount and schedule	Type and size	Method [1]	Daily production rate (piles/day)	Strikes/duration per pile	Total production days
Pier 3T	Demolition of Existing Pier 3T.	286 bearing piles August 2022–November 2022.	18-inch precast concrete square.	Vibratory Hammer	4	60 minutes	72
		87 fender piles August 2022–November 2022.	14-inch timber	Vibratory Hammer	4	60 minutes	22
CEP–175	Repair Fender System	9 fender piles October 2022–November 2022.	13-inch polymeric	Drilling with Impact Hammer OR.	7	60 minutes	2
				Impact Hammer OR	7	450 strikes	2
				Vibratory Hammer	7	30 minutes	2
CEP–102	Demolish Partial Existing Fender System.	22 fender piles October 2022–November 2022.	18-inch concrete square.	Vibratory Hammer	4	60 minutes	6
		9 fender piles October 2022–November 2022.	14-inch timber	Vibratory Hammer	4	60 minutes	3
		4 fender piles	13-inch polymeric	Vibratory Hammer	4	60 minutes	1
Pier 3	Begin Construction of New Pier 3.	300 bearing piles October 2022–March 2023.	24-inch precast concrete square.	Impact Hammer	2	3,200 strikes	150
CEP–176	Begin Construction of New Bulkhead.	109 bearing piles December 2022–30 March 2023.	42-inch steel pipe	Impact Hammer OR	2	1,800 strikes	55
				Vibratory Hammer	2	240 minutes	55
		221 sheet piles December 2022–30 March 2023.	28-inch steel sheet.	Impact Hammer OR	4	270 strikes	56
				Vibratory Hammer	4	60 minutes	56
CEP–102	Construction of a Portion of the New Bulkhead.	4 bearing piles December 2022–30 March 2023.	42-inch steep pipe.	Impact Hammer OR	2	2,000 strikes	2
				Vibratory Hammer	2	240 minutes	2
		8 bulkhead sheet piles December 2022–30 March 2023.	28-inch steel sheet.	Impact Hammer OR	4	270 strikes	2
				Vibratory Hammer	4	60 minutes	2
		11 bearing piles December 2022–30 March 2023.	24-inch precast concrete square.	Pre-drilling with Impact Hammer OR.	2	6 hours	6
				Impact Hammer	2	2,700 strikes	6
Total piles installed, extracted, or drilled		1,142.					
Total days pile driving/extraction/drilling.							[2 3 4] 280

[1] Only one method of installation is likely; however, because the exact means of installation are up to the selected construction contractor, all possibilities have been analyzed.
[2] Total number of days takes into account the most days possible for each pile type with multiple potential installation methods (*i.e.,* the worst case scenario).
[3] The preliminary schedule has work at Pier 4, demolition of Pier 3T, start of construction at Pier 3, and work at CEP–175 potentially occurring in the same timeframe, thus multiple pile types could be driven in the same day and the total days of pile driving/extraction/drilling reflects this assumption. Thus, the maximum number of days of work from these activities is associated with beginning the construction of Pier 3 (150 days). Adding remaining work, minus those activities that would occur during the same time frame (Pier 4, demo Pier 3T, and CEP–175), equals 280 days.
[4] Multiple types of equipment may be used on the same day; however, use of multiple noise sources (hammers or drills) would not occur at the same time. There will be no simultaneous activities associated with this project.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the Navy's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2021). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2021 draft SARs (Hayes *et al.,* 2021).

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Humpback whale	*Megaptera novaeangliae.*	Gulf of Maine	-,-;Y	1,396 (0; 1,380; 2016)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic (WNA) Coastal, Northern Migratory.	-,-; Y	6,636 (0.41; 4,759; 2016)	48	12.2–21.5
Bottlenose dolphin	*Tursiops truncatus*	WNA Coastal, Southern Migratory	-,-; Y	3,751 (0.06; 2,353; 2016)	24	0–18.3
Bottlenose dolphin	*Tursiops truncatus*	Northern North Carolina Estuarine	-,-; Y	823 (0.06; 782; 2017)	7.8	7.2–30
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-,-; N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	WNA	-; N	61,336 (0.08; 57,637; 2018)	1729	339
Gray seal [4]	*Halichoerus grypus*	WNA	-; N	27,300 (0.22; 23,785; 2016)	1,389	4,453

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] This stock abundance estimate for only the U.S. portion of this stock. The actual stock abundance, including the Canadian portion of the population, is estimated to be approximately 451,431 animals. The PBR value listed here is only for the U.S. portion of the stock, while M/SI reflects both the Canadian and U.S. portions.

As indicated above, all five species (with seven managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. While North Atlantic right whales (*Eubalaena glacialis*), minke whales (*Balaenoptera acutorostrata acutorostrata*), and fin whales (*Balaenoptera physalus*) have been documented in the area, the temporal and/or spatial occurrence of these whales is far outside the proposed area for this project and take is not expected to occur. Therefore, they are not discussed further beyond the explanation provided below.

Based on sighting data and passive acoustic studies, the North Atlantic right whale could occur off the coast of Virginia year-round (Department of Navy (DoN) 2009; Salisbury *et al.,* 2006). They have also been reported seasonally off Virginia during migrations in the spring, fall, and winter (Cetacean and Turtle Assessment Program (CeTAP) 1981, 1982; Niemeyer *et al.,* 2008; Kahn *et al.,* 2009; McLellan 2011b, 2013; Mallette *et al.,* 2016a, 2016b, 2017, 2018a; Palka *et al.,* 2017; Cotter 2019). Right whales are known to frequent the coastal waters of the mouth of the Chesapeake Bay (Knowlton *et al.,* 2002) and the area is a seasonal management area (November 1–April 30) mandating reduced ship speeds out to approximately 20 nautical miles (37 kilometers [km]); however, the project

area is further inside the Bay and away from this area.

North Atlantic right whales have stranded in Virginia, one each in 2001, 2002, 2004, 2005; three during winter (February and March) and one in summer (September) Costidis *et al.,* 2017, 2019). In January 2018, a dead, entangled North Atlantic right whale was observed floating over 60 miles (96.6 km) offshore of Virginia Beach (Costidis *et al.,* 2019). All North Atlantic right whale strandings in Virginia waters have occurred on ocean-facing beaches along Virginia Beach and the barrier islands seaward of the lower Delmarva Peninsula (Costidis *et al.,* 2017). Right whales are not expected to occur in the project area, and NMFS is not proposing to authorize take of this species.

Fin whales have been sighted off Virginia (CeTAP 1981, 1982; Swingle *et al.,* 1993, DoN 2009; Hyrenback *et al.,* 2012; Barco 2013; Mallette *et al.,* 2016a, b; Aschettino *et al.,* 2018; Engelhaupt *et al.,* 2017, 2018; Cotter 2019), and in the Chesapeake Bay (Bailey 1948; CeTAP 1981, 1982; Morgan *et al.,* 2002; Barco 2013; Aschettino *et al.,* 2018); however, they are not likely to occur in the project area. Sightings have been documented around the Chesapeake Bay Bridge Tunnel (CBBT) during the winter months (CeTAP 1981, 1982; Barco 2013; Aschettino *et al.,* 2018).

Eleven fin whale strandings have occurred off Virginia from 1988 to 2016 mostly during the winter months of February and March, followed by a few in the spring and summer months (Costidis *et al.,* 2017). Six of the strandings occurred in the Chesapeake Bay (three on eastern shore; three on western shore) with the remaining five occurring on the Atlantic coast (Costidis *et al.,* 2017. Documented strandings near the project area have occurred: February 2012, a dead fin whale washed ashore on Oceanview Beach in Norfolk (Swingle *et al.,* 2013); December 2017, a live fin whale stranded on a shoal in Newport News and died at the site (Swingle *et al.,* 2018); February 2014, a dead fin whale stranded on a sand bar in Pocomoke Sound near Great Fox Island, Accomack (Swingle *et al.,* 2015); and, March 2007, a dead fin whale near Craney Island, in the Elizabeth River, in Norfolk (Barco 2013). Only stranded fin whales have been documented in the project area; no free-swimming fin whales have been observed. Fin whales are not expected to occur in the project area, and NMFS is not proposing to authorize take of this species.

Minke whales have been sighted off Virginia (CeTAP 1981, 1982; Hyrenbach *et al.,* 2012; Barco 2013; Mallette *et al.,* 2016a, b; McLellan 2017; Engelhaupt *et al.,* 2017, 2018; Cotter 2019), near the CBBT (Aschettino *et al.,* 2018), but sightings in the project area are from strandings (Jensen and Silber 2004; Barco 2013; DoN 2009). In August 1994, a ship strike incident involved a minke whale in Hampton Roads (Jensen and Silber 2004; Barco 2013). It was reported that the animal was struck offshore and was carried inshore on the bow of a ship (DoN 2009). Twelve strandings of minke whales have occurred in Virginia waters from 1988 to 2016 (Costidis *et al.,* 2017). There have been six minke whale stranding from 2017 through 2020 in Virginia waters. Minke whales are not expected to occur in the project area, and NMFS is not proposing to authorize take of this species.

Humpback Whales

Humpback whales are found worldwide in all oceans. In winter, humpback whales from waters off New England, Canada, Greenland, Iceland, and Norway, migrate to mate and calve primarily in the West Indies, where spatial and genetic mixing among these groups occurs. NMFS defines a humpback whale stock on the basis of feeding location, *i.e.,* Gulf of Maine. However, our reference to humpback whales in this document refers to any individual of the species that are found in the species geographic region. These individuals may be from the same breeding population (*e.g.,* West Indies breeding population of humpback whales) but visit different feeding areas.

Based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock (Barco *et al.,* 2002). Therefore, the SAR abundance estimate is an underrepresentation of the relevant population, *i.e.,* the West Indies breeding population.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 DPSs with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. Humpback whales in the project area are expected to be from the West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland. This DPS is not ESA listed. Bettridge *et al.,* (2003) estimated the size of the West Indies DPS at 12,312 (95% CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Although humpback whales are migratory between feeding areas and calving areas, individual variability in the timing of migrations may result in the presence of individuals in high-latitude areas throughout the year (Straley, 1990). Records of humpback whales off the U.S. mid-Atlantic coast (New Jersey to North Carolina) from January through March suggest these waters may represent a supplemental winter feeding ground used by juvenile and mature humpback whales of U.S. and Canadian North Atlantic stocks (LaBrecque *et al.,* 2015).

Humpback whales are most likely to occur near the mouth of the Chesapeake Bay and coastal waters of Virginia Beach between January and March; however, they could be found in the area year-round, based on shipboard sighting and stranding data (Barco and Swingle, 2014; Aschettino *et al.,* 2015; 2016; 2017; 2018). Photo-identification data support the repeated use of the mid-Atlantic region by individual humpback whales. Results of the vessel surveys show site fidelity in the survey area for some individuals and a high level of occurrence within shipping channels—an important high-use area by both the Navy and commercial traffic (Aschettino *et al.,* 2015; 2016; 2017; 2018). Nearshore surveys conducted in early 2015 reported 61 individual humpback whale sightings, and 135 individual humpback whale sightings in late 2015 through May 2016 (Aschettino *et al.,* 2016). Subsequent surveys confirmed the occurrence of humpback whales in the nearshore survey area: 248 individuals were detected in 2016–2017 surveys (Aschettino *et al.,* 2017), 32 individuals were detected in 2017–2018 surveys (Aschettino *et al.,* 2018), and 80 individuals were detected in 2019 surveys (Aschettino *et al.,* 2019). Sightings in the Hampton Roads area in the vicinity of NAVSTA Norfolk were reported in nearshore surveys and through tracking of satellite-tagged whales in 2016, 2017 and 2019. The numbers of whales detected, most of which were juveniles, reflect the varying level of survey effort and changes in survey objectives from year to year, and do not indicate abundance trends over time. Most recently, the Hampton Roads Bridge-Tunnel Expansion Project (HRBT), which spanned from September 2020 through July 10, 2021 did not observe any humpback whales near the project site between Norfolk and Hampton, VA over

197 days of observations (Hampton Roads Connector Partners (HRCP), *Unpublished*).

Bottlenose Dolphin

Along the U.S. East Coast and northern Gulf of Mexico, the bottlenose dolphin stock structure is well studied. There are currently 53 management stocks identified by NMFS in the western North Atlantic and Gulf of Mexico, including oceanic, coastal, and estuarine stocks (Hayes *et al.,* 2017; Waring *et al.,* 2015, 2016).

There are two morphologically and genetically distinct bottlenose dolphin morphotypes (distinguished by physical differences) described as coastal and offshore forms (Duffield *et al.,* 1983; Duffield, 1986). The offshore form is larger in total length and skull length, and has wider nasal bones than the coastal form. Both inhabit waters in the western North Atlantic Ocean and Gulf of Mexico (Curry and Smith, 1997; Hersh and Duffield, 1990; Mead and Potter, 1995) along the U.S. Atlantic coast. The coastal morphotype of bottlenose dolphin is continuously distributed along the Atlantic coast south of Long Island, New York, around the Florida peninsula, and along the Gulf of Mexico coast. This type typically occurs in waters less than 25 meters deep (Waring *et al.,* 2015). The range of the offshore bottlenose dolphin includes waters beyond the continental slope (Kenney, 1990), and offshore bottlenose dolphins may move between the Gulf of Mexico and the Atlantic (Wells *et al.,* 1999).

Two coastal stocks are likely to be present in the project area: Western North Atlantic Northern Migratory Coastal stock and Western North Atlantic Southern Migratory Coastal stock. Additionally, the Northern North Carolina Estuarine System stock may occur in the project area.

Bottlenose dolphins are the most abundant marine mammal along the Virginia coast and within the Chesapeake Bay, typically traveling in groups of 2 to 15 individuals, but occasionally in groups of over 100 individuals (Engelhaupt *et al.,* 2014; 2015; 2016). Bottlenose dolphins of the Western North Atlantic Northern Migratory Coastal stock winter along the coast of North Carolina and migrate as far north as Long Island, New York, in the summer. They are rarely found north of North Carolina in the winter (NMFS, 2018a). The Western North Atlantic Southern Migratory Coastal stock occurs in waters of southern North Carolina from October to December, moving south during winter months and north to North Carolina during spring months. During July and August, the Western North Atlantic Southern Migratory Coastal stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to the eastern shore of Virginia (NMFS, 2018a). It is possible that these animals also occur inside the Chesapeake Bay and in nearshore coastal waters. The North Carolina Estuarine System stock dolphins may also occur in the Chesapeake Bay during July and August (NMFS, 2018a).

Vessel surveys conducted along coastal and offshore transects from NAVSTA Norfolk to Virginia Beach in most months from August 2012 to August 2015 reported bottlenose dolphins throughout the survey area, including the vicinity of NAVSTA Norfolk (Engelhaupt *et al.,* 2014; 2015; 2016). The final results from this project confirmed earlier findings that bottlenose dolphins are common in the study area, with highest densities in the coastal waters in summer and fall months. However, bottlenose dolphins do not completely leave this area during colder months, with approximately 200–300 individuals still present in winter and spring months, which is commonly referred to as the Chesapeake Bay resident dolphin population (Engelhaupt *et al.,* 2016).

Harbor Porpoise

Harbor porpoises inhabit cool temperate-to-subpolar waters, often where prey aggregations are concentrated (Watts and Gaskin, 1985). Thus, they are frequently found in shallow waters, most often near shore, but they sometimes move into deeper offshore waters. Harbor porpoises are rarely found in waters warmer than 63 degrees Fahrenheit (17 degrees Celsius) (Read 1999) and closely follow the movements of their primary prey, Atlantic herring (Gaskin 1992).

In the western North Atlantic, harbor porpoise range from Cumberland Sound on the east coast of Baffin Island, southeast along the eastern coast of Labrador to Newfoundland and the Gulf of St. Lawrence, then southwest to about 34 degrees North on the coast of North Carolina (Waring *et al.,* 2016). During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada (Waring *et al.,* 2016). Harbor porpoises sighted off the mid-Atlantic during winter include porpoises from other western North Atlantic populations (Rosel *et al.,* 1999). There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region (Waring *et al.,* 2016). During fall (October to December) and spring (April to June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south (LaBrecque *et al.,* 2015).

Based on stranding reports, passive acoustic recorders, and shipboard surveys, harbor porpoise occur in coastal waters primarily in winter and spring months, but there is little information on their presence in the Chesapeake Bay. They do not appear to be abundant in the NAVSTA Norfolk area in most years, but this is confounded by wide variations in stranding occurrences over the past decade. In the recent HRBT project, zero harbor porpoises were observed near the project area (HRCP, *Unpublished*).

Harbor Seal

The Western North Atlantic stock of harbor seals occurs in the project area. Harbor seal distribution along the U.S. Atlantic coast has shifted in recent years, with an increased number of seals reported from southern New England to the mid-Atlantic region (DiGiovanni *et al.,* 2011; Hayes *et al.,* 2017; Kenney R.D. 2019; Waring *et al.,* 2016). Regular sightings of seals in Virginia have become a common occurrence in winter and early spring (Costidis *et al.,* 2019). Winter haulout sites for harbor seals have been documented in the Chesapeake Bay at the CBBT, on the Virginia Eastern Shore, and near Oregon Inlet, North Carolina (Waring *et al.,* 2016; Rees *et al.,* 2016; Jones *et al.,* 2018).

Harbor seals regularly haul out on rocks around the portal islands of the CBBT and on mud flats on the nearby southern tip of the Eastern Shore from December through April (Rees *et al.,* 2016; Jones *et al.,* 2018). Seals captured in 2018 on the Eastern Shore and tagged with satellite-tracked tags that lasted from 2 to 5 months spent at least 60 days in Virginia waters before departing the area. All tagged seals returned regularly to the capture site while in Virginia waters, but individuals utilized offshore and Chesapeake Bay waters to different extents (Ampela *et al.,* 2019). The area that was utilized most heavily was near the Eastern Shore capture site, but some seals ranged into the Chesapeake Bay. To supplement this information, the HRBT project reported seeing zero seals in or around the project area (HRCP, *Unpublished*).

Gray Seal

The Western North Atlantic stock of gray seal occurs in the project area. The

western North Atlantic stock is centered in Canadian waters, including the Gulf of St. Lawrence and the Atlantic coasts of Nova Scotia, Newfoundland, and Labrador, Canada, and the northeast U.S. continental shelf (Hayes *et al.,* 2017). Gray seals range south into the northeastern United States, with strandings and sightings as far south as North Carolina (Hammill *et al.,* 1998; Waring *et al.,* 2004). Gray seal distribution along the U.S. Atlantic coast has shifted in recent years, with an increased number of seals reported in southern New England (DiGiovanni *et al.,* 2011; Kenney R.D., 2019; Waring *et al.,* 2016). Recent sightings included a gray seal in the lower Chesapeake Bay during the winter of 2014 to 2015 (Rees *et al.,* 2016). Along the coast of the United States, gray seals are known to pup at three or more colonies in Massachusetts and Maine.

Gray seals are uncommon in Virginia and in the Chesapeake Bay. Only 15 gray seal strandings were documented in Virginia from 1988 through 2013 (Barco and Swingle, 2014). They are rarely found resting on the rocks around the portal islands of the CBBT from December through April alongside harbor seals. Seal observation surveys conducted at the CBBT recorded one gray seal in each of the 2014/2015 and 2015/2016 seasons while no gray seals were reported during the 2016/2017 and 2017/2018 seasons (Rees *et al.,* 2016, Jones *et al.,* 2018). Sightings have been reported off Virginia and near the project area during the winter and spring (Barco 2013; Rees *et al.,* 2016; Jones *et al.,* 2018; Ampela *et al.,* 2019). However, the HRBT monitoring report indicated that zero gray seals were observed during the course of their project (HRCP, *Unpublished*).

Unusual Mortality Events

An unusual mortality event (UME) is defined under Section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. Currently, ongoing UME investigations are underway for pinnipeds along the Northeast Atlantic coast. There is an active UME for humpback whales along the Atlantic coast.

Northeast Pinniped UME

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared an UME. Additionally, seals showing clinical signs have been stranding as far south as Virginia, although not in elevated numbers; therefore, the UME investigation now encompasses all seal strandings from Maine to Virginia. Lastly, while take is not proposed for these species in this proposed IHA, ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. Additional information is available at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Atlantic Humpback Whale UME

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. This event has been declared an UME since 2017. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all whales examined, and additional research is needed. Additional information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Five marine mammal species (three cetacean and two pinniped, both phocid, species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.,* humpback whale), one is classified as a mid-frequency cetacean (*i.e.,* bottlenose dolphin), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, impact and vibratory pile driving, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005). As mentioned previously, drilling is considered a continuous source, similar to vibratory pile driving. The drilling may be used before driving piles in order to facilitate pile driving and hence the applicant calls this activity ''pre-drilling'' in their application. For the proposed project, the drilling apparatus utilized would vary depending on the different applications during in-water construction activities. Drilling would be used as necessary to remove sand with shell fragments or any obstructions in order to accelerate pile driving.

The likely or possible impacts of the Navy's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving, removal and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the Navy's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving or drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical

auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles for this project requires a combination of drilling, impact pile driving and vibratory pile driving. For this project, these activities would not occur at the same time and there would be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it

is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul-out regularly on man-made objects, such as the nearby Chesapeake Bay Bridge Tunnel, we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and these haulout sites (over 16 miles (26 km)). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The Navy's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. However, since the focus of the proposed action is pile driving and drilling, no net habitat loss is expected as the new Pier 3 will be immediately north of the existing Pier 3 and once complete, the current Pier 3 will be demolished. Construction activities are of short duration and would likely have

temporary impacts on marine mammal habitat through increases in underwater sounds. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving activities, elevated levels of underwater noise would ensonify the project area where both fishes and marine mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized reduction in water quality will occur because of in-water construction activities as well. Most of this effect will occur during the installation and removal of piles when bottom sediments are disturbed. The installation of piles will disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. In general, turbidity associated with pile installation is localized to about 25-ft (7.6 meter) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the new Pier 3. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in the project area and lower Chesapeake Bay. Pile extraction and installation may have impacts on benthic invertebrate species primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts will be temporary and highly localized, and no habitat will be permanently displaced by construction. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the demolition and reconstruction of Pier 3 would be minimal.

It is possible that avoidance by potential prey (*i.e.,* fish) in the immediate area may occur due to temporary loss of this foraging habitat. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in the in the project area and lower Chesapeake Bay.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The area impacted by the project is relatively small compared to the available habitat in the remainder of the project area and the lower Chesapeake Bay, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the Navy's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise generated from in-water pile driving (vibratory and impact) and drilling has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high- and low-frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species. However, auditory injury is unlikely to occur for mid-frequency species due to the proposed shutdown zones (see Proposed Mitigation section). Additionally, the proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal, root mean square (μPa (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's construction includes the use of continuous (vibratory pile driving, drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As previously noted, the Navy's proposed activity include the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal, drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (Table 5). Generally we choose source levels from similar pile types from locations (*e.g.,* geology, bathymetry) similar to the project. At this time, NMFS is not aware of reliable source levels available for polymeric piles using vibratory pile installation, therefore source levels for timber pile driving were used as a proxy. Similarly, the following proxies were used as source levels for piles where no data was available: Source levels for the 66-inch steel pile was used as a proxy for 42-inch steel pipe piles (vibratory); the 30-inch steel pile was used as a proxy for the 28-inch sheet piles (impact); and 18-inch octagonal pile was used as a proxy for 18-inch concrete piles (impact). Additionally, data on vibratory extraction of concrete piles are not available, therefore the Navy followed previous guidance suggesting that timber piles be used as a proxy for sound source levels (see 84 FR 28474; June 19, 2019).

Very little information is available regarding source levels for in-water drilling activities associated with nearshore pile installation. Measurements made during a pile drilling project in 1–5 m (3–16 ft) depths at Santa Rosa Island, CA, by Dazey *et al.,* (2012) appear to provide the best available proxy source levels for the proposed activities. Dazey *et al.* (2012) reported average rms source levels ranging from 151 to 157 dB re 1μPa, normalized to a distance of 1 m (3 ft) from the pile, during activities that included casing removal and installation as well as drilling, with an average of 154 dB re 1μPa during 62 days that spanned all related drilling activities during a single season. The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, and drilling).

TABLE 5—PROJECT SOUND SOURCE LEVELS NORMALIZED TO 10 METERS

Pile type	Pile size (inch)	Method	Peak SPL (re 1 μPa (rms))	RMS SPL (re 1 μPa (rms))	SEL (re 1 μPa (rms))	Source
Steel Pipe Pile	42	Impact	213	190	177	Navy 2015.
		Vibratory		168	168	Sitka 2017.
			168			
Steel Sheet	28	Impact	211	196	181	NAVFAC SW 2020.
		Vibratory		167	167	Navy 2015.
Concrete Pile	24	Impact	189	176	163	Illingworth and Rodkin 2017.
		Vibratory	185	162	157	Caltrans 2020.
Concrete Pile	18	Impact	185	166	154	Caltrans 2020.
		Vibratory	185	162	157	Caltrans 2020.
Polymeric Pile	13	Impact	177	153		Denes et al., 2016.
		Vibratory	185	162	157	Caltrans 2020.
Timber Pile	14	Vibratory	185	162	157	Caltrans 2020.
NA	"Multiple pile sizes" [1] [2]	Drilling		[2] 154	154	Dazey *et al.,* 2012.

[1] Pile sizes being installed using the drilling method might include 24-inch precast concrete square, 13-inch polymeric and 24-inch precast concrete square.
[2] Source levels were normalized to a distance of 1 m (3 ft) from the pile during activities that included casing removal and installation as well as drilling, with an average of 154 dB re 1μPa during the course of the project.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources in-water pile driving/removal and drilling activities from the Navy's proposed project, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and sources levels used in the User Spread are reported in Table 5, and the resulting isopleths are reported in Table 6 (Impact) and Table 7 (Vibratory and Drilling) below.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Pile driving site	Source	Level A—Radius to isopleth (m)				Level B—Radius to isopleth (m)	
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Distance to Level B threshold (m)	Area within Level B threshold (km^2) [1]
Pier 4	24″ Concrete Fender	143	5	170	76	117	<0.1
CEP–175	13″ Polymeric	22	1	26	12	3	<0.1
Pier 3	24″ Concrete Bearing	160	6	190	86	117	<0.1
CEP–176	42″ Steel Pipe Bearing	934	33	1,112	500	1,000	0.4
	28″ Steel Sheet	773	28	921	414	2,512	2.4
CEP–102	42″ Steel Pipe	1,002	36	1,193	536	1,000	1.4

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING—Continued

Pile driving site	Source	Level A—Radius to isopleth (m)				Level B—Radius to isopleth (m)	
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Distance to Level B threshold (m)	Area within Level B threshold (km^2) [1]
	28″ Steel Sheet	773	28	921	414	2,512	8.0
	24″ Concrete Pile	143	5	170	76	117	<0.1
	18″ Concrete Pile	36	1	43	19	25	<0.1

[1] Area within the Level B threshold was calculated using geographic information system (GIS) data as determined by transmission loss modeling, accounting for land.

TABLE 7—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR VIBRATORY PILE DRIVING AND REMOVAL, AND PRE-DRILLING

Pile driving site	Source	Level A—Radius to isopleth (m)				Level B—Radius to isopleth (m)	
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Level B—Radius to isopleth (m)	Area within Level B threshold (km^2) [1]
Pier 4	14″ Timber (demolition)	20	2	30	12	6,310	49.9
	24″ Concrete (vibratory)	5	<1	4	<1	6,310	97.8
	24″ Concrete (drilling)	1	0	1	<1	1,848	4.4
Pier 3T	16″ and 18″ Concrete (demolition)	20	2	30	12	6,310	49.9
	14″ Timber (demolition)	20	2	30	12	6,310	49.9
CEP–175	13″ Polymeric (vibratory)	18	2	27	11	6,310	11.1
	13″ Polymeric (drilling)	1	<1	1	<1	1,848	4.4
CEP–176	42″ Steel Pipe	80	7	118	49	[2] 15,849	46.0
	28″ Steel Sheet	43	4	64	26	13,594	39.9
CEP–102	42″ Steel Pipe	80	7	118	49	15,849	98.9
	28″ Steel Sheet	43	4	64	26	13,594	90.6
	24″ Concrete (drilling)	1	0	1	<1	1,848	4.4
	14″ Timber	20	2	30	12	6,310	49.9
	13″ Polymeric	20	2	30	12	6,310	49.9
	18″ Concrete	20	2	29.7	12	6,310	49.9

[1] Area within the Level B threshold was calculated using geographic information system (GIS) data as determined by transmission loss modeling.
[2] **Note:** This value is different than that listed in the application, due to a typographic error in the application. The correct maximum distance to 120 dB RMS threshold is 15,849 m as seen here.

The maximum distance to the Level A harassment threshold during construction would be during the impact driving of 42-inch steel pipe piles at CEP–102 (1,193 m for harbor porpoise; 1,001 m for humpback whale; 35.6 m for bottlenose dolphin; and 536 m for pinnipeds). The largest calculated Level B harassment zone extends out to 15,849 m, which would result from the vibratory installation of the 42-inch steel pipe pile.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate for each species.

Humpback Whale

Humpback whales occur in the mouth of the Chesapeake Bay and nearshore waters of Virginia during winter and spring months. Most detections during shipboard surveys were one or two juveniles per sightings. Although two individuals were detected in the vicinity of proposed project activities, there is no evidence that they linger for multiple days. Because no density estimates are available for the species in this area, the Navy estimated two takes for every 60 days of pile driving and drilling activities. Based on this information, NMFS has similarly estimated that two humpback whales may be taken by Level B harassment for every 60 days of pile driving and pre-drilling activities, which equates to 9 takes over 280 project days (Table 1). To be conservative, the Navy has requested 3 additional Level B harassment takes of humpback whales. Therefore, the Navy is requesting, and NMFS is proposing to authorize 12 takes by Level B harassment of humpback whale (Table 9).

The largest Level A harassment zone for low-frequency cetaceans extends approximately 1,002 m from the source during impact driving of a 48 inch steel pipe pile (Table 6). The Navy is planning to implement a 1,010 m shutdown zone for humpback whales during impact pile driving of the 48 inch steel pipe piles, and shutdown zones that include the entire Level A harassment isopleth for all activities, as indicated in Table 10. Therefore, the Navy did not request, and NMFS does not propose to authorize Level A harassment take of humpback whale.

Bottlenose Dolphin

The expected number of bottlenose dolphins in the project area was estimated using inshore seasonal densities provided in Engelhaupt *et al.* (2016) from vessel line-transect surveys near NAVSTA Norfolk and adjacent areas near Virginia Beach, Virginia, from August 2012 through August 2015 (Engelhaupt *et al.,* 2016). This density includes sightings inshore of the Chesapeake Bay from NAVSTA Norfolk west to the Thimble Shoals Bridge, and is the most representative density for the project area. NMFS multiplied the density of 1.38 dolphins/km^2 by the Level B harassment zone area for each activity for the project, and then by the number of days associated with that activity (see Table 8), which resulted in 14,989 takes by Level B harassment of bottlenose dolphins (see Table 9). There

is insufficient information on relative abundance to apportion the takes precisely to the three stocks present in the area. We use the same approach to estimating the apportionment of takes to stock used in the previous IHAs in the area including the HRBT project (86 FR 17458; April 2, 2021), and the U.S. Navy Norfolk Rule (86 FR 24340; May 6, 2021). Given that most of the NNCES stock are found in the Pamlico Sound Estuarine, over 160 kilometers to Norfolk, the project will assume that no more than 200 of the requested takes will be from this stock. Since members of the northern migratory coastal and southern migratory coastal stocks are thought to occur in or near the Bay in greater numbers, we will conservatively assume that no more than half of the remaining takes will accrue to either of these stocks. Additionally, a subset of these takes would likely be comprised of Chesapeake Bay resident dolphins, although the size of that population is unknown.

The largest Level A harassment area for mid-frequency cetaceans is less than 40 m, which is associated with impact pile driving of the 42 inch steel pipe. The Navy is planning on implementing a shutdown zone of 200 m during this activity as well as when pile driving the 24 inch concrete piles and 28 inch steel sheet piles. The Level A harassment zones for all other activities extend less than 10 m for mid-frequency cetaceans (see Table 6 and Table 7), and the Navy is planning to implement a minimum of a 10 m shutdown for all other activities not included in the list above (Table 10). Given the generally small size of the Level A harassment zones, and the Navy's shutdown plan, which includes the entire Level A harassment zone for all pile driving and drilling activities, we do not expect Level A harassment take of bottlenose dolphins. Therefore, the Navy did not request, and NMFS does not propose to authorize Level A harassment take of bottlenose dolphins (Table 9).

TABLE 8—BOTTLENOSE DOLPHIN CALCULATED EXPOSURE ESTIMATES

Location	Activity	Production days	Level A harassment area (km^2)	Level B harassment area (km^2)	Level A takes	Level B takes [1]
Pier 4	Vibratory Removal Timber Fender Piles	9	0.00001	49.9	0	620
	Pre-Drilling Concrete Fender Piles	6	0.000001	4.38	0	36
	Impact Drive Concrete Fender Piles	3	0.0000813	0.04	0	0
CEP–175	Impact Drive Polymeric Fender Piles	2	0.000001	0.000014	0	0
	Pre-Drilling Polymeric Fender Piles	2	0.000004	4.38	0	*12
	Vibratory Drive Polymeric Fender Piles	2	0.000004	11.1	0	31
Pier 3	Impact Drive Concrete Bearing Piles	150	0.00010155	0.04	0	8
CEP–176	Impact Drive Steel Bearing Piles	55	0.00174582	0.41	0	*31
	Impact Drive Sheet Piles	55	0.00119976	2.43	0	*184
	Vibratory Drive Steel Bearing Piles	55	0.00008	45.97	0	3,489
	Vibratory Drive Sheet Piles	56	0.000025	39.9	0	3,083
CEP–102	Impact Drive Steel Bearing Piles	2	0.00245817	1.37	0	*4
	Impact Drive Sheet Piles	2	0.00154729	7.96	0	*22
	Impact Drive Concrete Bearing Piles	6	0.0000813	0.02	0	0
	Pre-Drilling Concrete Bearing Piles	6	0.000001	4.38	0	36
	Vibratory Extraction Timber Fender Piles	3	0.00001	49.9	0	207
	Vibratory Extraction Concrete Fender Piles	6	0.00001	49.9	0	413
	Vibratory Extraction Polymeric Fender Piles	1	0.00001	49.9	0	69
	Vibratory Drive Steel Bearing Piles	2	0.000156	98.91	0	273
	Vibratory Drive Sheet Piles	2	0.000045	90.6	0	250
Pier 3T	Vibratory Extraction Concrete Bearing Piles	72	0.00001	49.9	0	4,958
	Vibratory Extraction Timber Fender Piles	22	0.00001	49.9	0	1,515
Total Bottlenose Dolphin Take Estimate					[2] 0	[3] 14,989

[1] All Level and Level B harassment exposure estimates were calculated using a density estimate of 1.38 Engelhaupt *et al.* (2016).
[2] The maximum distance to the Level A harassment threshold is 35.6 m resulting from impact driving 42-inch steel pipe piles. This falls within the proposed shutdown zones (see Table 10). Therefore, no Level A harassment take was requested nor proposed to be authorized for bottlenose dolphins.
[3] Some piles for a few projects are listed twice, due to the contractor choosing the installation method. However only the method resulting in the most takes was counted in the take totals. In all cases, vibratory driving resulted in the most takes. Numbers with an asterisk indicate calculated takes that were excluded from the total due to duplication.

Harbor Porpoise

Harbor porpoises are known to occur in the coastal waters near Virginia Beach (Hayes *et al.,* 2019). Density data for this species in the project vicinity do not exist as harbor porpoise sighting data collected by the U.S. Navy near NAVSTA Norfolk and Virginia Beach from 2012 to 2015 (Engelhaupt *et al.,* 2014; 2015; 2016) did not produce enough sightings to calculate densities. One group of two harbor porpoises was seen during spring 2015 (Engelhaupt *et al.,* 2016). Elsewhere in their range, harbor porpoises typically occur in groups of two to three individuals (Carretta *et al.,* 2001; Smultea *et al.,* 2017). Given the lack of density estimates for harbor porpoises in the proposed construction area, this exposure analysis (similar to the methods used in previous IHAs) assumes that there is a porpoise sighting once every 60 days of pile driving or drilling, which would equate to 6 sightings per year over 280 days of activity. Assuming an average group size of two (Hansen *et al.,* 2018; Elliser *et al.,* 2018), NMFS proposes to authorize 12 takes by Level B harassment of harbor porpoises (Table 9).

Harbor porpoises are members of the high-frequency hearing group which have Level A harassment isopleths as large as 1,193 m during the 42 inch steel pipe pile installation using impact pile driving. The Navy has proposed a 500 meter shutdown zone for harbor porpoises during the aforementioned activity in addition to impact pile driving the 24 inch concrete piles and 28 inch steel sheets, as a reasonable area to observe and implement shutdowns for this small and cryptic species while avoiding an impracticable number of shutdowns. Consequently, the Navy has requested authorization of take by Level A harassment for harbor porpoises during the project. While NMFS believes that take by Level A harassment is not likely, due to the duration of time a harbor porpoise would be required to remain within the Level A harassment

zone to accumulate enough energy to experience PTS, we propose to authorize 10 takes by Level A harassment as requested by the Navy (Table 9).

Harbor Seal

The expected number of harbor seals in the project area was estimated using systematic land- and vessel-based survey data for in-water and hauled-out seals collected by the U.S. Navy at the CBBT rock armor and portal islands from 2014 through 2019 (Jones *et al.,* 2020). The average daily seal count from the field season ranged from 8 to 23 seals, with an average of 13.6 harbor seals across all the field seasons.

The Navy expects, and NMFS concurs, that harbor seals are likely to be present from November to April. Consistent with previous nearby projects, NMFS calculated take by Level B harassment by multiplying 13.6 seals by 183, which is the number of pile driving/drilling days expected to occur from November to April, which results in 2,489 harbor seal takes. However, NMFS believes this may be an overestimate of take as recent monitoring reports from a nearby-completed project observed 0 harbor seals during the course of their project (HRCP, *Unpublished*). With these new data in hand, we propose to alter our estimation method for this species and propose to authorize half of the take estimated above to achieve a more realistic number of seals that may be encountered, while still conservatively estimating noise exposures. Therefore, NMFS proposes to authorize 1,244 takes of harbor seals.

The largest Level A harassment isopleth for phocid species is less than 550 m, which would occur during the installation of the 42 inch steel pipe pile by impact pile driving. We are proposing to implement a 200 m shutdown zone for this activity in addition to the installation of the 24 inch concrete piles and 28 inch steel sheet piles by impact pile driving (Table 10). Given the area of the Level A harassment zone that would exceed the implemented shutdown zone for these activities, and the cryptic nature of the species, the Navy is requesting 16 takes by Level A harassment of harbor seals. For all other activities, the proposed shutdown zones exceed the calculated Level A harassment isopleth for phocid species. Therefore, NMFS proposes to authorize 1,228 takes by Level B harassment, and 16 takes by Level A harassment of harbor seals (Table 9).

Gray Seal

Very little information is available about the occurrence of gray seals in the Chesapeake Bay and coastal waters. Survey data collected by the U.S. Navy at the CBBT portal islands from 2014 through 2018 (Rees *et al.,* 2016; Jones *et al.,* 2018) observed one gray seal in February 2015 and one seal in February of 2016, while no seals were observed at any other time. Maintaining the assumption that gray seals may utilize the Chesapeake Bay waters, the Navy conservatively estimates that one gray seal may be exposed to noise levels above the Level B harassment threshold for every 60 days of vibratory pile driving during the six month period when they are most likely to be present.

The Level A harassment isopleth for phocids is noted above for harbor seals, while the largest Level B harassment zone area is anticipated during drilling for installation of the 42 inch steel pipes (~16 km^2). The Navy calculated a total of 3 exposures for gray seals during the course of the project and they are expected to be very uncommon in the Project area. It is anticipated that up to 20 percent of gray seal exposures would be at or above the Level A harassment threshold based on the proportion of the project's pile driving and drilling activities that could exceed the Level A harassment threshold. Therefore, the Navy is requesting, and NMFS is proposing to authorize, 1 take by Level A harassment and 2 takes by Level B harassment of gray seals (Table 9).

TABLE 9—PROPOSED AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Stock	Level A harassment	Level B harassment	Total	Percent of stock
Humpback whale	Gulf of Maine [b]	0	12	12	1
Bottlenose dolphin	WNA Coastal, Northern Migratory [a c d]	0	19,327	19,327	111
	WNA Coastal, Southern Migratory [a d]	0	19,327	19,327	197
	Northern NC Estuarine [a c d]	0	200	200	24
Harbor porpoise	Gulf of Maine/Bay of Fundy	10	12	22	<0.01
Harbor seal	WNA	16	1,228	1,244	2
Gray seal	WNA	1	2	3	<0.01

[a] Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in the project area. Please see the Small Numbers section for additional information.
[b] West Indies DPS. Please see the Description of Marine Mammals in the Area of Specified Activities section for further discussion.
[c] Assumes multiple repeated takes of same individuals from small portion of each stock as well as repeated takes of Chesapeake Bay resident population (size unknown). Please see the Small Numbers section for additional information.
[d] The sum of authorized take for the three stocks of bottlenose dolphins does not add up to the total authorized number (14989) due to rounding.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or

stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

• Avoid direct physical interactions with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction;

• The Navy will conduct trainings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all activities subject to this IHA and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures; and

• Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

The following mitigation measures apply to the Navy's in-water construction activities:

Establishment of Shutdown Zones—The Navy will establish shutdown zones for all pile driving and removal and drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Table 9).

Protected Species Observers (PSOs)—The placement of PSOs during all pile driving and removal and drilling activities (described in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal and drilling must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A and B Harassment—The Navy will monitor the Level B harassment zones to the extent practicable, and all of the Level A harassment zones. The Navy will monitor at least a portion of the Level B harassment zone on all pile driving, removal or drilling days. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 10, pile driving and drilling activity must be delayed or halted. If pile driving and/or drilling is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft Start—Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

TABLE 10—SHUTDOWN ZONES (m) DURING PILE INSTALLATION AND REMOVAL

Pile type, size, and driving method	Humpback whales	Porpoises	All other species
Vibratory drive 14-inch timber piles	30	30	30
Vibratory drive 13-inch polymeric piles	30	30	30
Impact drive 13-inch polymeric piles	30	30	30
Vibratory drive 16-inch and 18-inch concrete piles	30	30	30
Impact drive 16-inch and 18-inch concrete piles	50	45	45
Vibratory drive 24-inch concrete piles	10	10	10
Impact drive 24-inch concrete piles	160	500	200
Vibratory drive 28-inch steel sheet piles	70	65	65
Impact drive 28-inch steel sheet piles	780	500	200
Vibratory drive 42-inch steel pipe piles	80	120	50
Impact drive 42-inch steel pipe piles	1,010	500	200
Pre-Drilling	20	500	200

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

The Navy has submitted a Marine Mammal Monitoring Plan to NMFS that has been approved for this project.

Visual Monitoring

Marine mammal monitoring during pile driving and removal and drilling activities must be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy must establish the following monitoring locations. For all pile driving activities, a minimum of one PSO must be assigned to the active pile driving or drilling location to monitor the shutdown zones and as much of the Level A and Level B harassment zones as possible. If the active project location includes demolition activities, then the next adjacent pier may be used as an appropriate monitoring location ensuring that the aforementioned criteria is met. Monitoring must be conducted by a minimum of two PSOs for impact driving, and a minimum of three PSOs for vibratory and drilling activities. For activities in Table 7 with Level B harassment zones larger than 3000 m, at least one PSO must be stationed on either Pier 14 or the North Jetty to monitor the part of the zone exceeding the edge of the Norfolk Naval Station (see Figure 3). The third PSO for vibratory and drilling activities would be located on Pier 1. PSOs will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures (See Figure 3 for representative monitoring locations). If changes are necessary to ensure full coverage of the Level A harassment zones, the Navy shall contact NMFS to alter observer locations (*e.g.,* vessel blocking view from pier location).

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from drilling or piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

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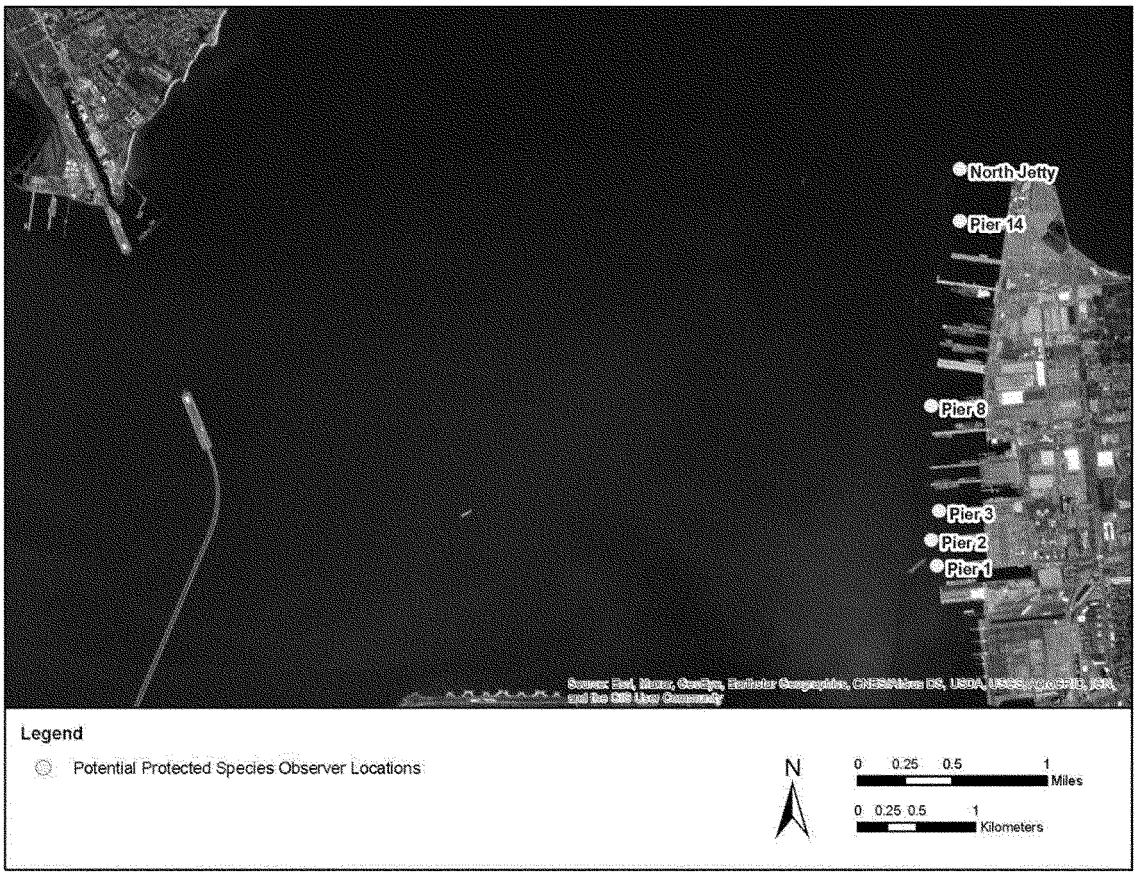

Figure 3. Protected Species Observer Locations at Naval Station Norfolk in Norfolk, Virginia.

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Acoustic Monitoring

The Navy intends to conduct a sound source verification (SSV) study for various types of pile driving, extraction, and drilling associated with this proposed project. Monitoring shall include two underwater positions and shall be conducted in accordance with NMFS guidance (NMFS 2012). One underwater location shall be at the standard 10 meters from the sound source, while the other positions shall be located at a distance of at least 20 times water depth at the pile. If the contractor determines that this distance interferes with shipping lanes for vessel traffic, or if there is no other reasons why this criteria cannot be achieved (*e.g.,* creates an unsafe scenario for crew), the Navy's Acoustic Monitoring Plan must offer an alternate site as close to the criteria as possible for NMFS' approval. Measurements shall be collected as detailed in the Navy's application (Table 13–1) for each pile type during the entire pile-driving/extraction/drilling event. Monitoring shall be conducted for 10 percent of each type of activity that has not previously been monitored at NAVSTA Norfolk (See Table 11 for complete list).

TABLE 11—ACOUSTIC MONITORING SUMMARY

Pile type [1]	Count [2]	Method of install/removal [2]	Number monitored [2]
13-inch polymeric	14	Vibratory	5
13-inch polymeric	14	Impact	5
13-inch polymeric	14	Drilling	5
16- or 18-inch concrete	308	Vibratory	10
24-inch concrete	47	Impact	10
42-inch steel pipe	113	Vibratory	10
42-inch steel pipe	113	Impact	10
28-inch steel sheet	229	Vibratory	10
28-inch steel sheet	229	Impact	10

[1] Data has previously been collected on the impact driving of 24-inch concrete piles and timber piles at NAVSTA Norfolk; therefore, no additional data collection is required for these pile types.

[2] Some piles may be either vibratory or impact pile driving, or a combination of both. The acoustic monitoring report at the end of Year 1 construction shall clarify which installation method was utilized and monitored for each pile type.

Environmental data shall be collected, including but not limited to, the following: Wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing underwater sound levels (*e.g.,* aircraft, boats, etc.).

Reporting

A draft marine mammal monitoring report and a draft acoustic monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal and drilling activities, or 60 days prior to a requested date of issuance of any future IHAs or LOAs for the project, or other projects at the same location, whichever comes first. If the Navy goes ahead with their plan to request incidental take authorization for future phases of this project, the future LOA will be requested for coverage beginning on April 1, 2023; the draft reports under this proposed IHA must be submitted to NMFS by January 31, 2023. The marine mammal report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or hole (drilling) and number of strikes for each pule (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

- Hydrophone equipment and methods: Recording device, sampling rate, distance (m) from the pile where recordings were made; depth of water and recording device(s);
- Type and size of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- For impact pile driving and/or drilling (per pile): Number of strikes and strike rate; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPL_{rms}); cumulative sound exposure level (SEL_{cum}), peak sound pressure level (SPL_{peak}), and single-strike sound exposure level (SEL_{s-s}); and
- For vibratory driving/removal and/or drilling (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPL_{rms}), cumulative sound exposure level (SEL_{cum}) (and timeframe over which the sound is averaged).

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS' comments must be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy must immediately cease the specified activities and shall report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*) NMFS and to the Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the authorization. The Navy must not resume their activities until notified by NMFS.

The report must include the following information:

i. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

ii. Species identification (if known) or description of the animal(s) involved;

iii. Condition of the animal(s) (including carcass condition if the animal is dead);

iv. Observed behaviors of the animal(s), if alive;

v. If available, photographs or video footage of the animal(s); and

vi. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number

of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and removal and drilling activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from pile driving and removal and drilling. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

The Level A harassment zones identified in Tables 6 and 7 are based upon an animal exposed to pile driving or drilling multiple piles per day. Considering the short duration to impact drive each pile and breaks between pile installations (to reset equipment and move pile into place), means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area, especially for small, fast moving species such as small cetaceans and pinnipeds. Additionally, no Level A harassment is anticipated for humpback whales due to the proposed mitigation measures, which we expect the Navy will be able to effectively implement given the small Level A harassment zone sizes and high visibility of humpback whales. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The Navy's proposed pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (immediately surrounding NAVSTA Norfolk in the Chesapeake Bay area) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006). Individual animals, even if taken multiple times, will most likely move away from the sound source and be temporarily displaced from the areas of pile driving or drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving and drilling activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted along both Atlantic and Pacific coasts, which have taken place with no known long-term adverse consequences from behavioral harassment. Furthermore, many projects similar to this one are also believed to result in multiple takes of individual animals without any documented long-term adverse effects. Level B harassment will be minimized through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is located on a busy waterfront with high amounts of vessel traffic.

As previously described, UMEs have been declared for Northeast pinnipeds (including harbor seal and gray seal) and Atlantic humpback whales. However, we do not expect takes proposed for authorization in this action to exacerbate or compound upon these ongoing UMEs. As noted previously, no injury, serious injury, or mortality is expect or proposed for authorization, and Level B harassment takes of humpback whale, harbor seal and gray seal will be reduced to the level of least practicable adverse impact through the incorporation of the proposed mitigation measures. For the WNA stock of gray seal, the estimated stock abundance is 451,600 animals. Given that only 1 to 3 takes by Level B harassment are proposed for this stock annually, we do not expect this proposed authorization to exacerbate or compound upon the ongoing UME.

For the WNA stock of harbor seals, the estimated abundance is 61,336 individuals. The estimated M/SI for this stock (339) is well below the PBR (1,729). As such, the proposed Level B harassment takes of harbor seal are not expected to exacerbate or compound upon the ongoing UMEs.

With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the Gulf of Maine stock and the West Indies breeding population, or distinct population segment (DPS)) remains healthy. The Gulf of Marine stock of humpback whales was listed as strategic under the MMPA from 1995 through the 2018 SARs but has since been removed from this list. Annual SARs have also indicated an increasing population trend for the stock, with a current abundance estimate of 1369 whales (Hayes *et al.,* 2021).

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 DPSs with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.,*

(2015), the West Indies DPS has a substantial population size (*i.e.,* 12,312 (95 percent CI 8,688–15,954) whales in 2004–05 (Bettridge *et al.,* 2003)), and appears to be experiencing consistent growth. This trend is consistent with that in 2021 draft SARs as mentioned above. Further, NMFS is proposing to authorize no more than eight takes by Level B harassment annually of humpback whale.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks;
- The number of anticipated takes is very low for humpback whale, harbor porpoise, and gray seal;
- The specified activity and associated ensonifed areas are very small relative to the overall habitat ranges of all species and do not include habitat areas of special significance (Biologically Important Areas or ESA-designated critical habitat);
- The lack of anticipated significant or long-term negative effects to marine mammal habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity; and
- Monitoring reports from similar work in the Chesapeake Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for humpback whale, harbor porpoise, gray seal, the Northern North Carolina Estuarine Stock of bottlenose dolphin and harbor seal (in fact, take of individuals is less than 5 percent of the abundance of the affected stocks, see Table 9). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

There are three bottlenose dolphin stocks that could occur in the project area. Therefore, the estimated 14,989 dolphin takes by Level B harassment would likely be split among the western North Atlantic northern migratory coastal stock, the western North Atlantic southern migratory coastal stock, and the northern North Carolina Estuarine stock (NNCES). Based on the stocks' respective occurrence in the area, NMFS estimates that there would be no more than 200 takes from the NNCES stock, representing 24 percent of that population, with the remaining takes split evenly between the northern and southern migratory coastal stocks. Based on the consideration of various factors as described below, we have determined the number of individuals taken would comprise less than one-third of the best available population abundance estimate of either coastal migratory stocks. Detailed descriptions of the stocks' ranges have been provided in the Description of Marine Mammals in the Area of Specified Activities section.

Both the northern migratory coastal and southern migratory coastal stocks have expansive ranges and they are the only dolphin stocks thought to make broad-scale, seasonal migrations in coastal waters of the western North Atlantic. Given the large ranges associated with these two stocks it is unlikely that large segments of either stock would approach the project area and enter into the Chesapeake Bay. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges and unlikely to be concentrated in or near the Chesapeake Bay.

Furthermore, the Chesapeake Bay and nearby offshore waters represent the boundaries of the ranges of each of the two coastal stocks during migration. The northern migratory coastal stock is found during warm water months from coastal Virginia, including the Chesapeake Bay and Long Island, New York. The stock migrates south in late summer and fall. During cold water months, dolphins may be found in coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border. During January–March, the southern Migratory coastal stock appears to move as far south as northern Florida. From April–June, the stock moves back north to North Carolina. During the warm water months of July–August, the stock is presumed to occupy the coastal waters north of Cape Lookout, North Carolina, to Assateague, Virginia, including the Chesapeake Bay. There is likely some overlap between the northern and southern migratory stocks during spring and fall migrations, but the extent of overlap is unknown.

The Chesapeake Bay and waters offshore of the mouth are located on the periphery of the migratory ranges of both coastal stocks (although during different seasons). Additionally, each of the migratory coastal stocks are likely to be located in the vicinity of the Bay for relatively short timeframes. Given the limited number of animals from each migratory coastal stock likely to be found at the seasonal migratory boundaries of their respective ranges, in combination with the short time periods (~2 months) animals might remain at these boundaries, it is reasonable to assume that takes are likely to occur only within some small portion of either of the migratory coastal stocks.

Many of the dolphin observations in the Bay are likely repeated sightings of the same individuals. The Potomac-Chesapeake Dolphin Project has observed over 1,200 unique animals since observations began in 2015. Re-sightings of the same individual can be highly variable. Some dolphins are observed once per year, while others are highly regular with greater than 10 sightings per year (Mann, Personal Communication). Similarly, using available photo-identification data, Engelhaupt *et al.* (2016) determined that specified individuals were often observed in close proximity to their original sighting locations and were observed multiple times in the same season or same year. Ninety-one percent of re-sighted individuals (100 of 110) in the study area were recorded less than 30 km from the initial sighting location. Multiple sightings of the same individual would considerably reduce the number of individual animals that are taken by harassment. Furthermore, the existence of a resident dolphin population in the Bay would increase the percentage of dolphin takes that are actually re-sightings of the same individuals.

In summary and as described above, the following factors primarily support our determination regarding the incidental take of small numbers of the affected stocks of a species or stock:

- The take of marine mammal stocks authorized for take comprises less than 5 percent of any stock abundance (with the exception of the Northern and Southern Migratory stocks of bottlenose dolphin);
- Potential bottlenose dolphin takes in the project area are likely to be allocated among three distinct stocks;
- Bottlenose dolphin stocks in the project area have extensive ranges and it would be unlikely to find a high percentage of the individuals of any one stock concentrated in a relatively small area such as the project area or the Chesapeake Bay;
- The Chesapeake Bay represents the migratory boundary for each of the specified dolphin stocks and it would be unlikely to find a high percentage of any stock concentrated at such boundaries; and
- Many of the takes would likely be repeats of the same animals and likely from a resident population of the Chesapeake Bay.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the U.S. Navy for conducting pile driving and drilling activities associated with the demolition and reconstruction of Pier 3 at Naval Station Norfolk, in Norfolk, Virginia from April 1, 2022 through March 31, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed Pier 3 project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 20, 2022.

Kimberly Damon-Randall,

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

[FR Doc. 2022–01474 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Limits of Application of Take Prohibitions

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

ACTION: Notice of information collection, request for comment.

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

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0399 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gary Rule, NOAA Fisheries, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232, (503) 230–5424 or *gary.rule@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

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

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it ''deems necessary and advisable to provide for the conservation of'' threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits ''take'' of any endangered species (''take'' includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 23 separate Distinct Population Segments (DPS) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington, and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened DPS, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (see 70 FR 37160, June 28, 2005, 71 FR 834, January 5, 2006, and 73 FR 55451, September 25, 2008). The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that limits impacts on, listed salmonids. Because we have determined that such programs/circumstances adequately protect listed salmonids, the regulations do not apply the ''take'' prohibitions to them. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

The currently approved application and reporting requirements apply to Pacific marine and anadromous fish species.

II. Method of Collection

Submissions may be electronically or on paper.

III. Data

OMB Control Number: 0648–0399.

Form Number(s): None.

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

Affected Public: Federal government; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 331.

Estimated Time per Response: 5 hours for a diversion screening limit project; 20 hours for a road maintenance agreement; 30 hours for an urban development package; 20 hours for a tribal plan; 10 hours for a fishery harvest plan; 5 hours for a report of aided, salvaged, or disposed of salmonids; 2 hours for research permits; 5 hours for artificial propagation plans; and 2 hours for annual reports.

Estimated Total Annual Burden Hours: 935.

Estimated Total Annual Cost to Public: $580.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*).

IV. Request for Comments

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

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

Sheleen Dumas,

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

[FR Doc. 2022–01485 Filed 1–25–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0004]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995

(PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is publishing this notice seeking comment on a Generic Information Collection titled, ''Partnership with EVERFI to Study High School Students' Estimation of College Costs,'' prior to requesting the Office of Management and Budget's (OMB's) approval of this collection under the Generic Information Collection ''Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings'' under OMB Control number 3170–0048.

DATES: Written comments are encouraged and must be received on or before February 25, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0004 in the subject line of the email.
- *Mail/Hand Delivery/Courier*: Comment intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Partnership with EVERFI to Study High School Students' Estimation of College Costs.

OMB Control Number: 3170–0048.

Type of Review: Request for approval of a generic information collection under an existing Generic Information Collection Plan.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 1,667.

Abstract: The Bureau plans to engage in research under its authority to conduct research on ''consumer awareness and understanding of costs, risks, and benefits of consumer financial products and service.'' To this end, the Bureau plans to partner with EVERFI, Inc. (a provider of financial education services) to distribute a survey about student loans and the costs of attending college through their proprietary software. Previous research has indicated that students tend to err in estimating the costs of attending college and the costs of borrowing student loans that are used to attend college. This survey will ask questions to measure high school students' expectations about college costs and the costs of borrowing student loans. The survey will then include a randomized experiment where some students are shown information about the average net costs of college, the cost of borrowing student loans, and the availability of certain income-driven repayment programs. Students will answer a battery of questions about their anticipated college attendance, major choice, and likelihood of borrowing student loans. The randomized experiment will measure the effect of the information treatments on the students' reported postsecondary plans. Doing so will contribute to our understanding of providing certain pieces of information that may affect students' postsecondary education plans.

The survey will involve U.S. high school students as respondents. The CFPB will distribute the survey as an addendum to EVERFI, Inc.'s main survey of students that enroll in EVERFI's Financing Higher Education, course. The CFPB survey will contain mostly questions about the respondents' estimates of college costs, the cost of borrowing student loans, and the questions about their post-high school plans discussed above. The CFPB will also receive the responses to EVERFI's main survey which includes demographic questions about the students as well as questions measuring their college enrollment intentions, preparations, and perceptions.

Request for Comments: The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be submitted to OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–01484 Filed 1–25–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2022–HQ–0002]

Proposed Collection; Comment Request

AGENCY: United States Transportation Command (USTRANSCOM), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Transportation Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Commander, United States Transportation Command, USTRANSCOM–J4, 508 Scott Dr., AFB IL, 62225–1437, Mr. Thomas E. Thompson, (618) 220–4804.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Tender of Service for Personal Property Household Goods and Unaccompanied Baggage Shipments; DD Form 619; OMB Control Number 0704–0531.

Needs and Uses: The information collection requirement is necessary to private sector commercial transportation service providers, who are under contract with the DoD for shipment/storage of personal property, to identify ownership, and to schedule pickup and delivery of personal property.

Affected Public: Businesses or other for-profit.

Annual Burden Hours: 18,980.

Number of Respondents: 876.

Responses per Respondent: 260.

Annual Responses: 227,760.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01481 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0016]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 25, 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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Temporary Food Establishment; DD Form 2970; OMB Control Number 0702–0132.

Type of Request: Revision.

Number of Respondents: 91.

Responses per Respondent: 1.

Annual Responses: 91.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 22.75.

Needs and Uses: The information collection requirement is necessary for the installation Preventive Medicine or Public Health Activity to evaluate a food vendor's ability to prepare and dispense safe food on the installation. The DD Form 2970, submitted one time by a food vendor requesting to operate a food establishment on a military installation, characterizes the types of foods, daily volume of food, supporting food equipment, and sanitary controls. Approval to operate the food establishment is determined by the installation's medical authority; the Preventive Medicine or Public Health Activity conducts an operational assessment based on the food safety criteria prescribed in the Tri-Service Food Code (TB MED 530/NAVMED P–5010–1/AFMAN 48–147_IP). Food vendors who are deemed inadequately prepared to provide safe food service are disapproved for operating on the installation.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01499 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0014]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense, (DoD).

ACTION: Emergency 30-day information collection notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to collect information on training and program evaluations for the Innovations in Sexual Assault Prevention Pilot Program (ISAPPP). As part of ISAPPP, the National Opinion Research Center, in collaboration with the Department of the Air Force (DAF), is conducting the ISAPPP surveys (a baseline survey and one follow-up survey) with DAF First Term Airmen/Guardians for the purpose of program evaluation. The results will be used by the DAF to evaluate and update their prevention programming. DoD requests emergency processing and

OMB authorization to collect the information after publication of this notice for a period of six months.

DATES: Comments must be received by February 25, 2022.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 30 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *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. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: The purpose of the overall evaluation is to determine the effectiveness of the Wingman Intervention Training (WIT) program in preventing sexual harassment (SH) and sexual assault (SA). Respondents are Airmen/Guardians. Respondents will be recruited as First Term Airmen/Guardians to target the population most vulnerable to SH and SA. Respondents will start the web-based baseline January 2022 with a six-month intake period until June 2022, and a 6-month follow-up survey (July–December 2022) on SH and SA so that DAF can learn whether the WIT programming is effective at preventing SH and SA events and promoting active bystander behaviors. DAF Resilience Office staff can use the results to improve their prevention programming, thus supporting safer, more inclusive settings. Further, Airmen/Guardians may benefit through the improvement of the WIT program to prevent SH and SA within the Air Force. The military and society at large will also benefit because military officers will be more knowledgeable about SH and SA and will be better able to intervene to prevent SH and SA.

Title; Associated Form; and OMB Number: Wingman Intervention Training Program Evaluation; OMB Control Number 0704–WITE.

Type of Request: Emergency.

Number of Respondents: 4,000.

Responses per Respondent: 2.

Annual Responses: 8,000.

Average Burden per Response: 17.5 minutes.

Annual Burden Hours: 2,333 hours.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Request for Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: January 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01501 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0005]

Proposed Collection; Comment Request

AGENCY: Washington Headquarter Services (WHS), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Washington Headquarter Services announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Pentagon Force Protection Agency Parking Management Branch, Room 2D1039, 9000 Defense Pentagon, Washington, DC 20301–9000, Myrna Merced, 703–697–9864.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199; OMB Control Number 0704–0395.

Needs and Uses: WHS requires the collection of information from members of the public assigned to the Pentagon, Mark Center, and Suffolk buildings to obtain an authorized parking permit to park in a controlled parking facility without being enrolled in the Mass Transit Benefit Program. The authority is promulgated in 10 U.S.C. 2674 Operation and Control of Pentagon Reservation and Defense Facilities in National Capital Region; Administrative Instruction Number 88, Pentagon Reservation Vehicle Parking Program, and E.O. 9397 (SSN), as amended.

Affected Public: Individuals or households.

Annual Burden Hours: 350 hours.

Number of Respondents: 4,200.

Responses per Respondent: 1.

Annual Responses: 4,200.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01393 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0003]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Emergency 30-day information collection notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice that DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to collect information about the behavior and attitudes of enlisted Navy Sailors regarding alcohol use and sexual assault in order to assist in the adaptation of an existing web-based sexual assault prevention program for use among enlisted Navy Sailors. DoD requests emergency processing and OMB authorization to collect the information after publication of this notice for a period of six months.

DATES: Comments must be received by February 25, 2022.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 30 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *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. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: This submission corresponds to the grant number W81XWH–20–2–0039 funded by the Congressionally Directed Medical Research Program and aligns with the Secretary of Defense's call for novel programs to prevent sexual assault within the military. Given the practical challenges of delivering tailored sexual assault prevention to service members in-person, a computerized prevention program that focuses on multiple risk factors for sexual aggression and sexual victimization, while engaging all service members as active bystanders to reduce risk for violence, addresses a significant gap in prevention delivery. A normative survey will provide information about the behavior and attitudes of Sailors regarding alcohol use and sexual assault. Next, focus groups and interviews will be conducted to obtain feedback about the content of the intervention and ways to adapt it for Sailors. There is no standardized set of questions for the focus groups or interviews, so they are not included in this information collection request. However, interviewees and focus group respondents will be selected based on their drinking habits, which will be determined by a brief pre-interview/focus group survey. After interview/focus group completion, a post-interview/focus group survey will be given to obtain demographic and alcohol use information to be used as descriptive information, as well as data from standardized measures that assess respondents' opinions of the existing intervention. These two surveys are included in this request. Data from the three surveys will be incorporated into the intervention content and help generate an adapted prototype of the sexual assault prevention program (+Change) for Sailors. This study is a critical advancement in the prevention of sexual assault in military service members.

Title; Associated Form; and OMB Number: Personalized Web-Based Sexual Assault Prevention for Service Members; OMB Control Number 0703–PWSP.

Type of Request: New emergency request.

Sexual Assault Prevention in Service Members Normative Survey

Number of Respondents: 500.
Responses per Respondent: 1.
Annual Responses: 500.
Average Burden per Response: 25 minutes.
Annual Burden Hours: 208.3.

Pre and Post Interview/Focus Group Surveys

Number of Respondents: 87.
Responses per Respondent: 2.
Annual Responses: 174.
Average Burden per Response: 7.5 minutes.
Annual Burden Hours: 21.8.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's Obligation: Voluntary.

Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: January 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01498 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0002]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Marine Corps (USMC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Marine and Family Programs, Compliance (MFI), 3280 Russell Road, Quantico, VA 22134, ATTN: Mr. Theodore McCann, or call 703–784–1333.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: United States Marine Corps Child and Youth Programs; NAVMC Forms 1750/7, 1750/10, 1750/11; OMB Control Number 0703–UCYP.

Needs and Uses: The USMC Child and Youth Programs information collection is needed to obtain authorization for Child and Youth Programs personnel to administer non-medicated topical products, maintain the medication administration record, and controlled medication administration record and daily log for USMC Child and Youth Programs participants.

Affected Public: Individuals and households.

Annual Burden Hours: 2,667.

Number of Respondents: 16,000.

Responses per Respondent: 1.

Annual Responses: 16,000.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: January 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01503 Filed 1–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0009]

Agency Information Collection Activities; Comment Request; Education Stabilization Fund—Governor's Emergency Education Relief Fund (GEER I and GEER II) 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 February 11, 2022; and therefore, the Department is requesting public comments no later than February 10, 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 28, 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–0009. 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—Governor's Emergency Education Relief Fund (GEER I and GEER II) Recipient Data Collection Form.

OMB Control Number: 1810–0748.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 3,326.

Total Estimated Number of Annual Burden Hours: 40,612.

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 Governor's Emergency Education Relief Fund (GEER Fund) awards grants to Governors (States) and Outlying Areas for the purpose of providing local

educational agencies (LEAs), institutions of higher education, and other education-related entities with emergency assistance as a result of the coronavirus pandemic. 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 GEER program and obtain information on how the funds were used by State and Local Education Agencies, institutions of higher education, and other education-related entities. Emergency processing is necessary to provide states with sufficient time to collect the required data on expenditures of GEER funds. The changes to the recently approved collection include *Question 2a–d* of the form to address the expenditure of GEER funds directly by the Governor's office (or another entity, such as the SEA, designated as the administrator of the GEER fund by the Governor's office).

The Department addressed all public comments from the recently approved information collection. The only change to the approved collection is to include a Yes/No question asked of prime grantees regarding whether they expended GEER funds directly. Grantees who respond in the affirmative are asked for the amount of their expenditures for administrative uses and non-administrative uses. When considering your comments, please refer to Attachment A, which outlines the additional questions.

Dated: January 20, 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. 2022–01475 Filed 1–25–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Change in Oil Pipeline Index Figure

On January 20, 2022, the Commission determined that the appropriate oil pricing index factor for pipelines to use for the current five-year period is Producer Price Index for Finished Goods minus point two one percent (PPI–FG–0.21%).[1]

In accordance with the Order on Rehearing, oil pipelines must multiply their July 1, 2020 through June 30, 2021 index ceiling levels by positive 0.984288 to recompute their July 1, 2021 through June 30, 2022 index ceiling levels, to be effective March 1, 2022. The index figure published by the Commission reflects the final change in the PPI–FG published by the Bureau of Labor Statistics. The annual average PPI–FG index figures were 205.7 for 2019 and 202.9 for 2020.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2019 to 2020, minus 0.21%, is negative 0.015712.[3] Accordingly, the index multiplier is 0.984288.[4]

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the internet through FERC's Home Page (*http://www.ferc.gov*) using the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page. 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.

User assistance is available for eLibrary and other aspects of FERC's website during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

[1] *Five-Year Review of the Oil Pipeline Index,* 178 FERC ¶ 61,023, at P 105 (2022) (*Order on Rehearing*).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at 202–691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, scroll down to ''PPI Databases'' and click on ''Top Picks'' of the Commodity Data including ''headline'' FD–ID indexes (Producer Price Index—PPI). At the next screen, under the heading ''PPI Commodity Data,'' select the box, ''Finished goods—WPUFD49207,'' then scroll to the bottom of this screen and click on Retrieve data.

[3] [202.9–205.7]/205.7 = (−0.013612)—0.0021 = (−0.015712).

[4] 1 − 0.015712 = 0.984288.

Dated: January 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01521 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: PR22–18–000.

Applicants: Southern California Gas Company.

Description: Submits tariff filing per 284.123(b), (e)+: Offshore_Delivery_Service_Rate_Revision_January_2022 to be effective 1/19/2022.

Filed Date: 1/19/2022.

Accession Number: 20220119–5106.

Comments Due: 5 p.m. ET 2/9/22.

284.123(g) Protests Due: 5 p.m. ET 3/21/22.

Docket Numbers: RP22–492–000.

Applicants: Southern LNG Company, L.L.C.

Description: § 4(d) Rate Filing: Dredging Surcharge Cost Adjustment—2022 to be effective 3/1/2022.

Filed Date: 1/20/22.

Accession Number: 20220120–5024.

Comment Date: 5 p.m. ET 2/1/22.

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 by clicking on the links or 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: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01515 Filed 1–25–22; 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 exempt wholesale generator filings:

Docket Numbers: EG22–44–000.
Applicants: Swoose II LLC.
Description: Self-Certification of EWG Status of Swoose II LLC.
Filed Date: 1/18/22.
Accession Number: 20220118–5322.
Comment Date: 5 p.m. ET 2/8/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2562–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Compliance Filing—Definitive Interconnection System Impact Study Process to be effective 10/1/2021.
Filed Date: 1/20/22.
Accession Number: 20220120–5045.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–846–000.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Amended GIA DSA Deer Creek Solar 1 SA No. 1058 1059 WDT1384 to be effective 1/21/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5078.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–847–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6312; Queue No. AE2–297 and Cancellation of SA No. 6014 to be effective 12/21/2021.
Filed Date: 1/20/22.
Accession Number: 20220120–5086.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–848–000.
Applicants: Urbana Solar LLC.
Description: Urbana Solar LLC submits Request for Limited One-Time Prospective Waiver with Expedited Consideration.
Filed Date: 1/18/22.
Accession Number: 20220118–5328.
Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–849–000.
Applicants: Sustaining Power Solutions LLC.
Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status in the NW and SW Regions to be effective 1/21/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5098.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–850–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6321; Queue No. AC2–050 to be effective 12/21/2021.
Filed Date: 1/20/22.
Accession Number: 20220120–5100.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–851–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 6318; Queue No. AG2–395 to be effective 12/21/2021.
Filed Date: 1/20/22.
Accession Number: 20220120–5102.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–852–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6324; Queue No. AG2–389 to be effective 12/21/2021.
Filed Date: 1/20/22.
Accession Number: 20220120–5105.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–853–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Blackwater Solar Amended and Restated LGIA Filing to be effective 1/5/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5112.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–854–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Bird Dog Solar Amended and Restated LGIA Filing to be effective 1/5/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5113.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–855–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 355, Simultaneous Exchange with Dynasty or Alternative to be effective 3/22/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5114.
Comment Date: 5 p.m. ET 2/10/22.

Docket Numbers: ER22–856–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Wolfskin Solar Amended and Restated LIGA Filing to be effective 1/5/2022.
Filed Date: 1/20/22.
Accession Number: 20220120–5115.
Comment Date: 5 p.m. ET 2/10/22

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 20, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01514 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–2–000]

Commission Information Collection Activities (Ferc-545) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–545 (Gas Pipeline Rates: Rate Change (Non-Formal)), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due February 25, 2022.

ADDRESSES: Send written comments on FERC–545 to OMB through *www.reginfo.gov/public/do/PRAMain.*

Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0154) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–2–000) by one of the following methods: Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

OMB Control No.: 1902–0154.

Type of Request: Three-year extension of the FERC–545 information collection requirements with no changes to the current reporting requirements. No comments were received on the 60-day notice published November 15, 2021 (86 FR 63010).

Abstract: FERC–545 is required to implement Sections 4, 5, and 16 of the Natural Gas Act (NGA), (15 U.S.C. 717c, 717d, and 717o). NGA Sections 4, 5, and 16 authorize the Commission to inquire into rate structures and methodologies and to set rates at a just and reasonable level. Specifically, a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce.

Under the NGA, a natural gas company's rates must be just and reasonable and not unduly discriminatory or preferential. The Commission may act under different sections of the NGA to effect a change in a natural gas company's rate. When the Commission reviews rate increases that a natural gas company has proposed, it is subject to the requirement of Section 4(e) of the NGA. Under Section 4(e), the natural gas company bears the burden of proving that its proposed rates are just and reasonable. On the other hand, when the Commission seeks to impose its own rate determination, it must do so in compliance with Section 5(a) of the NGA. Under Section 5, the Commission must first establish that its alternative rate proposal is both just and reasonable.

Section 16 of the NGA states that the Commission ''shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out provisions of [the NGA].'' In other words, Section 16 of the NGA grants the Commission the power to define accounting, technical and trade terms, prescribe forms, statements, declarations, or reports and to prescribe rules and regulations.

Pipelines adjust their tariffs to meet market and customer needs. The Commission's review of these proposed changes is required to ensure rates remain just and reasonable and that services are not provided in an unduly or preferential manner. The Commission's regulations in 18 CFR part 154 specify what changes are allowed and the procedures for requesting Commission approval.

The Commission uses information in FERC–545 to examine rates, services, and tariff provisions related to natural gas transportation and storage services. The following filing categories are subject to FERC–545: (1) Tariff Filings—filings regarding proposed changes to a pipeline's tariff (including Cost Recovery Mechanisms for Modernization of Natural Gas Facilities filings in Docket No. PL15–1) and any related compliance filings; (2) Rate Filings—rate-related filings under NGA sections 4 and 5 and any related compliance filings and settlements; (3) Informational Reports; (4) Negotiated Rate and Non-Conforming Agreement Filings; (5) North American Energy Standards Board (NAESB) (RM96–1–042) Version 3.2; and (6) Market-Based Rates for Storage Filings (Part 284.501–505).

Type of Respondents: Natural gas pipelines under the jurisdiction of NGA.

Estimate of Annual Burden:[1] The public reporting burden has increased for this information collection due to normal fluctuations in industry and the inclusion of tariff filings in compliance with Order No. 587–Z. On July 15, 2021, in Docket No. RM96–1–042, the Commission amended its regulations to incorporate by reference the North American Energy Standards Board (NAESB) Wholesale Quadrant Version 3.2 standards.[2] The revisions made by NAESB Version 3.2 are designed to enhance the natural gas industries' cyber security measures.

The 60-day notice was published on November 15, 2021 (86 FR 63010). No comments were received.

The Commission estimates the annual public reporting burden and cost for the information collection as follows:

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The final rule was published in the **Federal Register** on August 10, 2021 (86 FR 43590). OMB approved the information collection aspects of the rule, including revsions of FERC–545, in November of 2021.

FERC–545—GAS PIPELINE RATES: RATE CHANGE (NON-FORMAL)

	Number of respondents (1)	Average number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [3] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Tariff Filings	109	2.768	301.712	211 hrs.; $20,467.	63,661.232 hrs.; $6,175,139.50.	56,652.66
Rate Filings	32	2	64	354 hrs.; $34,338.	22,656 hrs.; $2,197,632.	68,676
Informational Reports.	100	1.770	177	235 hrs.; $22,795.	41,595 hrs.; $4,034,715.	40,347.15
Negotiated Rates & Non-Conforming Agreement Filings.	69	11	759	233 hrs.; $22,601.	176,847 hrs.; $17,154,159.	248,611
Market-Base Rates for Storage Filings.	2	1	2	230 hrs.; $22,310.	460 hrs.; $44,620.	22,310
NAESB (version 3.2) one time over 3 years carried over from RM96–1–42 [4].	59	1	59	10 hrs.; $970	593.33 hrs.; $57,553.33.	970
Total			1,362.712		$305,812.56 hrs.; 29,663,818.51.	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[3] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*) and scaled to reflect benefits using the relative importance of employer costs for employee compensation from June 2021 (available at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

Computer and Information Systems Manager (Occupation Code: 11–3021), $103.61

Computer and Information Analysts (Occupation Code: 15–1120 (1221), $67.99

Electrical Engineer (Occupation Code: 17–2071), $72.15

Legal (Occupation Code: 23–0000), $142.25

The average hourly cost (salary plus benefits), weighing all of these skill sets evenly, is $96.50. We round it to $97/hour.

[4] The final rule in Docket No. RM96–1–042 was published in the **Federal Register** on August 10, 2021 (86 FR 43590). OMB approved the information collection aspects of the rule, including revisions of FERC–545, in November of 2021.

Dated: January 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01522 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–2–000]

Commission Information Collection Activities (Ferc–732) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–732, (Electric Rate Schedule and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets), which will be submitted to the Office of Management and Budget (OMB) for review. The Commission issued a 60-day notice on November 15, 2021 requesting public comments; no comments were received.

DATES: Comments on the collection of information are due February 25, 2022.

ADDRESSES: Send written comments on FERC–732 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0245) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–2–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

1. FERC–732

Title: FERC–732, Electric Rate Schedule and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets

OMB Control No.: 1902–0245.

Type of Request: Three-year extension of the FERC–732 information collection requirement with no changes to the current reporting requirements.

Abstract: 18 CFR part 42 provides the reporting requirements of FERC–732 as they pertain to long-term transmission rights. To implement section 1233 [1] of the Energy Policy Act of 2005 (EPAct 2005),[2] the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines.[3]

The FERC–732 regulations require that transmission organizations (that are public utilities with one or more organized electricity markets) choose one of two ways to file:

- File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC.
- File an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines.

Additionally, the Commission requires each transmission organization to make its transmission planning and expansion procedures and plans available to the public. FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

Type of Respondents: Public utility with one or more organized electricity markets

Estimate of Annual Burden: [4] The Commission estimates the total burden and cost [5] for this information collection as follows.

FERC–732—ELECTRIC RATE SCHEDULES AND TARIFFS: LONG-TERM FIRM TRANSMISSION RIGHTS IN ORGANIZED ELECTRICITY MARKETS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Total annual burden hours and total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Public utility with one or more organized electricity markets	1	1	[6] 1	1,180 hrs.; $102,660	$102,660

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01523 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824.

[2] 16 U.S.C. 824q.

[3] 18 CFR 42.1(d).

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[5] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour) posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*).

[6] The ''1'' Tariff filing is a placeholder for future fillers.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–2–000]

Commission Information Collection Activities (Ferc–549c) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–549C, (Standards for Business Practices of Interstate Natural Gas Pipelines), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due February 25, 2022.

ADDRESSES: Send written comments on FERC–549C to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0174) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–2–000) by one of the following methods: Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

1. FERC–549C

Title: FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

OMB Control No.: 1902–0174.

Type of Request: Three-year extension of the FERC–549C information collection requirements with no changes to the current reporting requirements. No comments were received on the 60 day notice published on November 15, 2021 (86 FR 63010).

Abstract: The business practice standards under FERC–549C are required to carry out the Commission's policies in accordance with the general authority in sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA),[1] and sections 311, 501, and 504 of the Natural Gas Policy Act of 1978 (NGPA).[2] The Commission adopted these business practice standards in order to update and standardize the natural gas industry's business practices and procedures in addition to improving the efficiency of the gas market and the means by which the gas industry conducts business across the interstate pipeline grid. In various orders since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines proposed by the North American Energy Standards Board (NAESB) in order to create a more integrated and efficient pipeline industry.[3] Generally, when and if NAESB-proposed standards (*e.g.,* consensus standards developed by the Wholesale Gas Quadrant (WGQ)[4]) are approved by the Commission, the Commission incorporates them by reference into its approval. The process of standardizing business practices in the natural gas industry began with a Commission initiative to standardize electronic communication of capacity release transactions. The outgrowth of the initial Commission standardization efforts produced working groups composed of all segments of the natural gas industry. The Gas Industry Standards Board (GISB) is a consensus organization open to all members of the gas industry was created. GISB was succeeded by NAESB.

NAESB is a voluntary non-profit organization comprised of members from the retail and wholesale natural gas and electric industries. NAESB's mission is to take the lead in developing standards across these industries to simplify and expand electronic communication and to streamline business practices. NAESB's core objective is to facilitate a seamless North American marketplace for natural gas, as recognized by its customers, the business community, industry participants, and regulatory bodies.

NAESB has divided its efforts among four quadrants including two retail quadrants, a wholesale electric quadrant, and the WGQ. The NAESB WGQ standards are a product of this effort. Industry participants seeking additional or amended standards (to include principles, definitions, standards, data elements, process descriptions, and technical implementation instructions) must submit a request to the NAESB office, detailing the change, so that the appropriate process may take place to amend the standards. Failure to collect the FERC–549C data would prevent the Commission from monitoring and properly evaluating pipeline transactions and/or meeting statutory obligations under both the NGA and NGPA.

On August 17, 2020, NAESB filed a report informing the Commission that it had adopted and ratified WGQ Version 3.2 of its business practice standards applicable to interstate natural gas pipelines. Version 3.2 of the WGQ includes business practice standards developed and modified in response to industry requests and directives from the NAESB Board of Directors. This version also includes the standards developed in response to the recommendations of Sandia National Laboratory (Sandia),[5] which in 2019 issued a cybersecurity surety assessment of the NAESB standards sponsored by DOE (Sandia Surety Assessment),[6] and

[1] 15 U.S.C. 717c–717w.

[2] 15 U.S.C. 3301–3432.

[3] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[4] An accredited standards organization under the auspices of the American National Standards Institute (ANSI).

[5] Sandia is a multidisciplinary national laboratory and federally funded research and development center for the U.S. Department of Energy's (DOE) National Nuclear Security Administration that supports numerous federal, state, and local government agencies, companies, and organizations.

[6] In April 2017, NAESB announced that Sandia, through funding provided by DOE, would be performing a surety assessment of the NAESB standards. As determined by Sandia and DOE, the

Continued

the standards developed to enable the use of distributed ledger technologies when transacting the NAESB Base Contract for Sale and Purchase of Natural Gas. The NAESB report identifies all the changes made to the WGQ Version 3.1 Standards and summarizes the deliberations that led to the changes being made. It also identifies changes to the existing standards that were considered but not adopted due to a lack of consensus or other reasons.

Type of Respondents: Natural gas pipelines under the jurisdiction of NGA and NGPA.

Estimate of Annual Burden.[7] The Commission estimates the total annual burden and cost for this information collection as follows:[8]

FERC–549C—STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

	Number of respondents (1)	Average number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response[9] (4) (3) * (4) = (5)	Total annual burden hours and total annual cost (5) ÷ (1)	Cost per respondent ($)
Burden from Final Rule RM96–1–42 (NAESB Version 3.2)	59.33	1	59.33	100 hrs.; $9,407	5,933.33 hrs.; $558,148.35	$9,407
Standards for Business Practices of Interstate Natural Gas Pipelines	165	2.96	490	96 hrs.; $9,030.72	47,040 hrs.; $4,425,052.80	$26,818.50
Total for FERC–549C			549.33		52,973.33 hrs.; $4,983,201.15	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01519 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–6–000]

Spire Storage West, LLC; Notice of Revised Schedule for Environmental Review of the Clear Creek Expansion Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental impact statement (EIS) for Spire Storage West, LLC's Clear Creek Expansion Project. The first notice of schedule, issued on August 26, 2021, identified January 21, 2022 as the final EIS issuance date. However, environmental staff is in the process of assessing various alternatives raised during the draft EIS comment period. As a result, staff has revised the schedule for issuance of the final EIS.

Schedule for Environmental Review

Issuance of the Notice of Availability of the final EIS March 15, 2022

90-day Federal Authorization Decision Deadline June 13, 2022

If another schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/*

purpose of the surety assessment was to analyze cybersecurity elements within the standards, focusing on four areas: (1) The NAESB Certification Program for Accredited Certification Authorities, including the Wholesale Electric Quadrant (WEQ)-012 Public Key Infrastructure Business Practice Standards, the NAESB Accreditation Requirements for Authorized Certificate Authorities, and the Authorized Certification Authority Process; (2) the WEQ Open Access Same-Time Information Systems suite of standards; (3) the WGQ and Retail Markets Quadrant internet Electronic Transport (IET) and Quadrant Electronic Delivery Mechanism (EDM) Related Standards Manual; and (4) a high-level dependency analysis between the gas and electric markets to evaluate the different security paradigms the markets employ.

[7] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[8] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–549C are approximately the same as the Commission's average cost. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour) posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*).

[9] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from June 2021 (available at *https://www.bls.gov/oes/current/naics2_22.htm*). The hourly estimates for salary plus benefits are:

Petroleum Engineer (Occupation Code: 17–2171), $74.20

Computer Systems Analysts (Occupation Code: 15–1120), $67.99

Legal (Occupation Code: 23–0000), $142.25

Economist (Occupation Code: 19–3011), $75.75

The average hourly cost (salary plus benefits) is calculated weighting each of the aforementioned wage categories as follows: $74.20 (0.3) + $142.25 (0.3) + $67.99 (0.15) + $75.75 (0.25) = $94.07.

ferc-online/overview to register for eSubscription.

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, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP21–6), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01520 Filed 1–25–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0116; FRL–9496–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Plating and Polishing Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Plating and Polishing Area Sources (EPA ICR Number 2294.06, OMB Control Number 2060–0623), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently-approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0116, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Plating and Polishing Area Sources (40 CFR part 63, subpart WWWWWW) apply to both existing and new plating and polishing facilities that are an area source of hazardous air pollutant (HAP) emissions and that use one or more of the following metal HAP: Cadmium, chromium, lead manganese, or nickel (hereafter referred to as the plating and polishing metal HAP). A plating and polishing facility is a plant site that is engaged in any of the following processes: Non-chromium electroplating; electroless or non-electrolytic plating; other non-electrolytic metal coating processes such as chromate conversion coating, nickel acetate sealing, sodium dichromate sealing, and manganese phosphate coating, and thermal spraying; dry mechanical polishing of finished metals and formed products after plating or thermal spraying; electroforming; and electro-polishing. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart WWWWWW.

Form Numbers: None.

Respondents/affected entities: Plating and polishing area source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart WWWWWW).

Estimated number of respondents: 2,900 (total).

Frequency of response: Initially and annually.

Total estimated burden: 67,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $8,000,000 (per year), which includes no annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or

operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01531 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0209; FRL–9491–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Cross-State Air Pollution Rule and Texas SO_2 Trading Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Cross-State Air Pollution Rule and Texas SO_2 Trading Programs (Renewal)'' (EPA ICR Number 2391.06, OMB Control Number 2060–0667) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on May 25, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number No. EPA–HQ–OAR–2018–0209, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kevin Tran, Clean Air Markets Division, Office of Air and Radiation, (6204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9074; fax number: 202–343–2361; email address: *tran.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: EPA is renewing an ICR for the Cross-State Air Pollution Rule (CSAPR) trading programs to allow for continued implementation of the programs. The information collection requirements under five CSAPR trading programs and the Texas SO_2 Trading Program are reflected in the existing ICR as most recently revised in 2018. In 2021, EPA promulgated an additional CSAPR NO_X Ozone trading program which only includes sources previously subject to another CSAPR trading program reflected in the current ICR. This ICR renewal reflects all six CSAPR trading programs and the Texas SO_2 Trading Program. Most affected sources under the CSAPR and Texas trading programs are also subject to the Acid Rain Program (ARP). The information collection requirements under the CSAPR and Texas trading programs, which consist primarily of requirements to monitor and report emissions data in accordance with 40 CFR part 75, substantially overlap and are fully integrated with ARP information collection requirements. The burden and costs of overlapping requirements are accounted for in the ARP ICR (OMB Control Number 2060–0258). This ICR accounts for information collection burden and costs under the CSAPR and Texas trading programs that are incremental to the burden and costs already accounted for in the ARP ICR. All data received by EPA will be treated as public information.

Form Numbers: Agent Notice of Delegation #5900–172, Certificate of Representation #7610–1, General Account Form #7610–5, Allowance Transfer Form #7610–6, Retired Unit Exemption #7610–20, Allowance Deduction #7620–4.

Respondents/affected entities: Industry respondents are stationary, fossil fuel-fired boilers and combustion turbines serving electricity generators subject to the CSAPR and Texas trading programs, as well as non-source entities voluntarily participating in allowance trading activities. Potential state respondents are states that can elect to submit state-determined allowance allocations for sources located in their states.

Respondents' obligation to respond: Industry respondents: Voluntary and mandatory (Sections 110(a) and 301(a) of the Clean Air Act). State respondents: Voluntary.

Estimated number of respondents: EPA estimates that there are 953 industry respondents, including 903 affected sources and 50 non-source entities participating in allowance trading activities, and 27 potential state respondents.

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 113,512 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $16,482,349 (per year); includes $7,095,827 annualized capital or operation & maintenance costs.

Changes in Estimates: There is decrease of 20,911 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due almost entirely to adjustments in the estimated numbers of respondents and transactions.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01442 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2008–0701; FRL–9495–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Focus Groups as Used by EPA for Economics Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Focus Groups as Used by EPA for Economics Projects (Renewal)'' (EPA ICR Number 2205.22, OMB Control Number 2090–0028) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed renewal of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on September 29, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OA–2008–0701, online using *www.regulations.gov* (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nathalie Simon, Office of Policy, (MC 1809T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–2347; fax number: 202–566–2363; email address: *simon.nathalie@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Environmental Protection Agency (EPA) is seeking approval for a generic information collection request (ICR) for the conduct of focus groups and one-on-one interviews related to economics projects primarily for survey development. Focus groups are groups of individuals brought together for moderated discussions on a specific topic or issue. These groups are typically formed to gain insight and understanding of attitudes and perceptions held by the public surrounding an issue. One-on-one interviews, as the term implies, are individual interviews in which a respondent is generally asked to review materials and provide feedback on their content and design as well as the thought processes that the materials invoke.

Focus groups and one-on-one interviews (hereafter referred to collectively as ''focus groups'') used as a qualitative research tool have three major purposes: (1) To better understand respondents' attitudes, perceptions and emotions in response to specific topics and concepts; (2) to obtain respondent information useful for better defining variables and measures in later quantitative studies; and (3) to further explore findings obtained from quantitative studies.

Through these focus groups, the Agency will be able to gain a more in-depth understanding of the public's attitudes, beliefs, motivations and feelings regarding specific issues and will provide invaluable information regarding the quality of draft survey instruments. Focus group discussions are necessary and important steps in the design of a quality survey.

Form Numbers: None.

Respondents/affected entities: Individuals/members of the public.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 1,089 (total).

Frequency of response: one-time.

Total estimated burden: 726 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $21,150 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is decrease of 414 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is based on projected use estimates for new and continuing projects provided by program offices at EPA. A decrease in burden conveys simply that EPA anticipates less need for the conduct of focus groups under this ICR than in the past.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01472 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0626; FRL–9492–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Metal Furniture Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Metal Furniture Coating'' (EPA ICR Number 0649.14, OMB Control Number 2060–0106), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0626, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection

Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Metal Furniture Coating were proposed on November 28, 1980; promulgated on October 29, 1982; and most-recently revised on October 17, 2000. These regulations apply to each metal furniture surface coating operation in which organic coatings are applied (greater than 3,842 liters of coating per year), commencing construction, modification, or reconstruction after November 28, 1980. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. This information is being collected to assure compliance with 40 CFR part 60, subpart EE.

Form Numbers: None.

Respondents/affected entities: Metal furniture surface coating operations.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart EE).

Estimated number of respondents: 42 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Total estimated burden: 5,940 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $791,000 (per year), which includes $88,200 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden from the most-recently approved ICR. This decrease is not due to any program changes. The adjustment decrease in burden from the most-recently approved ICR is due to a decrease in the number of sources. The number of respondents has been adjusted downwards from the most-recently approved ICR to reflect a more accurate estimate of subject sources, based on data collected through EPA's Enforcement and Compliance History Online (ECHO) database and a review of metal furniture facilities subject to other federal regulations. The decrease in the number of respondents also results in a decrease in the operation and maintenance costs. There are no new respondents anticipated in the next three years, therefore, there are no capital costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01456 Filed 1–25–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 22–60; FR ID 68873]

Disability Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the third meeting of the fourth term of its Disability Advisory Committee (DAC or Committee).

DATES: Thursday, February 24, 2022. The meeting will come to order at 1:00 p.m. Eastern Time.

ADDRESSES: The DAC meeting will be held remotely, with video and audio coverage at *www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Joshua Mendelsohn, Designated Federal Officer (DFO), at (202) 559–7304 or *DAC@fcc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with American Sign Language interpreters and open captioning at: *www.fcc.gov/live.* In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters via the email address *livequestions@fcc.gov.*

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to receive and consider reports and recommendations from its working groups. The DAC may also receive briefings from Commission staff on issues of interest to the Committee and may discuss topics of interest to the committee, including, but not limited to, matters concerning communications transitions, telecommunications relay services, emergency access, and video programming accessibility.

Federal Communications Commission.

Gregory Haledjian,

Legal Advisor, Consumer and Governmental Affairs Bureau.

[FR Doc. 2022–01447 Filed 1–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 68945]

Open Commission Meeting Thursday, January 27, 2022

January 20, 2022.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 27, 2022, which is scheduled to commence at 10:30 a.m.

Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	CONSUMER & GOVERNMENTAL AFFAIRS.	*Title*: Empowering Broadband Consumers Through Transparency (CG Docket No. 22–2). *Summary*: The Commission will consider a Notice of Proposed Rulemaking that would propose to require that broadband internet access service providers display, at the point of sale, labels to disclose to consumers certain information about their prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.
2	WIRELINE COMPETITION	*Title*: Connecting Tribal Libraries (CC Docket No. 02–6). *Summary:* The Commission will consider a Report and Order that would amend the definition of library in the Commission's rules to clarify that Tribal libraries are eligible for support through the E-Rate Program.
3	MEDIA	*Title*: Updating Outmoded Political Programming and Record-Keeping Rules (MB Docket No. 21–293). *Summary*: The Commission will consider a Report and Order to update outmoded political programming rules.
4	OFFICE OF ENGINEERING & TECHNOLOGY.	*Title:* Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37 (ET Docket No. 14–165); Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268); Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36); Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186). *Summary*: The Commission will consider a Second Order on Reconsideration and Order resolving pending issues associated with white space devices and the white spaces databases, enabling unlicensed white space devices to continue operating efficiently while protecting other spectrum users.
5	OFFICE OF ENGINEERING & TECHNOLOGY.	*Title:* Updating Equipment Authorization Rules (ET Docket Nos. 21–363, 19–48). *Summary*: The Commission will consider a Notice of Proposed Rulemaking that would propose to update existing equipment authorization rules to reflect more recent versions of the technical standards that are incorporated by reference and incorporate by reference a new technical standard so that our equipment authorization system can continue to keep pace with technology developments.
6	MEDIA	*Ttitle*: Restricted Adjudicatory Matter. *Summary*: The Commission will consider a restricted adjudicatory matter.
7	INTERNATIONAL	*Title*: National Security Matter. *Summary*: The Commission will consider a national security matter.
8	ENFORCEMENT	*Title*: Enforcement Bureau Action. *Summary*: The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–01488 Filed 1–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0174 and 3060–0214; FR ID 68626]

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 can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 25, 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 Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@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 Cathy Williams at (202) 418–2918. 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: 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.

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: 3060–0174.

Title: Sections 73.1212, 76.1615, and 76.1715, Sponsorship Identification.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents and Responses: 22,900 respondents; 1,886,524 responses.

Estimated Time per Response: .0011 to .2011 hours.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Total Annual Burden: 258,567 Hours.

Total Annual Cost: $449,373.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements that are approved under this collection are as follows:

47 CFR 73.1212 requires a broadcast station to identify at the time of broadcast the sponsor of any matter for which consideration is provided. For advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file. Pursuant to the changes contained in 47 CFR 73.1212(e) and 47 CFR 73.3526(e)(19), this list, which could contain personally identifiable information, would be located in a public inspection file to be located on the Commission's website instead of being maintained in the public file at the station.

Burden estimates for this change are included in OMB Control Number 3060–0214.

47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which money, service or other valuable consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. Under this rule section, when advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product is sufficient when it is clear that the mention of the name of the product constitutes a sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

This information collection is being revised to reflect the burden associated with the foreign sponsorship identification disclosure requirements adopted in the Sponsorship Identification Requirements for Foreign Government-Provided Programming (86 FR 32221, June 17, 2021, FCC 21–42, rel. Apr. 22, 2021). The collection requires broadcast television and radio stations, as well as 325(c) permit holders, to make a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or furnished by a foreign governmental entity that indicates the specific entity and country involved. Licensees of each broadcast station and 325(c) permit holders also are required to exercise reasonable diligence to ascertain

whether the foreign sponsorship disclosure requirements apply at the time of the lease agreement and at any renewal thereof.

This information collection requirements will provide the Commission and the public with increased transparency and will ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The information collection requirements will also enable interested parties to monitor the extent of such efforts to persuade the American public.

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents and Responses: 23,996 respondents; 62,839 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority that covers this information collection is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,047,805 Hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0214, requires broadcast stations to maintain for public inspection a file containing the material set forth in 47 CFR 73.3526 and 73.3527.

This collection is being revised to reflect the burden associated with the foreign sponsorship identification disclosure requirements adopted in the Sponsorship Identification Requirements for Foreign Government-Provided Programming (86 FR 32221, June 17, 2021, FCC 21–42, rel. Apr. 22, 2021). The collection requires broadcast television and radio stations to place copies of foreign sponsorship identification disclosures required by 47 CFR 73.1212(j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as ''Foreign Government-Provided Programming Disclosures.'' The collection requires 325(c) permit holders to place copies of foreign sponsorship identification disclosures required by 47 CFR 73.1212(j) and the name of the program to which the disclosures were appended in its International Bureau Filing System record on a quarterly basis. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.

This information collection requirement will provide the Commission and the public with increased transparency and will ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The information collection requirements will also enable interested parties to monitor the extent of such efforts to persuade the American public.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–01511 Filed 1–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreement are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011666–008.

Agreement Name: West Coast North America/Pacific Islands Vessel Sharing Agreement.

Parties: Maersk A/S and Swire Shipping Pte. Ltd.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The amendment changes the name of Swire Shipping.

Proposed Effective Date: 1/14/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/795.

Agreement No.: 201345–001.

Agreement Name: SSL/Matson Pacific Islands Vessel Sharing Agreement.

Parties: Swire Shipping Pte. Ltd. and Matson South Pacific Limited.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The amendment updates the name of Swire Shipping Pte. Ltd and updates the name of the Agreement.

Proposed Effective Date: 1/14/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/32506.

Agreement No.: 201320–001.

Agreement Name: SSL/Matson West Coast North America/Pacific Islands Slot Charter Agreement.

Parties: Swire Shipping Pte. Ltd. and Matson Navigation Company, Inc.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The amendment changes the name of Swire Shipping.

Proposed Effective Date: 1/14/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/23436.

Agreement No.: 201272–002.

Agreement Name: Kyowa/SSL Pacific—Asia Slot Charter Agreement.

Parties: Kyowa Shipping Co., Ltd. and Swire Shipping Pte. Ltd.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The amendment changes the name of Swire Shipping.

Proposed Effective Date: 1/14/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16283.

Dated: January 21, 2022.

William Cody,

Secretary.

[FR Doc. 2022–01533 Filed 1–25–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Information Collection Renewal

AGENCY: Federal Mine Safety and Health Review Commission (FMSHRC).

ACTION: Notice and requests for comment.

SUMMARY: FMSHRC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on the renewal of an information collections as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, FMSHRC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. FMSHRC is soliciting comment concerning the renewal of its information collection titled ''Medical Exception Request to the COVID–19 Vaccination Requirement.''

DATES: You should submit written comments by March 28, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@fmshrc.gov*. Include ''3079–0001'' in the subject line of the message.
- *Fax:* (202) 434–9916.
- *Mail:* Office of the Chief Operating Officer, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.
- *Hand Delivery/Courier:* same as mailing address.

FOR FURTHER INFORMATION CONTACT: Leslie Bayless, FMSHRC Chief Operating Officer, (202) 434–9900, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FMSHRC is publishing notice of the renewal of the emergency approval granted to the information collection set forth in this document.

Title: Medical Exception Request to the COVID–19 Vaccination Requirement.

OMB Control No.: 3079–0001.

Abstract: The President, by Executive order 13991 (January 20, 2021) established the Safer Federal Workforce Task Force. The Task force was established to give the heads of Federal agencies ongoing guidance to keep their employees safe and their agencies operating during the COVID–19 pandemic. The Task force issued guidance, in accordance with the President's Executive Order 14043 (September 9, 2021), requiring Federal employees to be vaccinated against COVID–19 by November 22, 2021 absent an exception required by law. To determine whether employees who request a medical exception qualify for the exception sought, or, alternatively, must comply with the November 22 deadline, FMSHRC has developed the ''Medical Exception Request to the COVID–19 Vaccination Requirement.''

This form was developed, consistent with guidance issued by the Task Force, to gather information from employees and applicants for employment who have requested medical exceptions to determine whether such employees qualify for legal exceptions to the vaccine requirement. The Request form also will be used to collect information from job applicants who may request a legal exception upon receiving an offer of employment from FMSHRC.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 8 Job Applicants, 8 employees, and 36 medical professionals.

Estimated Burden per Respondent: 0.25 hours for applicants and employees; 0.5 hours for medical professionals.

Total Burden: 22.0 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimates of the burden of the collections of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 20, 2022.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2022–01441 Filed 1–25–22; 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 25, 2022.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org*:

1. *OceanFirst Financial Corp., Toms River, New Jersey;* to acquire Partners Bancorp (''Bancorp''), Salisbury, Maryland, and thereby indirectly acquire Bancorp's subsidiary banks, Bank of Delmarva, Seaford, Delaware, and Virginia Partner Bank,

Fredericksburg, Virginia, through their merger with and into OceanFirst Bank, Toms River, New Jersey, a wholly owned subsidiary of OceanFirst Financial Corp.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Bank of Montreal, Montreal, Quebec, Canada; and BMO Financial Corp., Wilmington, Delaware;* to acquire BancWest Holding Inc., and thereby indirectly acquire Bank of the West, both of San Francisco, California. Following the share acquisition, BMO Financial Corp. will merge with BancWest Holding Inc. with BMO Financial Corp. as the surviving entity.

Board of Governors of the Federal Reserve System, January 21, 2022.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–01529 Filed 1–25–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. P222100]

HISA Enforcement Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; request for public comment.

SUMMARY: The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission. The proposed rules and rule modifications must be published in the **Federal Register** for public comment. Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification. The Authority submitted to the Commission a proposed rule on Enforcement on December 20, 2021. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule.

DATES: If approved, the HISA proposed rule would have an effective date of July 1, 2022. Comments must be received on or before February 9, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HISA Enforcement'' on your comment and file your comment online at *https://www.regulations.gov* under docket number FTC–2022–0009. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Austin King (202–326–3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

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Background

The Horseracing Integrity and Safety Act of 2020 [1] recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission.[2] The proposed rules and rule modifications must be published in the **Federal Register** for public comment.[3] Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.[4]

The Authority submitted to the Commission a proposed rule on Enforcement on December 20, 2021. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions.[5]

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 (the ''Act'') and Federal Trade Commission Rule § 1.142, notice is hereby given that, on December 20, 2021, the Horseracing Integrity and Safety Authority (''HISA'' or the ''Authority'') filed with the Federal Trade Commission (the ''Commission'') the proposed Enforcement rule and supporting documentation as described in Items I, II, III, IV, and X below, which Items have been prepared by HISA. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for, the Proposed Rule

a. Background and Purpose

The Horseracing Integrity and Safety Act of 2020 (''Act'') recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. As part of this endeavor, the Act, in 15 U.S.C. 3053(a), directs the Authority to develop proposed rules relating to ''(8) a description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons; (9) a schedule of civil sanctions for violations; and (10) a process or procedures for disciplinary hearings.''

With the review, input, and ultimate approval of the Authority's Board of Directors, the proposed rule: (1) Sets forth a set of violations in addition to those proposed separately in the Rule 2200 Series, previously filed on

[1] 15 U.S.C. 3051 through 3060.

[2] 15 U.S.C. 3053(b)(2).

[3] 15 U.S.C. 3053(b)(1).

[4] 15 U.S.C. 3053(c)(1).

[5] 16 CFR 1.140–1.144; *see also* Fed. Trade Comm'n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

December 6, 2021; (2) puts in place a schedule of civil sanctions for use in conjunction with the violations; (3) creates hearing and appeal procedures for disciplinary and accreditation decisions; and (4) sets forth rules that define the investigatory powers available to the Authority.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The proposed rule submitted by the Authority, which is applicable to all covered horses, covered persons, and covered racetracks, would establish rule violations and civil sanctions, procedures for disciplinary and accreditation hearings, and provisions concerning the exercise of investigatory powers by the Authority. The proposed rules would ensure that the Authority's enforcement activities are conducted pursuant to a set of uniform standards. The Act provides that the uniform rules established under 15 U.S.C. 3057(d)(1) shall: ''(A) take into account the unique aspects of horseracing; (B) be designed to ensure fair and transparent horseraces; and (C) deter safety, performance, and anti-doping and medication control rule violations.'' 15 U.S.C. 3057(d)(2).

Existing Standards

In developing the rules pertaining to violations, sanctions, hearing procedures, and investigatory powers, the Authority relied to a great extent upon the rules of horseracing in these subject areas as they currently exist in racing states. Additionally, rules in the various states incorporate many of the specific standards and protocols set forth in the Association of Racing Commissioners International's Model Rules of Racing (''ARCI Rules''). The ARCI ''Model Rules'' of racing and wagering are recognized worldwide as a standard for the independent and impartial regulation of horseracing as well as the conduct of pari-mutuel wagering. Relying upon the collective expertise of regulatory personnel in member jurisdictions in consultation with regulated entities, industry stakeholders, fans and individuals, ARCI committees regularly consider ways to improve and enhance the regulation of racing. In some racing states, the Model Rules have the force of law, as they have been adopted by reference statutorily or through regulatory rulemaking. In other states the Model Rules form the basis upon which rules are written, ensuring substantial uniformity in the regulation of the sport.

While state regulations vary in many details concerning medication control and safety provisions, the overall structure of the rules governing horseracing is consistent between and among the states. The rules of horseracing center around a number of common subject areas, including the licensing of racing associations and of individual participants in horseracing, medication control rules, pari-mutuel wagering rules, the operation of various incentive funds, rules concerning the running of the race, and rules establishing disciplinary measures and hearing procedures. The basic precepts of many of the rules pertaining to violations, sanctions, hearing procedures, and investigatory powers have been in force in racing states for many years, and the Authority has reviewed key provisions in numerous states in the course of developing the Rule 8000 Series.

The Authority has also examined rules promulgated by the Financial Industry Regulatory Authority (''FINRA''). FINRA regulates and investigates the activities of brokerage firms, and a review of some of the FINRA provisions related to sanctions and investigatory powers was beneficial in the development of HISA rules in these areas.

In sum, many of the rules set forth in this 8000 Series are derived from provisions with common features in many of the state and ARCI rules. The Authority reviewed these provisions and tailored them to the Authority's regulatory structure and goals. The process was one of analysis and incorporation of common existing standards, and did not to any significant extent require the rejection of alternate standards. In other words, for many aspects of the proposed rules, the Authority identified no reasonable alternatives to the consensus established in existing state laws.

The provisions of this Rule were made publicly available on the HISA website on November 22, 2021. Very few comments were received, but those that were received are addressed below. The ARCI Rules, several key state laws, and the FINRA provisions on which the Authority, as well as the few comments that the Authority received in its pre-submission comment-seeking process, are included in the supporting documentation available at *https://www.regulations.gov* under docket number FTC–2022–0009.

a. Rule 8100—Violations

The violations set forth in this section are drawn from similar provisions found in the ARCI Rules and the rules of many racing states. A number of the violations prohibit interfering with or obstructing investigatory or regulatory efforts conducted by Authority personnel. The violations also include attempts to conceal violations or to intimidate witnesses to violations or individuals who might report violations. Other provisions penalize the perpetration of a fraud concerning a Covered Horse and the failure to properly register with the Authority as required by rule. The prohibitions in Rule 8100 operate together with the Racetrack Safety Rules in the separately proposed Rule 2200 Series and future anti-doping and medication control rules to provide a comprehensive enforcement scheme that will enhance the safety and integrity of horseracing.[6]

The violations enumerated in this rule are tailored to the unique aspects of horseracing in that violations do arise in the sport and must be penalized. It is vital to penalize violations to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. The successful prosecution of violations requires the investigation of the circumstances surrounding an alleged violation. An investigation includes interviewing the person alleged to have committed the violation, the inspection of that person's books and records upon request by investigators, and interviewing other individuals who may have knowledge of the violation. The violation provisions in Section 8100 penalize conduct that inhibits the investigatory process; such conduct includes intimidating witnesses, failing to cooperate with an investigation, and failing to provide accurate information regarding an investigation. Successful and consistent prosecution of violations deters violations and ensures the integrity of the sport. The 8100 series also penalized Covered Persons and Racetracks who fail to remit fees as required under 15 U.S.C. 3052(f)(3), as funding of the Authority is a vital element in supporting the Authority's unique role in ensuring fair and transparent horseracing and deterring rule violations.

[6] *See generally* 15 U.S.C. 3057(a)(2); 810 Ky. Admin. Reg. 3:020 (''Licensing of Racing Participants''), Section 15 (''License Denial, Revocation, and Suspension'').

b. Rule 8200—Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation

The sanctions set forth in Rule 8200 apply to the Racetrack Safety rules set forth in the Rule 2200 Series and to the violations established in Rule 8100. Specifically exempted from the 8000 series are the rules under development by the Authority's Anti-Doping and Medication Committee. The rules pertaining to anti-doping and medication control violations are complex and specific to the unique aspects of medication control and will be set forth in that body of rules. Additionally, a second exemption in Rule 8200 makes clear that the sanctions in Rule 8200 do not apply to areas of regulatory activity that are not pre-empted by HISA; state regulations will continue to govern disciplinary action in these areas. By way of example, state regulations will continue to operate in the context of pari-mutuel wagering and the licensing by state racing commissions of individual participants in horseracing.

The sanctions provide the Authority with a broad range of options to apply in penalizing the violation of Authority rules. The sanctions range from the severe penalty of a lifetime ban from registration with the Authority to revocation or suspension of a Covered Person's registration, the imposition of specified fines, or the issuance of a cease and desist order. Rule 8200 further permits the Authority to require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

The rule also includes a mechanism permitting the Authority to issue a Notice of Suspected or Actual Violation to a Covered Person in cases in which the Authority has reason to suspect that a Covered Person has violated or failed to comply with Authority rules. This mechanism requires the Authority to specify the nature of the suspected or actual violation and requires the Covered Person to respond to the Authority's notice. The Notice provision is intended in part to allow safety issues to be addressed without immediate resort to formal disciplinary action.[7]

The schedule of sanctions set forth in Rule 8200 provides the specific penalties that are the consequence of committing a rule violation in horseracing as conducted under the jurisdiction of the Authority. The schedule is tailored to the unique aspects of horseracing in that it imposes substantial fines upon Covered Persons. The imposition of fines is very common in the penalization of violations of horseracing rules. The sanctions also include forfeiture of purse, disqualification of horses, and changes to the order of finish in horse races, which are penalties unique to horseracing. Various other provisions can result in temporary or permanent revocation of registration with the Authority; registration is required to participate in horseracing. Additionally, racetracks can be prohibited from conducting horseraces upon a finding that a racetrack safety violation has been committed.

The sanctions established under Rule 8200 work in conjunction with the violations set forth in Rule 8100 to ensure that violations are properly and consistently penalized. This deters future violations and ensures that racing participants and the betting public have confidence that horseracing is conducted in a fair and transparent manner. The Consent Decree provision is included to allow the Authority to enter into agreements with Covered Persons that will ensure that Covered Persons take actions as needed to ensure that horseracing is conducted in a fair and transparent manner consistent with preserving the integrity of the sport. Similarly, the Notice of Suspected or Actual Violation allows the Authority to identify potential or actual violations and to ensure that Covered Persons cooperate with the Authority in taking any remedial action necessary to protect the integrity of horseracing.

c. Rule 8300 et seq.—Disciplinary Hearings and Accreditation Procedures

The disciplinary procedures established in the Rule 8300 Series apply to Safety Violations in the Rule 2200 Series as well as the violations set forth in Rule 8100. Rule 8310 specifies that anti-doping and medication control rule violations are to be adjudicated in accordance with the specialized procedures within the medication rules. In tandem with Rule 8200, the disciplinary proceedings do not apply to areas of regulatory activity that are not pre-empted by HISA.

Rule 8320 provides a procedure pertaining to the appeal of violations. The rule specifies that stewards' rulings penalizing violation of the prohibitions relating to riding crops, shock wave therapy, and electrical or mechanical devices are appealable to the Board of the Authority. All other rule violations of the safety rules in Rule 2200 Series are referred by the Racing Safety Committee to one of four adjudicative bodies, depending upon the seriousness of the alleged violation and the facts of the case; the Racetrack Safety Committee may conduct the initial appeal hearing itself, or it may refer the case to the state stewards, or to either the National Stewards Panel or the Arbitral Body to be established under anti-doping and medication control rules. Under this procedure, the Racetrack Safety Committee, having knowledge and expertise concerning matters of racetrack safety, will direct the case to the adjudicator best suited to decide the case.

In a parallel manner, the Board of the Authority will refer the appeal of violations of the prohibitions in Rule 8100 either to the Board itself for a hearing, to the state stewards, or to either the National Stewards Panel or the Arbitral Body to be established under anti-doping and medication control rules.

Rule 8340 sets forth notice requirements and hearing procedures to guide the adjudication of hearings before the Board of the Authority or the Racetrack Safety Committee in appeals under Rules 8320 and 8330 in those instances when the Board or the Committee refer matters to themselves for a hearing (the hearings referrals are described as ''initial hearings'' in Rule 8340). In the case of an initial hearing before the Board, the Board will appoint a panel of three Board members to adjudicate at the hearing. Rule 8340 establishes the procedures for the hearings.

Rule 8350 sets forth procedures for the appeal to the Board of any decision rendered by the Racetrack Safety Committee, the state stewards, the National Stewards Panel, or an Arbitral Body. Additionally, in those instances in which a panel of the Board conducts the initial hearing, the procedures prohibit the members of the panel from participating in consideration of the appeal before the full Board. Rule 8350 establishes the procedures and standards of review to be provided upon appeal.

Rule 8360 establishes procedures appeals from any decision rendered by the Authority denying or revoking racetrack accreditation. The procedures provide that any revocation of accreditation be stayed, pending the Authority's review of the case. The Authority may permit the racetrack to

[7] *See generally* FINRA Rule 8310 (''Sanctions for Violation of the Rules''); 810 Ky. Admin. Reg. 8:030 (''Disciplinary Measures and Penalties''), Sections 9 (''Disciplinary Measures by Stewards and Judges'') and 10 (''Disciplinary Measures by the Commission''); Minn. Admin. R. 7897.0120 (''Disciplinary Sanctions''); Minn. Admin. R. 7897.0130 (''Schedule of Fines'').

make a presentation, if requested by the racetrack. One commenter suggested creating a timeframe for the request and presentation, but the Authority prefers to avoid rigid timeframes in this context. The Authority may also request additional information from any source concerning the review of the case. After considering factors enumerated in the Rule concerning the nature of deficiencies in racetrack operations, the Authority may then deny or revoke accreditation upon a two-thirds vote of a quorum of the Authority members present; alternatively, the Authority may reinstate accreditation subject to any requirements deemed necessary by the Authority to ensure that horseracing at the racetrack is conducted in a safe manner. The process in Rule 8360 is designed to provide the racetrack and the Authority the opportunity and flexibility to remedy racetrack deficiencies and ensure that horseracing is conducted safely.

Finally, Rule 8370 makes clear that decisions rendered by the Authority under Rules 8350 and 8360 constitute final civil sanctions within the meaning of 15 U.S.C. 3058, and are therefore subject to appeal and review by the Commission pursuant to the statute.[8]

It is vital to penalize violations of the rules of horseracing to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. In accordance with principles of due process, persons alleged to have committed violations are entitled to a fair hearing at which they may have the opportunity to present evidence in defense of a charged violation. The provisions set forth in the Rule 8300 Series establish the rules and parameters of the hearing process. These provisions also provide for appeals to the Authority to review any decisions rendered against a Covered Person who is charged with a violation. These provisions are keyed to the unique organizational structure of the Authority. The hearing process is necessary to ensure that the penalties imposed upon Covered Persons are based upon a legitimate legal process that comports with the principles of due process. This ensures that violations are consistently and fairly penalized, which in turn deters future violations, and maintains the integrity and conduct of fair and transparent horseraces.

The Rule 8300 Series also establishes procedures for hearings to adjudicate the denial or revocation of racetrack accreditation in those instances in which racetracks are alleged to have committed violations of the Racetrack Safety rules. Racetrack safety is of course unique to horseracing and is essential to ensure that horseracing is conducted safely and in a fair and transparent manner.

4. Rule 8400—Investigatory Powers

The provisions set forth in Rule 8400 are common to the rules of many racing states and the ARCI rules of horseracing. These provisions establish the Authority's power of access to records and places of business used in connection with Covered Horses and authorize the seizure of medications or other items that are in violation or suspected violation of Authority rules. The rules require Covered Persons to cooperate with the Authority in investigations, and they include the duty to respond truthfully to questions posed by investigators about a racing matter. Rule 8400 also authorizes the issuance of subpoenas and oaths to witnesses. All these provisions will serve to enhance the integrity of horseracing by ensuring the effective enforcement of Authority rules.[9]

As stated previously, it is vital to penalize violations of the rules of horseracing to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. The successful prosecution of violations requires the investigation of all the circumstances surrounding an alleged violation. Central to any investigation is the power to gain access to the books, records, and premises of persons believed to have committed a violation; to subpoena witnesses; and to take testimony under oath of any person with knowledge of the circumstances regarding a violation. Rule 8400 specifically confers these powers upon the Authority and penalizes any obstruction or failure to comply with the investigatory powers set forth in the section.

III. Self-Regulatory Organization's Summary of Comments

As encouraged by the Commission's procedural rule, beginning in November 2021, prior to finalization of the submissions by the Authority to the Commission, a draft of the proposed Enforcement rule was made available to the public for review and comment on the HISA website, *https://www.hisausregs.org/.* Five comments upon the 8000 series were received. These comments were posted on the HISA Regulations Publication website at *https://www.hisausregs.org/.*

IV. Self-Regulatory Organization's Responses to Comments and Discussion of Alternatives

The following is a description of the primary subjects that received comments and the manner in which the Authority addressed those comments in developing the proposed rule submitted to the Commission, as well as the reasonable alternatives the Authority considered alongside the option ultimately proposed.

As previously mentioned, because of the relative uniformity of state approaches to defining violations, imposing sanctions, establishing hearing procedures, and providing investigatory powers, informed heavily by the ARCI Model Rules, the Authority did not identify reasonable alternatives to many of the aspects of its proposed Enforcement rule. The absence of reasonable alternatives to many aspects of Enforcement was underscored by the paucity of public comments on the proposed rule compared to the plethora of comments the Authority has received on Racetrack Safety (proposed on December 6, 2021) and Anti-Doping (yet to be proposed but under development). Most aspects of the proposed Enforcement rule received no comments, including Rule 8100 and Rule 8400.

Rule 8200 Comments

One commenter inquired whether Continuing Education courses will be required in this context. Rule 2182, previously proposed to the Commission, does establish Continuing Education requirements. Rule 8200 further provides that the Authority may enter into a consent decree or similar agreement with a Covered Person to enhance the safety and integrity of horseracing under the Act. Such a decree might require a trainer to adopt improved practices to ensure proper care for horses or might similarly require a racetrack to upgrade its facilities to enhance the safety of horseracing conducted at the track.

One commenter asked whether a consent decree ''process'' has been developed. The rule allows the Authority to enter into a consent decree,

[8] *See generally* Minn. Admin. R. 7897.0150 (''Disciplinary Procedures''); Minn. Admin. R. 7897.0170 (''Conduct of Appeal Hearing''); Model Rules of the Association of Racing Commissioners International (''Chapter 3, Due Process and Hearings, ARCI–003–010 Proceedings by Stewards/Judges'').

[9] *See generally* FINRA Rule 8210 (a) (''Provision of Information and Testimony and Inspection and Copying of Books''); Ky. Rev. Stat. 230.260(12) (''Authority of Kentucky Horse Racing Commission''); Minn. Stat. 240.21 (''Right of Inspection'').

though the process for doing so is not strictly defined, to allow for flexibility in developing decrees.

Rule 8300 et seq. Comments

One commenter suggested deleting Rule 8320, though without offering a reason; the Authority believes the Rule will operate to enhance the effective enforcement of racing safety and integrity.

One commenter suggested creating a timeframe for the request and presentation under Rule 8360, but the Authority prefers to avoid rigid timeframes in this context.

V. Legal Authority

The rule is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

VI. Effective Date

If approved by the Commission, the proposed rule will take effect July 1, 2022.

VII. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule to the Commission, are available for public inspection at *www.regulations.gov* under docket number FTC–2022–0009.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: ''The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.'' [10] In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission must approve the proposed rule if the Commission finds that the proposed rule is consistent with the Act and the Commission's procedural rule, the Commission may consider broader questions about the health and safety of horses or the integrity of horseraces and wagering on horseraces in another context: ''The Commission may adopt an interim final rule, to take effect immediately, . . . if the Commission finds that such a rule is necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.'' [11] The Commission may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission that bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces but do not discuss whether HISA's proposed rule on Enforcement is consistent with the Act or the applicable rules, they should not submit a comment here. Instead, they are encouraged to submit a petition requesting that the Commission issue an interim final rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (Part 1, Subpart D); [12] if it does, the petition will be published in the **Federal Register** for public comment. In particular, the petition for an interim final rule must ''identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.'' [13] As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is ''necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.'' [14]

VIII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 9, 2022. Write ''HISA Enforcement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov.*

Because of the public health emergency in response to the COVID–19 outbreak and the Commission's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''HISA Enforcement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at

[10] 15 U.S.C. 3053(c)(2).

[11] 15 U.S.C. 3053(e).

[12] 16 CFR 1.31; *see* Fed. Trade Comm'n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

[13] 16 CFR 1.31(b)(3).

[14] 15 U.S.C. 3053(e).

www.regulations.gov—as legally required by FTC Rule § 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 9, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy.*

IX. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

X. Self-Regulatory Organization's Proposed Rule Language

Rule 8000 Series—Violations, Sanctions, Hearing Procedures, and Investigatory Powers

8100 Violations
8200 Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation
8300 Disciplinary Hearings and Accreditation Procedures
8310 Application
8320 Adjudication of Violations of Established in the Rule 2200 Series
8330 Adjudication of Rule 8100 Violations
8340 Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority
8350 Appeal to the Board
8360 Accreditation Procedures
8370 Final Civil Sanction
8400 Investigatory Powers

8000. Violations, Sanctions, Hearing Procedures, and Investigatory Powers

8100. Violations

Violations under this Rule shall include:

(a) Failure to cooperate with the Authority or an agent of the Authority during any investigation;

(b) Failure to respond truthfully, to the best of a Covered Person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority;

(c) Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including:

(1) Intentional interference, or an attempt to interfere, with an official or agent of the Authority;

(2) Procurement or the provision of knowingly false information to the Authority or agent of the Authority; and

(3) The intimidation of, or an attempt to intimidate, a potential witness;

(d) Assisting, encouraging, aiding, abetting, conspiring, covering up, or any other type of intentional complicity involving a racetrack safety violation, or the violation of a period of suspension or ineligibility;

(e) Threatening or seeking to intimidate a person with the intent of discouraging the person from the good faith reporting to the Authority, an agent of the Authority or the Commission, of information that relates to:

(1) A suspected or alleged violation of a rule in the Rule 2200 Series; or

(2) a suspected or alleged noncompliance with a rule in the Rule 2200 Series;

(f) Failure to comply with a written order or ruling of the Authority or an agent of the Authority pertaining to a racing matter or investigation;

(g) Failure to register with the Authority, making a knowingly false statement or omission of information in an application for registration with the Authority, or failure to advise the Authority of material changes in the application information as required under any provision in Authority regulations;

(h) Perpetrating or attempting to perpetrate a fraud or misrepresentation in connection with the care or racing of a Covered Horse;

(i) Failure to remit fees as required under 15 U.S.C. 3052(f)(3); and

(j) Failure by a Racetrack to collect equitable allocation amounts among Covered Persons in conformity with the funding provisions of 15 U.S.C. 3052(f)(3) and any rules pertaining thereto.

8200. Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation

(a) Application. This Schedule shall apply to any violation of, or failure to comply with, the Act or regulations promulgated by the Authority by a Covered Person, except for:

(1) Anti-doping and medication control rule violations as established in the Rule 3000 Series; [15] and

(2) State laws or regulations not pre-empted by 15 U.S.C. 3054(b).

(b) Imposition of Sanction. The Authority, the Racetrack Safety Committee, the stewards, any steward or body of stewards selected from the National Stewards Panel, or an Arbitral Body, after any hearing required to be conducted in accordance with the Rule 7000 Series and upon finding a violation or failure to comply with the regulations of the Authority with the exceptions identified in paragraph (a), may impose one or more of the following sanctions on a Covered Person for each violation of the rules of the Authority:

(1) For a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2273 relating to the use of other electrical or mechanical devices, or a violation of Rule 2280 relating to the use of the riding crop, impose the penalties set forth in Rules 2272, 2274, 2282, and 2283;

(2) impose a fine upon a Covered Person in the following amounts:

(i) Up to $50,000.00 for a first violation, or

(ii) from $50,000.00 to $100,000.00 for a second violation of the same or similar nature to a prior violation, or any violation that due to its nature, chronicity, or severity poses an actual or potential threat of harm to the safety, health, and welfare of Covered Persons, Covered Horses, or the integrity of Covered Horseraces;

(3) deny or suspend the registration of a Covered Person for a definite period, probationary period, or a period contingent on the performance of a particular act;

(4) revoke the registration of a Covered Person subject to reapplication at a specified date;

(5) impose a lifetime ban from registration with the Authority;

(6) bar a Covered Person from associating with all Covered Persons concerning any matter under the jurisdiction of the Commission and the Authority during the period of a suspension;

[15] The Commission notes that the 3000 Series and 7000 Series rules have not yet been proposed by the Authority. This and other cross-references to forthcoming rule proposals will be effective if such rules are proposed by the Authority and approved by the Commission under the same process as this proposed rule. The 2000 Series rules were published in the **Federal Register** on January 5, 2022. 87 FR 435.

(7) impose a temporary or permanent cease and desist order against a Covered Person;

(8) require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(9) deny or require the forfeiture of purse money, disqualify a horse, or make changes to the order of finish in Covered Races as consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(10) censure a Covered Person;

(11) prohibit a Racetrack from conducting any Covered Horserace; or

(12) impose any other sanction as a condition of participation in horseracing as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case, and that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(c) Consent Decrees. The Authority shall have the discretion to enter into a consent decree or other similar agreement with a Covered Person as necessary to promote the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(d) Notice of Suspected or Actual Violation.

(1) The Authority or the Racetrack Safety Committee may issue a Notice of Suspected or Actual Violation to a Covered Person in any case in which the Authority has reason to believe that the Covered Person has violated or has failed to comply any provision of regulations of the Authority. The notice shall:

(i) Identify the provision or provisions which the Covered Person is believed to have violated;

(ii) specify with reasonably particularity the factual basis of the Authority's belief that the provision has been violated; and

(iii) provide the Covered Person at least 7 days to respond, or a longer period as deemed appropriate and specified in the Notice by the Authority based upon the seriousness of the violation or the imminence of risk.

(2) Upon receipt of the Notice of Suspected or Actual Violation, the Covered Person shall respond in writing to the Authority within the time period specified in the notice. The Covered Person shall include in the response:

(i) A statement by the Covered Person admitting the violation, or explaining the reasons why the Covered Person believes that a violation has not occurred;

(ii) all relevant details concerning the circumstances of the suspected or actual violation, including the results of any investigation undertaken by the Covered Person of the circumstances, and identification of any persons responsible for the circumstances; and

(iii) a detailed explanation of any remedial plan the Covered Person proposes to undertake to cure the suspected or actual violation, and the date of the expected completion of the remedial plan.

8300. Disciplinary Hearings and Accreditation Procedures

8310. Application

An alleged violation or failure to comply with the provisions of the Rule 2200 Series and any alleged violation of the rules set forth in Rule 8100 shall be adjudicated in accordance with this Rule 8300 Series, except that:

(a) An alleged violation of the anti-doping and medication control rule provisions in the Rule 3000 Series shall be adjudicated in accordance with the procedures set forth therein; and

(b) This regulation shall not apply to the adjudication of violations arising under state laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

8320. Adjudication of Violations of Established in the Rule 2200 Series

(a) Any ruling by the stewards finding a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2280 relating to the use of the riding crop, or a violation of Rule 2273 relating to the use of other electrical or mechanical devices, may be appealed to the Board of the Authority under the procedures described in Rule 8330. An appeal shall be filed in writing within 10 days of the issuance of the ruling by the stewards.

(b) With regard to any matter involving an alleged violation of a rule in the Rule 2200 Series other than those set forth in paragraph (a) above, the Racetrack Safety Committee may, at its discretion and taking into account the seriousness of the alleged violation and the facts of the case:

(1) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;

(2) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;

(3) Refer the matter to the stewards for adjudication in accordance with the procedures of the applicable state jurisdiction; or

(4) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8330. Adjudication of Rule 8100 Violations

With regard to any matter involving an alleged violation of a rule established in Rule 8100, the Board of the Authority may at its discretion and taking into account the seriousness of the violation and the facts of the case:

(a) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;

(b) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;

(c) Refer the matter to the stewards for adjudication in accordance with the procedures of the applicable state jurisdiction; or

(d) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8340. Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority

(a) An initial hearing before the Board shall be conducted by a panel of three Board members. The Board chair shall appoint the panel members and shall also designate one of them as the chair of the panel.

(b) An initial hearing before the Racetrack Safety Committee shall be heard by a quorum of the Racetrack Safety Committee. The Racetrack Safety Committee chair shall act as the chair of the hearing panel unless the Chair is unavailable, in which case the Racetrack Safety Committee chair shall designate a member of the quorum to act as the chair of the panel.

(c) Persons entitled to notice of a hearing before the Board or the Racetrack Safety Committee shall be informed not less than twenty (20) days prior to the hearing of:

(1) The time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) a description of the alleged violation, specifying by number the rule allegedly violated; and

(4) a statement of the factual basis of the alleged violation in sufficient detail to provide adequate opportunity to prepare for the hearing.

(d) At any time prior to, during, or after the hearing, the Board or the Racetrack Safety Committee in its discretion may require the submission

of written briefs or other information as will assist in the hearing of the matter.

(e) All testimony in proceedings before the Board or the Racetrack Safety Committee shall be given under oath.

(f) The burden of proof shall be on the party alleging the violation to show, by a preponderance of the evidence, that the Covered Person has violated or failed to comply with a provision of or is responsible for a violation of a provision of the Authority's regulations.

(g) The Board or the Racetrack Safety Committee shall allow a full presentation of evidence and shall not be bound by the technical rules of evidence. However, the Board or the Racetrack Safety Committee may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Board or the Racetrack Safety Committee shall have the authority to determine, in its sole discretion, the weight and credibility of any evidence or testimony. The Board or the Racetrack Safety Committee may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people. Any applicable rule of privilege shall apply in hearings before the Board or the Committee.

(h) A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such limited cross-examination as may be required for a full and true disclosure of the facts.

(i) The Board or the Racetrack Safety Committee shall issue to all parties within 30 days of the close of the hearing a written decision setting forth findings of fact, conclusions of law and the disposition of the matter including any penalty imposed. If the thirtieth day falls on a Saturday, Sunday, or holiday, then the written decision shall be issued on the next working day immediately following the Saturday, Sunday, or holiday.

8350. Appeal to the Board

(a) Any decision rendered by the Racetrack Safety Committee, the stewards, the National Stewards Panel, or an Arbitral Body, may be appealed on the record to the Board. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(b) Any decision rendered by an initial Board hearing panel may be appealed on the record to the Board, to be heard by a quorum of the Board which shall not include the Board members who were on the panel in the initial hearing. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(c) An appeal shall not automatically stay the decision. A party may request the Board to stay the decision. The Board shall order a stay for good cause shown.

(d) A party to the decision may appeal to the Board by filing with the Board a written request for an appeal within 10 days of receiving a written order. The appeal request shall contain the following information:

(1) The name, address, and telephone number, if any, of the appellant;

(2) a description of the objections to the decision;

(3) a statement of the relief sought; and

(4) whether the appellant desires to be present in person at the hearing of the appeal.

(e) The Board shall set a date, time, and place for the hearing. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by electronic or U.S. mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of a sanction or prolong a stay issued by the Board.

(f) Upon review of the decision which is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.

(g) Upon completing its review, the Board may:

(1) Accept the decision;

(2) Reject or modify the decision, in whole or in part;

(3) Remand the matter, in whole or in part, to the stewards, Racetrack Safety Committee, the National Stewards Panel, or an Arbitral Body, as the case may be, for further proceedings as appropriate; or

(4) Conduct further proceedings on the matter as appropriate, including but not limited to requiring the submission of written briefs or, in extraordinary circumstances and at the Board's discretion, the taking of additional testimony before the Board under oath.

(h) The Board shall issue its written decision based on the record and any further proceedings or testimony. A copy of the Board's decision shall be served upon all parties by first class mail, electronic mail, or personal service.

(i) The decision of the Board shall be the final decision of the Authority.

8360. Accreditation Procedures

(a) Any decision issued by the Authority denying or revoking racetrack accreditation may:

(1) Be appealed within 10 days by the Racetrack to the Authority for a de novo hearing reviewing the Authority's decision; or

(2) Reviewed by the Authority on its own initiative.

(b) The Authority's order revoking accreditation shall be stayed automatically pending review of the decision by the Authority.

(c) At its discretion, the Authority may request and consider any additional information from any source that may assist in the review.

(d) The Racetrack may request to make a presentation before the Authority concerning racetrack safety and any remedial efforts proposed to be undertaken by the Racetrack. At its discretion, the Authority may permit the Racetrack to make such presentation.

(e) In conducting its review, that Authority may consider all factors that it deems appropriate, including but not limited to:

(1) The extent and magnitude of any deficiencies in racetrack operations conducted at the Racetrack;

(2) The threat posed by the deficiencies to the safety and integrity of horseracing conducted at the Racetrack;

(3) The adequacy of the efforts the Racetrack proposes to undertake or has undertaken to remedy all deficiencies at the Racetrack;

(4) The likelihood and timeframe within which compliance will be achieved by the Racetrack, given the resources available to the Racetrack and the past record of the Racetrack in achieving and maintaining compliance with the rules of the Authority; and

(5) Any other factors the Authority deems relevant to its review.

(f) Upon completing its review, the Authority may take one or more of the following actions:

(1) Order that the Racetrack's accreditation be denied or revoked, upon a vote in favor of denial or revocation by two-thirds of a quorum of the members of the Authority;

(2) Reinstate accreditation subject to any requirements the Authority deems necessary to ensure that horseracing will be conducted in a manner consistent with racetrack safety and integrity. The Authority may also impose a fine upon reinstatement in amount not to exceed $50,000.00. The Authority may require the Racetrack to report at prescribed intervals on the status of racetrack safety operations and remedial efforts to improve safety

pursuant to the Authority's racetrack safety rules; or

(3) Prohibit a Racetrack from conducting any Covered Horserace.

8370. Final Civil Sanction

Any decision rendered by the Board of the Authority under Rule 8350, or the Authority under Rule 8360, shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

8400. Investigatory Powers

(a) The Commission, the Authority, or their designees:

(1) Shall have free access to the books, records, offices, racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, training, and racing of Covered Horses, and to the books, records, offices, facilities, and other places of business of any person who owns a Covered Horse or performs services on a Covered Horse; and

(2) May seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of any provision of 15 U.S.C. 57A or the regulations of the Authority.

(b) A Covered Person shall:

(1) Cooperate with the Commission, the Authority or their designees during any investigation; and

(2) Respond truthfully to the best of the Covered Person's knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

(c) A Covered Person or any officer, employee or agent of a Covered Person shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. 57A or the regulations of the Authority.

(d) The Commission or the Authority may issue subpoenas for the attendance of witnesses in proceedings within their jurisdiction and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to matters within the jurisdiction of the Commission or the Authority.

(e) Failure to comply with a subpoena or with the other provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.

(f) The Commission or the Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Commission or the Authority.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2022–01663 Filed 1–25–22; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246; Docket No. 2022–0001; Sequence No. 1]

Information Collection; General Services Administration Regulation; Packing List Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, GSA invites the public to comment on a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause.

DATES: *Submit comments on or before:* March 28, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–0246 via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0246, Packing List Clause''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0246, Packing List Clause'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0246, Packing List Clause, in all correspondence related to this collection. Comments received generally will be posted without change to *http://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: Mr. Clarence Harrison Jr, Procurement Analyst, at telephone 202–227–7051, or via email at *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211–77, Packing List, requires a contractor to include a packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term ''Credit Card'' is required.

B. Annual Reporting Burdens

Respondents: 14,923.
Responses per Respondent: 19.
Total Annual Responses: 283,233.
Hours per Response: .05.
Total Burden Hours: 14,161.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: 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.*

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–01490 Filed 1–25–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10157 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 25, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The HIPAA Eligibility Transaction System (HETS); *Use:* CMS created the HETS application to provide Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant 270/271 health care eligibility inquiries (270) and responses (271) on a real-time basis. In creating the HETS application, federal law requires that CMS take precautions to minimize the security risk to federal information systems. Accordingly, CMS is requiring that trading partners who wish to connect to the HETS 270/271 application via the CMS Extranet and/or internet agree to specific trading partner terms as a condition of receiving access to Medicare eligibility information. Applicants will complete the entire Trading Partner Agreement form to indicate agreement with CMS trading partner terms and provide sufficient information to establish connectivity to the service and assure that those entities that access the Medicare eligibility information are aware of applicable provisions and penalties for the misuse of information.

CMS uses the Trading Partner Agreement Form to capture certain information whereby a person certifies that they are fully aware of any and all penalties related to the use of PHI and their access to this data from the HETS application. The information is an attestation by the authorized representative of an entity that wishes to access the Medicare eligibility information to conduct real-time eligibility transactions. The authorized representative is a person responsible for business decisions on behalf of the Organization who is submitting the access request. The data captured includes the authorized representative's name, title contact number and the name of the submitting entity. Other data captured is the submitter's National Provider Identifier (NPI), business name, billing address, physical address, and telephone number. *Form Number:* CMS–10157 (OMB control number: 0938–0960); *Frequency:* Annually; *Affected Public:* Private Sector, Businesses or other for-profits; *Number of Respondents:* 1,000; *Total Annual Responses:* 1,000; *Total Annual Hours:* 250. (For policy questions regarding this collection contact Rupinder Singh at 410–786–7484.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Contract Year 2023 Plan Benefit Package (PBP) Software and Formulary Submission; *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. CMS uses this data to review and approve the benefit packages that the plans will offer to Medicare beneficiaries. This allows CMS to review the benefit packages in a consistent way across all submitted bids during with incredibly tight timeframes. This data is also used to populate data on Medicare Plan Finder, which allows beneficiaries to access and compare Medicare Advantage and Prescription Drug plans. *Form Number:* CMS–R–262 (OMB control number: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions), State, Local, or Tribal Governments; *Number of Respondents:* 785; *Total Annual Responses:* 8,405; *Total Annual Hours:* 76,378. (For policy questions regarding this collection contact Kristy L Holtje at 410–786–2209.)

Dated: January 21, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–01495 Filed 1–25–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Request for Certification of Adult Victims of Human Trafficking

AGENCY: Office on Trafficking in Persons; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office on Trafficking in Persons (OTIP), is requesting a 3-year extension of the Request for Certification of Adult Victims of Human Trafficking (RFC) form (Office of Management and Budget (OMB) #: 0970–0454, expiration 2/28/22). Minor revisions have been made to the form, including the addition of a few fields that will enable OTIP to be more responsive to congressional inquiries, federal reporting requirements, and the needs of victims.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* The U.S. Department of Health and Human Services (HHS) provides letters of certification to foreign national victims of severe forms of trafficking in persons under the authority of the Trafficking Victims Protection Act of 2000 (TVPA), as amended 22 U.S.C. Section 7105(b)(1)(C) and (E). HHS delegated this authority to OTIP. Certification is required for foreign national adult victims of human trafficking in the United States to apply for federally funded benefits and services.

OTIP developed a form for potential victims and their advocates, including case managers, attorneys, law enforcement officers, service providers, and other representatives to provide the required information for certification to HHS in accordance with the TVPA of 2000, as amended. The RFC form (formerly titled Trafficking Victims Tracking System) was renamed in order to create continuity between the RFC and Request for Assistance for Child Victims of Human Trafficking (RFA) forms (OMB Control Number 0970–0362).

Since the RFC form originally received clearance, OTIP modernized its request process and launched Shepherd, an online case management system, to process requests for certification and assistance on behalf of foreign national adult and minor victims of trafficking. The PDF version of the form should only be used in exceptional circumstances when the online case management system is inaccessible. If a requester encounters issues submitting a request through Shepherd, they may submit the RFC form to OTIP as a password protected PDF to *Trafficking@acf.hhs.gov.* The form asks the requester for their identifying information, identifying information for the foreign national adult in the event the form is submitted by a case manager, and information describing the victim's case management service needs. The minor revisions made to this form enable OTIP to better fulfill its mandate in accordance with the TVPA of 2000, as amended. These revisions also enable OTIP to be more responsive to congressional inquiries, federal reporting requirements, and the needs of victims, as the information provided will be factored into policy and program development efforts.

Respondents: Potential victims of a severe form of trafficking in persons and their advocates, including case managers, attorneys, law enforcement officers, service providers, and other representatives.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Request for Certification of Adult Victims of Human Trafficking	1,300	1	1	1,300	433

Estimated Total Annual Burden Hours: 433.

Authority: 22 U.S.C. 7105.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–01524 Filed 1–25–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1564]

Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation; Guidance for Industry and Food and Drug Administration Staff, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation.'' FDA encourages the collection, analysis, and integration of patient perspectives in the development, evaluation, and surveillance of medical devices, including digital health technologies. Patient-reported outcome (PRO) instruments facilitate the systematic

collection of patient perspectives as valid scientific evidence to support the regulatory and healthcare decision-making process. This guidance describes principles that should be considered when using PRO instruments in the evaluation of medical devices and provides recommendations about the importance of ensuring the measures are fit-for-purpose. This guidance is not meant to replace the Patient-Focused Drug Development (PFDD) guidance series. Some of the comments received in the docket may be addressed in PFDD Guidance #3, which is currently in development.

DATES: The announcement of the guidance is published in the **Federal Register** on January 26, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1564 for ''Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Michelle Tarver, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5608, Silver Spring, MD 20993–0002, 301–796–6884; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

A PRO instrument can be used in a clinical investigation to measure the effects of a medical intervention or changes in the health status of a patient. PRO instruments allow for collection of certain data as valid scientific evidence of safety and effectiveness that is complementary to other clinical outcomes and/or biomarkers. Information from well-defined and reliable PRO instruments can provide valuable evidence for benefit-risk assessments and can be used in medical device labeling to communicate the effect of a treatment on patient symptoms, functioning, or quality of life when the labeling is consistent with the PRO instrument's documented measurement capability. PRO instruments may be used to inform a patient's eligibility for inclusion within a study, to capture safety or effectiveness outcomes, and may be aligned as primary or secondary endpoints or used as a stand-alone outcome assessment or component of a composite endpoint. When data from a PRO instrument is used in the evaluation of a medical device, FDA

determines the validity evidence needed to support the PRO instrument's specified use for a regulatory purpose. FDA uses the term ''fit-for-purpose'' to describe this flexible approach. As part of providing valid scientific evidence to assess the safety and effectiveness of medical devices, PRO instruments can measure the impact of medical devices on patient well-being and other concepts that may influence payers, healthcare providers, and patients when making decisions about potential treatments or management options.

A notice of availability of the draft guidance appeared in the **Federal Register** of August 31, 2020 (85 FR 53820). FDA considered comments received and revised the guidance as appropriate in response to the comments, including clarifying and expanding examples, making clear the language relating to PRO instrument scores, as well as clarifying the applicability of PRO instruments throughout the total product life cycle and within clinical studies. Additional language on recommendations to document modifications, ensure content is relevant, and consider patient burden was also included. This guidance is not meant to replace the Patient-Focused Drug Development (PFDD) guidance series. Comments received in the docket related to the PFDD guidance series have been shared with the Center for Drug Evaluation and Research (CDER) to be considered as part of the development of PFDD Guidance #3 entitled ''Selecting, Developing or Modifying Fit-for-Purpose Clinical Outcome Assessments'' and PFDD Guidance #4 entitled ''Incorporating Clinical Outcome Assessments into Endpoints for Regulatory Decision Making.'' [1]

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Principles for Selecting, Developing, Modifying, and Adapting Patient-Reported Outcome Instruments for Use in Medical Device Evaluation'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 18042 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
860, subpart D	De Novo classification process	0910–0844
''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act''.	513(g) Request for Information	0910–0705
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
800, 801, and 809	Medical Device Labeling Regulations	0910–0485

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01377 Filed 1–25–22; 8:45 am]

BILLING CODE 4164–01–P

[1] For more information, please see the FDA PFDD Guidance Series website: *https://www.fda.gov/drugs/development-approval-process-drugs/fda-patient-focused-drug-development-guidance-series-enhancing-incorporation-patients-voice-medical.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3846]

Patient Engagement in the Design and Conduct of Medical Device Clinical Studies; Guidance for Industry, Food and Drug Administration Staff, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Patient Engagement in the Design and Conduct of Medical Device Clinical Studies.'' The Patient Engagement Advisory Committee (PEAC) recommended that FDA and industry develop a framework to clarify how patient advisors can engage in the clinical investigation process. This guidance focuses on the applications, perceived barriers, and common challenges of patient engagement in the design and conduct of medical device clinical studies.

DATES: The announcement of the guidance is published in the **Federal Register** on January 26, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3846 for ''Patient Engagement in the Design and Conduct of Medical Device Clinical Studies.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Patient Engagement in the Design and Conduct of Medical Device Clinical Studies'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Michelle Tarver, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5608, Silver Spring, MD 20993–0002, 301–796–6884 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11 and 12, 2017, the PEAC met to discuss and make recommendations regarding patient engagement into medical device clinical studies. The PEAC stated that some framework should be developed by FDA and industry to clarify how patient advisors can engage in the clinical study process. Based on this recommendation, FDA is pursuing various efforts of

encouraging voluntary patient engagement in clinical studies, including guidance. FDA believes medical device clinical studies designed with patient input may help to address common challenges faced in medical device clinical studies.

While FDA acknowledges that patient engagement may be beneficial across the total product lifecycle, this guidance focuses on the applications of patient engagement in the design and conduct of medical device clinical studies. The guidance will: (1) Help sponsors understand how they can voluntarily use patient engagement to elicit experience, perspectives, and other relevant information from patient advisors (see definition in section IV) to improve the design and conduct of medical device clinical studies; (2) highlight the benefits of engaging with patient advisors early in the medical device development process; (3) illustrate which patient engagement activities are generally not considered by FDA to constitute research or an activity subject to FDA's regulations, including regulations regarding institutional review boards (IRBs); and (4) address common questions and misconceptions about collecting and submitting to FDA patient engagement information regarding the design and conduct of a medical device clinical study.

A notice of availability of the draft guidance appeared in the **Federal Register** of September 24, 2019 (84 FR 50047). FDA considered comments received and revised the guidance as appropriate in response to the comments, including clarifying terminology, adding additional background on patient engagement efforts at FDA, and clarifying how sponsors can obtain specific feedback from FDA on patient engagement plans and patient-centered study designs.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on patient engagement in the design and conduct of medical device clinical studies. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Patient Engagement in the Design and Conduct of Medical Device Clinical Studies'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 18040 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
814, subparts A through E	Premarket Approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''	De Novo Classification Process	0910–0844
''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act''.	513(g) Request for Information	0910–0705
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
56	Institutional Review Boards	0910–0130

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01374 Filed 1–25–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892–2479; Michael Shmilovich; *shmilovm@nih.gov;* telephone: 301–435–5019. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows.

Sulfur and Selenium Containing Cannabinoid Receptor Modulating Compounds

Available for licensing and commercial development are sulfur- and selenium-containing pyrazole molecules for potentially treating metabolic disorders, psychiatric disorders, neurological disorders, pain disorders,

gastrointestinal disorders, cancers, inflammation-related disorders, substance abuse associated pathologies, and other conditions using the same. The filed provisional patent application includes extensive descriptions of the exemplary molecules and their various constituents. Therapeutic targets of said molecules include but are not limited to the cannabinoids 1 receptor, the cannabinoid 2 receptor, GPR55, GPR18, or GPR119. The rights pursued claim compounds, pharmaceutical compositions, and methods of use.

Potential Commercial Applications:

- Pharmaceuticals
- Cancer therapy
- Inflammatory and autoimmune disease

Development Stage:

- Early stage

Inventors: Malliga R. Iyer, Ph.D. (NIAAA).

Intellectual Property: HHS Reference No. E–190–2021–0; U.S. Provisional Patent Application No. 63/265,225 filed December 10, 2021.

Licensing Contact: Michael Shmilovich; 301–435–5019; *michael.shmilovich@nih.gov*.

Dated: January 20, 2022.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2022–01517 Filed 1–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee management; notice of open Federal Advisory Committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet virtually on Tuesday, March 15, 2022. The meeting will be open to the public.

DATES: The meeting will take place on Tuesday, March 15, 2022, 1 p.m. to 3 p.m. ET. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the virtual conference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by 5 p.m. ET on March 2, 2022, to obtain the call-in number and access code for the March 15, 2022, virtual meeting. For more information on services for individuals with disabilities or to request special assistance, contact Deborah Gartrell-Kemp as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronic Delivery:* Email Deborah Gartrell-Kemp at *Deborah.GartrellKemp@fema.dhs.gov* no later than March 2, 2022, for consideration at the March 15, 2022 meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer: Stephen Dean, telephone (301) 447–1271, email *Stephen.Dean@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.GartrellKemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet virtually on Tuesday, March 15, 2022. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Tuesday, March 15, 2022, there will be four sessions, with deliberations and voting at the end of each session as necessary:

1. The Board will discuss United States Fire Administration Data, Research, Prevention and Response.

2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2022 and beyond Budget Request/Budget Planning.

3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, admissions and strategic plan.

4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted by March 10,

2022, at *https://www.usfa.fema.gov/training/nfa/about/bov.html.*

Eriks J. Gabliks,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2022–01483 Filed 1–25–22; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2021–0158; FXES11140300000–212]

Draft Environmental Assessment and Proposed Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Sugar Creek Wind Project, Logan County, Illinois

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Sugar Creek Wind One, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, for its Sugar Creek Wind Project (project). The applicant requests the ITP, which would be for a 30-year period, for the take of the federally listed endangered Indiana bat and threatened northern long-eared bat incidental to the otherwise lawful activities associated with the project. The applicant proposes a conservation program to minimize and mitigate for the unavoidable incidental take as described in their habitat conservation plan (HCP). The Service requests public comment on the application, which includes the applicant's proposed HCP, and the Service's draft environmental assessment, prepared pursuant to the National Environmental Policy Act. The Service provides this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before February 25, 2022.

ADDRESSES:

Document availability: Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0158 at *http://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft EA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2021–0158.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0158; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Kraig McPeek, Field Supervisor, Illinois-Iowa Ecological Services Field Office, U.S. Fish and Wildlife Service, 1511 47th Ave., Moline, IL 61265; telephone: 309–757–5800, extension 202; or Andrew Horton, Regional HCP Coordinator, U.S. Fish and Wildlife Service—Interior Region 3, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; telephone: 612–713–5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 30-year ITP for take of the federally endangered Indiana bat (*Myotis sodalis*) and federally threatened northern long-eared bat (*Myotis septentrionalis*). The applicant determined that wind farm activities on this land are reasonably certain to result in incidental take of these federally listed species. Activity that could result in incidental take of Indiana bats and northern long-eared bats is the operation of 57 wind turbines occurring in Logan County, Illinois across approximately 12,120 acres of private land. The estimated level of take from the project is up to 90 Indiana bats and 60 northern long-eared bats over the 30-year project duration.

The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of Indiana bats and northern long-eared bats through on-site minimization measures and to provide habitat conservation measures for Indiana bats and northern long-eared bats to offset any impacts from operations of the project. On-site minimization measures include feathering turbine blades until wind speeds reach 3.0 meters per second (m/s) when temperatures are above 40 degrees Fahrenheit during the spring, summer, and fall (March 15 to November 15). Additionally, on-site minimization measures include feathering of turbine blades until wind speeds reach 5.0 m/s during fall (August 1 to October 15) when temperatures are above 50 degrees Fahrenheit. Minimization measures will be implemented nightly from sunset to sunrise. To offset the impacts of the taking of Indiana bats and northern long-eared bats, the applicant proposes to protect known maternity colony habitat for both covered species. The Service requests public comments on the permit application, which includes a proposed HCP, and an EA prepared in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

The applicants' HCP describes the activities that will be undertaken to implement the project, as well as the mitigation and minimization measures proposed to address the impacts to the covered species. Pursuant to NEPA, the EA analyzes the impacts the ITP issuance would have on the covered species and the environment.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. We prepared a draft EA that analyzes the environmental impacts on the human environment resulting from three alternatives: A no-action alternative, the applicant's proposed action, and a more restrictive alternative consisting of feathering at a rate of wind speed that results in less impacts to bats.

Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2022–01437 Filed 1–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2221A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0149]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Class III Gaming Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 25, 2022.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0149 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, Director, Office of Indian Gaming, AS–IA, telephone: 202–219–4066. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 12, 2021 (86 FR 44401). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: The collection of information will ensure that the provisions of the Indian Gaming Regulatory Act (IGRA) and other applicable requirements are met when federally recognized Tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR 291, Class III Gaming Procedures, specify the information collection requirement. An Indian Tribe must ask the Secretary to issue Class III gaming

procedures. The information to be collected includes: The name of the Tribe, the name of the State, Tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Title of Collection: Class III Gaming Procedures.

OMB Control Number: 1076–0149.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 12.

Total Estimated Number of Annual Responses: 12.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 3,840 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

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*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–01482 Filed 1–25–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/ A0A501010.999900253G; OMB Control Number 1076–0164, 1076–0185]

Agency Information Collection Activities; Homeliving Programs and School Closure and Consolidation, Tribal Education Department Grant Program

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing to renew two information collections.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference Office of Management and Budget (OMB) Control Number 1076–0164 or 1076–0185 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Veronica Lane, Acting Chief Performance Officer, Central Office, by email at *veronica.lane@bie.edu,* or by telephone at (202) 893–1828. 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 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), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

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

Abstract: The regulations at 25 CFR 36, Subpart G, Home-living Programs, implement section 1122 of the Native American Education Improvement Act of 2001 (Pub. L. 95–561, title XI, § 1120, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007). These regulations require the BIE to implement national standards for home-living situations in all BIE-funded residential schools. The BIE must collect information from all BIE-funded residential schools in order to assess each school's progress in meeting the national standards. Submission of this information allows the BIE to ensure that minimum academic standards for the education of Indian children and criteria for dormitory situations in Bureau-operated schools and Indian-controlled contract schools are met.

Title of Collection: Homeliving Programs and School Closure and Consolidation.

OMB Control Number: 1076–0164.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes.

Total Estimated Number of Annual Respondents: 164.

Total Estimated Number of Annual Responses: 164 per year, on average.

Estimated Completion Time per Response: Ranges from 15 minutes to 40 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 932 hours.

Respondent's Obligation: Response is required to obtain a benefit.

Frequency of Collection: Annual or on occasion, depending on the activity.

Total Estimated Annual Nonhour Burden Cost: $0.

Abstract: Under 25 U.S.C. 2020, Congress appropriated funding through the BIE for the development and operation of Tribal departments or

divisions of education for the purpose of planning and coordinating all educational programs of the Tribe. All Tribal education departments (TEDs) awarded will provide coordinating services and technical assistance to the school(s) they serve. As required under 25 U.S.C. 2020, for a federally recognized Tribe to be eligible to receive a grant, the Tribe must submit a grant application proposal. Once the grant has been awarded, each awardee will be responsible for quarterly and annual reports. All awardees must comply with regulations relating to grants made under 25 U.S.C. 5322(a).

Title of Collection: Tribal Education Department Grant Program.

OMB Control Number: 1076–0185.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes and their Tribal Education Departments (TEDs).

Total Estimated Number of Annual Respondents: 33.

Total Estimated Number of Annual Responses: 63.

Estimated Completion Time per Response: Varies from 2 to 81 hours.

Total Estimated Number of Annual Burden Hours: 1,113 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Yearly for the proposal and annual report, quarterly for the quarterly reports.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–01480 Filed 1–25–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033280; PPWOCRADN0–PCU00RP14.R50000]

American Museum of Natural History, New York, NY; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The American Museum of Natural History (AMNH) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on August 10, 2018. This notice corrects the minimum number of individuals and 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 American Museum of Natural History. 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 American Museum of Natural History at the address in this notice by February 25, 2022.

FOR FURTHER INFORMATION CONTACT: Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

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 American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Mercer County, NJ, and Richmond 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). 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 minimum number of individuals and number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (83 FR 39777–39779, August 10, 2018). The Museum received copies of archival documentation housed in a different institution that pertains to the AMNH's excavations at the Abbott Farm site, Mercer County, NJ. This new information led Museum staff to identify an additional 21 culturally affiliated human remains and an additional 56 associated funerary objects. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 39778, August 10, 2018, FR Doc #2018–17217, on page 39778), column 1, paragraph 3, under History and Description of the Remains, sentence 7 is corrected by substituting the following sentence:

> The 10 associated funerary objects—10 pieces of pottery—were found with these human remains.

In the **Federal Register** (83 FR 39778, August 10, 2018, FR Doc #2018–17217, on page 39778), columns 1 and 2 are corrected by adding the following paragraphs at the end of paragraph 4 to replace the existing paragraphs:

> In 1896, human remains representing, at minimum, 10 individuals, were removed from NJ, Mercer County, Delaware Valley, one mile south of Trenton, Andrew K. Rowan Farm, Village Site. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include two adult females, one adult who is likely female, six adults whose sex is indeterminate, and one individual whose age and sex are indeterminate. No known individuals were identified. The 26 associated funerary objects include five implements (one of which is broken), one celt, one broken clay pipe, one scrapper, one chip, three pieces of pottery fragments and 14 sherds. Artifact analysis and burial depth suggest that these human remains and associated funerary objects date to the Middle Woodland Period (A.D. 200–900).
>
> In 1898, human remains representing, at minimum, four individuals, were removed from NJ, Mercer County, Delaware Valley, one mile south of Trenton, Andrew K. Rowan Farm, Lowland. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include one adult female, two adults whose sex is indeterminate, and one adult who is likely male. No known individuals were identified. The five associated funerary objects include three implements, one animal tooth, and one lot of pottery fragments. Artifact analysis and burial depth suggest that these human remains and associated funerary objects date to the Middle Woodland Period (A.D. 200–900).
>
> In 1898, human remains representing, at minimum, two individuals were removed from NJ, Mercer County, Delaware Valley, one mile south of Trenton, Andrew K. Rowan

Farm, Village site, Lowland. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include one adult who is likely male and one adult whose sex is indeterminate. No known individuals were identified. No associated funerary objects are present. Burial depth suggests that these human remains date to the Middle Woodland Period (A.D. 200–900).

In 1898, human remains representing, at minimum, two individuals were removed from NJ, Mercer County, Delaware Valley, one mile south of Trenton, Andrew K. Rowan Farm Village site. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include two individuals of unknown sex or age. No known individuals were identified. The two associated funerary objects are one beaver tooth and one lot of pottery fragments. Burial depth suggests that these human remains date to the Middle Woodland Period (A.D. 200–900).

In 1899, human remains representing, at minimum, one individual were removed from NJ, Mercer County, Delaware Valley, 1 mile south of Trenton, Andrew K. Rowan Farm, Village Site. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include one subadult. No known individual was identified. The one associated funerary object is one lot of animal bone fragments. Burial depth suggests that these human remains date to the Middle Woodland Period (A.D. 200–900).

In 1899, human remains representing, at minimum, two individuals were removed from NJ, Mercer County, Abbott Farm, Trench 1. The human remains were excavated by Ernest Volk during an AMNH sponsored expedition. The AMNH accessioned the human remains that same year. The human remains include two adults whose sex is indeterminate. No known individuals were identified. The 14 associated funerary objects include one lot of beaver teeth fragments, one fragmentary pot (more than 50 pieces), two pieces of white quarts, two flakes, one broken spearpoint, one broken point, one bone implement, one unfinished implement, one implement (knife?), and three blade pieces. Artifact analysis and burial depth suggest that these human remains and associated funerary objects date to the Middle Woodland Period (A.D. 200–900).

In the **Federal Register** (83 FR 39778, August 10, 2018, FR Doc #2018–17217, on page 39778), column 3, paragraph 3, is corrected by substituting the following paragraph:

We infer that the human remains and associated funerary objects from Abbott Farm, Bowman's Brook, and Burial Ridge date to the Middle Woodland (A.D. 200–900) or later. Historically, these three locales lay within Lenape territory during the contact period, while archeological and linguistic data indicate a cultural continuity extending back to the Middle Woodland Period.

In the **Federal Register** (83 FR 39778, August 10, 2018, FR Doc #2018–17217, on page 39779), column 1, paragraph 1 under the heading ''Determinations Made by the American Museum of Natural History,'' after ''Officials of the American Museum of Natural History have determined that,'' sentences 1 and 2 are corrected by substituting the following sentences:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 68 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 226 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 Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org,* by February 25, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin may proceed.

The American Museum of Natural History is responsible for notifying the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: January 12, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01036 Filed 1–25–22; 8:45 am]

BILLING CODE 4312–52–P\

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cellular Base Station Communication Equipment, Components Thereof, and Products Containing Same, DN 3599;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Apple Inc. on January 19, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular base station communication equipment, components thereof, and products containing same. The complainant names as respondents: Ericsson AB of Sweden; Telefonaktiebolaget LM Ericsson of Sweden; and Ericsson Inc. of Plano, TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether

issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3599'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 20, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01438 Filed 1–25–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1226]

Certain Artificial Eyelash Extension Systems, Products, and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on Issues Under Review and on Remedy, Public Interest, and Bonding; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''FID'') of the presiding chief administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date in the above-captioned investigation to April 27, 2022.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Lashify, Inc. of Glendale, California (''Lashify''). *See* 85 FR 68366–67. The

complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,660,388 (''the '388 patent'') and 10,721,984 (''the '984 patent''), and the sole claim of U.S. Design Patent Nos. D877,416 (''the D'416 patent'') and D867,664 (''the D'664 patent''), respectively (collectively, the ''Asserted Patents''). The complaint also alleges the existence of a domestic industry. The notice of investigation (''NOI'') names nine respondents, including: KISS Nail Products, Inc. of Port Washington, New York (''KISS''); Ulta Beauty, Inc. of Bolingbrook, Illinois (''Ulta''); CVS Health Corporation of Woonsocket, Rhode Island (''CVS''); Walmart, Inc. of Bentonville, Arkansas (''Walmart''); Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China; Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China; Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China; Alicia Zeng d/b/a Lilac St. and Artemis Family Beginnings, Inc. of San Francisco, California; and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas. *Id.* The Office of Unfair Import Investigations is also a party to the investigation. *Id.*

The Commission later amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm'n Notice (Feb. 10, 2021); *see also* 86 FR 9535 (Feb. 16, 2021).

The Commission previously terminated the investigation as to claims 2–4 and 7 of the '388 patent and claims 6–8, 12, 18–19, 25–26, and 29 of the '984 patent based on Complainant's partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm'n Notice (May 11, 2021). The Commission also previously terminated claims 2–5, 10–11, 14, 17, 21–22, and 24 of the '984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm'n Notice (July 6, 2021).

The Commission previously terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm'n Notice (May 20, 2021).

The Commission previously determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '388 patent, thus terminating that patent from the investigation. *See* Order No. 35, *unreviewed by* Comm'n Notice (July 9, 2021).

On October 28, 2021, the presiding ALJ issued the FID, finding that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain artificial eyelash extension systems, products, and components thereof. FID at 141–142. The FID finds that two accused products infringe the '984 patent, the'984 patent is not invalid, and Lashify has failed to satisfy the technical prong of the domestic industry requirement with respect to the '984 patent. The FID further finds that the D'416 patent and D'664 patent are infringed and not invalid, and Lashify satisfied the technical prong with respect to both design patents. The FID further finds that Lashify has failed to satisfy the economic prong of the domestic industry requirement with respect to all of the Asserted Patents remaining in the investigation. The FID also includes the ALJ's recommended determination on remedy and bonding should the Commission find a violation of section 337. Specifically, the ALJ recommended a limited exclusion order directed to certain artificial eyelash extension systems, products, and components thereof, and cease and desist orders directed to KISS, Ulta, CVS, and Walmart.

On November 9, 2021, Lashify filed a petition for review of the FID's findings of non-infringement, that Lashify has failed to satisfy the technical prong of the domestic industry requirement with respect to the '984 patent, and that Lashify has not satisfied the economic prong of the domestic industry requirement with respect to any of the patents-in-suit. That same day, Respondents filed a contingent petition seeking review of alleged additional, independent grounds of non-infringement and invalidity to support the FID's finding of no violation.

On November 17, 2021, Lashify, Respondents, and OUII filed their respective responses to the petitions for review.

On November 29, 2021, respondents KISS, Ulta, Walmart, and CVS filed a joint submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50 (a)(4)). Lashify and OUII did not file a statement on the public interest. No submissions were received in response to the Commission notice seeking public interest submissions. 86 FR 62844–45 (Nov. 12, 2021).

Having examined the record of the investigation, including the FID, the petitions for review, and the responses thereto, the Commission has determined to review the FID in part. In particular, as to the '984 patent, the Commission has determined to review: (1) The FID's findings regarding the technical prong of the domestic industry requirement; and (2) the FID's findings that the asserted claims of the '984 patent are not invalid as obvious. The Commission has further determined to review the FID's findings regarding the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the FID.

The Commission has also determined to extend the target date for completing this investigation until April 27, 2022.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) Please discuss whether Complainant should be considered a mere importer when its domestic activities and investments are evaluated as a whole with respect to the asserted patents, rather than when its domestic activities and investments are evaluated in a ''line-by-line'' approach, with citation to the record evidence.

(2) To the extent Complainant is not a mere importer and certain domestic activities and investments with respect to the asserted patents excluded by the FID (*see e.g.,* certain warehousing/distribution, quality control, and/or sales and marketing expenditures) should be credited as cognizable domestic industry investments, please discuss whether Complainant's cognizable domestic industry investments are significant or substantial within the meaning of section 337(a)(3)(A)–(C), with citation to record evidence. Please be sure to provide your explanation and data separately for each asserted patent.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles

from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994). In particular, the written submissions should address any request for a cease and desist order in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order, the written submissions should respond to the following requests:

(1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

(2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. In addition, the parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents remaining in the investigation expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on February 3, 2022. Reply submissions must be filed no later than the close of business on February 10, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1226) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on January 20, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 20, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01457 Filed 1–25–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On January 21, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States of America* v. *To Go Stores, LLC,* Civil Action No. 3:22–cv–1038.

The United States filed the complaint in this Resource Conservation and Recovery Act (RCRA) case concurrently with the lodging of the Proposed Consent Decree. The Complaint alleges that Defendant To Go Stores, LLC is civilly liable for violations of regulations promulgated under RCRA Subchapter IX governing underground storage tanks. The complaint alleges that To Go Stores failed to comply with RCRA regulations, as administered by the Puerto Rico Department of Natural and Environmental Resources, for underground storage tanks at 15 gas stations owned and/or operated by To Go Stores in Puerto Rico. The alleged violations include failure to: Adequately monitor for releases; provide adequate spill and overfill prevention equipment; provide and maintain corrosion protection equipment; maintain records; secure monitoring wells; report and investigate suspected releases; and obtain financial assurance.

Under the Proposed Consent Decree, To Go Stores will inspect certain facilities; install new tanks at certain facilities; and install and operate a centralized monitoring system and new release detection equipment, including automatic tank gauging, at 43 facilities in Puerto Rico. To Go Stores will pay a civil penalty of $125,000. The Proposed Consent Decree will resolve all RCRA claims alleged in this action by the United States against To Go Stores.

The publication of this notice opens a period for public comment on the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States* v. *To Go Stores, LLC,* D.J. Ref. No. 90–7–1–11717. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.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 $8.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–01504 Filed 1–25–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0026]

Proposed Extension of Information Collection; Ground Control for Surface Coal Mines and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Ground Control for Surface Coal Mines and Surface Work Areas of Underground Coal Mines.

DATES: All comments must be received on or before March 28, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2021–0039. Comments, including attachments, submitted electronically to *https://www.regulations.gov* will be posted to the docket with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 103(h) requires that every operator of a coal or other mine establish and maintain records, make reports, and provide required

information to the Secretary of Labor (Secretary). Section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan for highwalls, pits, and spoil banks that is consistent with prudent engineering design and which will ensure safe working conditions. The mine operator is required by section 77.1000–1 to file the ground control plan with the appropriate District Manager. The mining methods employed by the operator are selected to ensure highwall, pit, and spoil bank stability. In the event of a highwall failure or material dislodgment, there may be very little time to escape possible injury; therefore, preventive measures must be taken. Each plan is based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. The plan is used to show how the mine operator will maintain safe working conditions around the highwalls, pits, and spoil banks. Each plan is reviewed by MSHA to ensure that highwalls, pits, and spoil banks are maintained in a safe condition through implementation of sound engineering design.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Ground Control for Surface Coal Mines and Surface Work Areas of Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the FOR FURTHER INFORMATION section of this notice.

III. Current Actions

This information collection request concerns provisions for ground control for surface coal mines and surface work areas of underground coal mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Number of Respondents: 287.

Frequency: On occasion.

Number of Responses: 287.

Annual Burden Hours: 1,962 hours.

Annual Respondent or Recordkeeper Cost: $545.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–01451 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0030]

Proposed Extension of Information Collection; Main Fan Operation and Inspection (I–A, II–A, III, and V–A mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Main fan operation and inspection (I–A, II–A, III, and V–A mines).

DATES: All comments must be received on or before March 28, 2022.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2021–0040. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions

Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes the MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Potentially gassy (explosive) conditions underground are largely controlled by the main fans. When accumulations of explosive gases, such as methane, are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results of such contacts are usually disastrous, and multiple fatalities may be reasonably expected to occur. The standard contains significantly more stringent requirements for main fans in ''gassy'' mines than for main fans in other mines. Title 30 CFR 57.22204, which only applies to metal and nonmetal underground mines that are categorized as ''gassy,'' requires main fans to have pressure-recording systems. This standard also requires main fans to be inspected daily while operating if persons are underground and certification made of such inspections by signature and date. Certifications and pressure recordings must be retained for one year and made available to authorized representatives of the Secretary.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Main fan operation and inspection (I–A, II–A, III, and V–A mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for main fan operation and inspection in I–A, II–A, III, and V–A mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0030.

Affected Public: Business or other for-profit.

Number of Respondents: 6.

Frequency: On occasion.

Number of Responses: 5,940.

Annual Burden Hours: 2,046 hours.

Annual Respondent or Recordkeeper Cost: $6,000.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–01450 Filed 1–25–22; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0022]

Bay Area Compliance Laboratories Corp.: Grant of Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for Bay Area Compliance Laboratories Corp. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on January 26, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's website includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Bay Area Compliance Laboratories Corp. (BACL) as a NRTL. BACL's expansion covers the addition of seven recognized testing standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

BACL submitted an application, dated July 20, 2017 (OSHA–2016–0022–0011),[1] to expand its NRTL scope of recognition to include seven additional test standards. OSHA performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing BACL's expansion application in the **Federal Register** on October 22, 2021 (86 FR 58694). The agency requested comments by November 8, 2022, but it received no comments in response this notice. OSHA now is proceeding with this final notice to grant expansion of BACL's scope of recognition.

To obtain or review copies of all public documents pertaining to BACL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2016–0022 contains all materials in the record concerning BACL's recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350, TTY (877) 889–5627.

II. Final Decision and Order

OSHA staff examined BACL's expansion application and examined other pertinent information. Based on a review of this evidence, OSHA finds that BACL meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant expansion of BACL's scope of recognition. OSHA limits the expansion of BACL's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN BACL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 153	Portable Electric Lamps.
UL 935	Standard for Fluorescent-Lamp Ballasts.
UL 1310	Standard for Class 2 Power Units.
UL 1598	Luminaires.
UL 1598C	Standard for Light-Emitting Diode (LED) Retrofit Luminaire Conversion Kits.
UL 1993	Self-Ballasted Lamps and Lamp Adapters.
UL 8750	Standard for Light-Emitting Diode (LED) Equipment for Use in Lighting Products.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), only standards determined to be appropriate test standards may be approved for NRTL recognition. Any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, BACL must abide by the following conditions of the recognition:

1. BACL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. BACL must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and
3. BACL must continue to meet the requirements for recognition, including all previously published conditions on BACL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of BACL, subject to the limitation and conditions specified above.

III. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 18, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–01454 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–26–P

[1] OSHA notes that in the preliminary notice, it accidentally listed this document's docket number as OSHA–2016–0022–0009.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of MET Laboratories, Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 10, 2022.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2006–0028). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Extension of comment period: Submit requests for an extension of the comment period on or before February 10, 2022 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that MET Laboratories, Inc. (MET), is applying for expansion of the current recognition as a NRTL. MET requests the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) The type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including MET, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET currently has one facility (site) recognized by OSHA for product testing and certification, with the headquarters located at: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230. A complete list of MET's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/met.html.*

II. General Background on the Application

MET submitted one application, dated September 25, 2018 (OSHA–2006–0028–0080), to expand the recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the appropriate test standard found in MET's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 62109–1	Standard for Safety of power converters for use in photovoltaic power systems—Part 1: General requirements.

III. Preliminary Findings on the Application

MET submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that MET has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the one test standard for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of MET's application.

OSHA welcomes public comment as to whether MET meets the requirements of 29 CFR 1910.7 for expansion of the recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0028.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health whether to grant MET's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

IV. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 20, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–01455 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0046]

QPS Evaluation Services, Inc.: Grant of Renewal of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to grant renewal of recognition to QPS Evaluation Services, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The renewal of recognition becomes effective on January 26, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of QPS Evaluation Services, Inc. (QPS) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

QPS initially received OSHA recognition as a NRTL on March 2, 2011 (76 FR 11518). QPS's most recent renewal was granted on April 25, 2016, for a five-year period ending on April 25, 2021 (81 FR 24133). QPS submitted its request for renewal in July, 2019 (OSHA–2010–0046–0016). While OSHA should have rejected the renewal request because it was submitted more than one year before the expiration of QPS's current recognition (see above discussion), OSHA failed to do so and instead accepted the request. Because OSHA accepted the request rather than rejecting it, OSHA is processing the renewal request even though it was filed outside the time period permitted by 29 CFR 1910.7 Appendix A.

The renewal application was amended on August 25, 2021 (OSHA–2010–0046–0017) to indicate that a change in company ownership had occurred after QPS submitted the original renewal application. Through communications with QPS, OSHA confirmed that QPS's acquisition by another company was the only material change that occurred after QPS submitted its initial renewal application.

QPS retains its recognition pending OSHA's final decision in this renewal process. The current address of the QPS facility recognized by OSHA and included as part of the renewal request is: QPS Evaluation Services, Inc., 81 Kelfield Street, Unit 8, Toronto, Ontario M9W 5A3 Canada.

OSHA evaluated QPS's application for renewal and made a preliminary determination that QPS can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing QPS's renewal application in the **Federal Register** on December 15, 2021 (86 FR 71284). The agency requested comments by December 30, 2021, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew QPS's NRTL recognition.

To obtain or review copies of the publicly available information in QPS's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2010–0046. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of QPS as a NRTL. OSHA examined QPS's renewal application and all pertinent information related to QPS's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that QPS meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of QPS's recognition to include the terms and conditions of QPS's recognition found in 81 FR 24133. The NRTL scope of recognition for QPS is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/qps.html.* This renewal extends QPS's recognition as a NRTL for a period of five years from January 26, 2022.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, QPS must abide by the following conditions of recognition:

1. QPS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);
2. QPS must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and
3. QPS must continue to meet the requirements for recognition, including all previously published conditions on QPS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of QPS as a NRTL.

III. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 14, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–01452 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

UL LLC: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of UL LLC for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add two test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 10, 2022.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2009–0025). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Extension of comment period: Submit requests for an extension of the comment period on or before February 10, 2022 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of

Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that UL LLC (UL) is applying to expand the scope of its current recognition as a NRTL. UL requests the addition of eleven test standards to its NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following the requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.* UL currently has thirteen facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: UL LLC, 333 Pfingsten Road, Northbrook, Illinois 60062. A complete list of UL sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/ul.html.*

II. General Background on the Application

UL submitted an application, dated May 23, 2019, to expand recognition to include twelve additional test standards (OSHA–2009–0025–0038). This application was amended on November 11, 2021 to remove one standard from the original request (OSHA–2009–0025–0039). The expansion, if approved, will cover the remaining eleven standards. OSHA staff performed a detailed analysis of the application packet and other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the test standards found in UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test Standard	Test Standard title
UL 122701 *	Requirements for Process Sealing Between Electrical Systems and Flammable or Combustible Process Fluids.
UL 248–19 *	Standard for Low-Voltage Fuses—Part 19: Photovoltaic Fuses.
UL 8139	Electrical Systems of Electronic Cigarettes and Vaping Devices.
UL 61730–1	Standard for Photovoltaic (PV) Module Safety Qualification—Part 1: Requirements for Construction.
UL 61730–2	Photovoltaic (PV) Module Safety Qualification—Part 2: Requirements for Testing.
ISA 60079–25	Standard for Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079—25	Standard for Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079–26	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 60079–30–1	Standard for Explosive Atmospheres—Part 30–1: Electrical Resistance Trace Heating-General and Testing Requirements.
UL 121201	Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations.
UL 60079–28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.

* In this notice, OSHA also proposes to add this test standard to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) verify it represents a product category for which OSHA requires certification by a NRTL; (2) verify the document represents a product and not a component; and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; or (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or if the test standard covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add two new test standards to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA preliminarily determines that these test standards are appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 122701	Requirements for Process Sealing Between Electrical Systems and Flammable or Combustible Process Fluids.
UL 248–19	Standard for Low-Voltage Fuses—Part 19: Photovoltaic Fuses.

IV. Preliminary Findings on the Application

UL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and related material preliminarily indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of the test standards listed above for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA also preliminarily determined that the test standards listed above are appropriate test standards. OSHA seeks public comment on these preliminary determinations.

V. Public Participation

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL and whether the test standards listed above are appropriate test standards that should be included in the NRTL Program's List of Appropriate Test Standards. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to no longer than 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2009–0025 (for further information, see the "*Docket*" heading in the section of this notice titled **ADDRESSES**),

OSHA staff will review all comments to the docket submitted in a timely manner and after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant UL's application for expansion of its scope of recognition and to add the test standards listed above to the NRTL Program's List of Appropriate Test Standards. The Assistant Secretary will make the final decision on granting the application and on adding the test standards listed above to the NRTL Program's List of Appropriate Test Standards. In making these decisions, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

VI. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 14, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–01453 Filed 1–25–22; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Notice; 2021 Statutory Pay-As-You-Go Act Annual Report

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: This report is being published as required by the Statutory Pay-As-You-Go (PAYGO) Act of 2010. The Act requires that OMB issue an annual report and a sequestration order, if necessary.

FOR FURTHER INFORMATION CONTACT: Erin O'Brien. 202–395–3106.

SUPPLEMENTARY INFORMATION: This report can be found at *https://www.whitehouse.gov/omb/paygo/.*

Authority: 2 U.S.C. 934.

Kelly A. Kinneen,

Assistant Director for Budget.

This Report is being published pursuant to section 5 of the Statutory Pay-As-You-Go (PAYGO) Act of 2010, Public Law 111–139, 124 Stat. 8, 2 U.S.C. 934, which requires that OMB issue an annual PAYGO report, including a sequestration order if necessary, no later than 14 working days after the end of a congressional session.

This Report describes the budgetary effects of all PAYGO legislation enacted during the first session of the 117th Congress and presents the 5-year and 10-year PAYGO scorecards maintained by OMB.[1] Because neither the 5-year nor 10-year scorecard shows a debit for the budget year, which for purposes of this Report is fiscal year 2022,[2] a sequestration order under subsection 5(b) of the PAYGO Act, 2 U.S.C 934(b) is not required.

The budget year balance on each of the PAYGO scorecards is zero because the Protecting Medicare and American Farmers from Sequester Cuts Act (Pub. L. 117–71) shifted the debits on both scorecards from fiscal year 2022 to fiscal year 2023. The change directed by Public Law 117–71 is discussed in more detail in section IV of this report.

During the first session of the 117th Congress, two laws with PAYGO effects were enacted with emergency requirements under section 4(g) of the PAYGO Act, 2 U.S.C. 933(g). Four laws had estimated budgetary effects on direct spending and/or revenues that were excluded from the calculations of the PAYGO scorecards due to provisions excluding all or part of the law from section 4(d) of the PAYGO Act, 2 U.S.C. 933(d).

I. PAYGO Legislation With Budgetary Effects

PAYGO legislation is authorizing legislation that affects direct spending or revenues, and appropriations legislation that affects direct spending in the years after the budget year or affects revenues in any year.[3] For a more complete description of the Statutory PAYGO Act, see Chapter 6, "Budget Concepts," of the *Analytical*

[1] This report encompasses laws enacted between January 3, 2021 at noon and January 3, 2022 at 11:56 a.m. (Pub. L. 116–285 through Pub. L. 117–81).

[2] References to years on the PAYGO scorecards are to fiscal years.

[3] Provisions in appropriations acts that affect direct spending in the years after the budget year (also known as "outyears") or affect revenues in any year are considered to be budgetary effects for the purposes of the PAYGO scorecards except if the provisions produce outlay changes that net to zero over the current year, budget year, and the four subsequent years. As specified in section 3 of the PAYGO Act, off-budget effects are not counted as budgetary effects. Off-budget effects refer to effects on the Social Security trust funds (Old-Age and Survivors Insurance and Disability Insurance) and the Postal Service.

Perspectives volume of the 2022 President's Budget, found on the website of the U.S. Government Printing Office (*https://www.govinfo.gov/app/collection/budget/2022/BUDGET-2022-PER*).

The PAYGO Act's requirement of deficit neutrality is based on two scorecards that tally the cumulative budgetary effects of PAYGO legislation as averaged over rolling 5- and 10- year periods starting with the budget year. The 5-year and 10-year PAYGO scorecards for each congressional session begin with the balances of costs or savings carried over from previous sessions and then tally the costs or savings of PAYGO laws enacted in the most recent session.

The 5-year and 10-year PAYGO scorecards for the first session of the 117th Congress began with balances of zero in each year because Section 1401(d) of Public Law 116–260 set each year of the scorecards to zero at the end of the second session of the 116th Congress. Laws enacted during the first session of the 117th Congress created balances on the 5- and 10-year scorecards of $370,633 million and $187,020 million in each year, respectively. Public Law 117–71 shifted the fiscal year 2022 debits on both scorecards to fiscal year 2023. Therefore, the 2022 balance on both the 5- and 10-year scorecards is zero and the 2023 balances on the 5- and 10-year scorecards are $741,265 million and $374,039 million, respectively. The debit for the remaining years on the 5-year scorecard, 2024–2026, is $370,633 million per year and the debit for the remaining years on the 10-year scorecard, 2024–2031, is $187,020 million per year.

In the first session of the 117th Congress, 35 laws were enacted that were determined to constitute PAYGO legislation. Of the 35 enacted PAYGO laws, 12 laws were estimated to have PAYGO budgetary effects (costs or savings) in excess of $500,000 over one or both of the 5-year or 10-year PAYGO windows. These were:

- Public Law 116–286, 1921 Silver Dollar Coin Anniversary Act;
- Public Law 116–313, To deem an urban Indian organization and employees thereof to be a part of the Public Health Service for the purposes of certain claims for personal injury, and for other purposes.;
- Public Law 116–315, Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020;
- Public Law 116–325, Bankruptcy Administration Improvement Act of 2020;
- Public Law 117–2, American Rescue Plan Act of 2021;
- Public Law 117–7, To prevent across-the-board direct spending cuts, and for other purposes.;
- Public Law 117–27, VOCA Fix to Sustain the Crime Victims Fund Act of 2021;
- Public Law 117–43, Extending Government Funding and Delivering Emergency Assistance Act;
- Public Law 117–58, Infrastructure Investment and Jobs Act;
- Public Law 117–61, Protecting America's First Responders Act of 2021;
- Public Law 117–71, Protecting Medicare and American Farmers from Sequester Cuts Act; and
- Public Law 117–76, Responsible Education Mitigating Options and Technical Extensions Act.

In addition to the laws identified above, 23 laws enacted in this session were estimated to have negligible budgetary effects on the PAYGO scorecards—costs or savings of less than $500,000 over both the 5-year and 10-year PAYGO windows—including the two laws enacted with emergency designations discussed below.

II. Budgetary Effects Excluded From the Scorecard Balances

A. Legislation Designated as Emergency Requirements

As shown on the scorecards, two laws were enacted in the first session of the 117th Congress with an emergency designation under the Statutory PAYGO Act, and that had PAYGO effects:

- Public Law 117–31, Emergency Security Supplemental Appropriations Act, 2021; and
- Public Law 117–39, Emergency Repatriation Assistance for Returning Americans Act.

The effects of the provisions in these laws that are designated as emergency requirements appear on the scorecard, but are subtracted before computing the scorecard totals.

B. Statutory Provisions Excluding Legislation From the Scorecards

Four laws enacted in the first session of the 117th Congress had estimated budgetary effects on direct spending and revenues that were excluded from the calculations for the PAYGO scorecards due to provisions in law excluding all or part of the law from section 4(d) of the PAYGO Act.

One law was excluded entirely from the scorecards:

- Public Law 117–6, PPP Extension Act of 2021.

In addition, budgetary effects in three laws were excluded by provisions excluding certain portions of those laws from the scorecards:

- Public Law 117–43, Extending Government Funding and Delivering Emergency Assistance Act;
- Public Law 117–58, Infrastructure Investment and Jobs Act; and
- Public Law 117–70, Further Extending Government Funding Act.[4]

III. PAYGO Scorecards

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[4] Section 2201 of Public Law 117–70 excluded the budgetary effects of Division C from the PAYGO scorecards. There were no PAYGO budgetary effects for Divisions A and B of Public Law 117–70, so the scorecards do not include an entry for Public Law 117–70.

STATUTORY PAY-AS-YOU-GO SCORECARDS

(In millions of dollars; negative amounts portray decreases in deficits)

	2022	2023	2024	2025	2026
First Session of the 117th Congress	370,633	370,633	370,633	370,633	370,633
Balances from Previous Sessions	0	0	0	0	0
Change in balances pursuant to Sec. 7 of P.L. 117-71	-370,633	370,633	0	0	0
5-year PAYGO Scorecard	0	741,265	370,633	370,633	370,633

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
First Session of the 117th Congress	187,020	187,020	187,020	187,020	187,020	187,020	187,020	187,020	187,020	187,020
Balances from Previous Sessions	0	0	0	0	0	0	0	0	0	0
Change in balances pursuant to Sec. 7 of P.L. 117-71	-187,020	187,020	0	0	0	0	0	0	0	0
10-year PAYGO Scorecard	0	374,039	187,020	187,020	187,020	187,020	187,020	187,020	187,020	187,020

IV. Legislative Revisions to the PAYGO Scorecards

Section 7 of Public Law 117–71, the Protecting Medicare and American Farmers from Sequester Cuts Act, states, ''For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 117th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2022 and added to such scorecard in 2023.'' Accordingly, both the 5- and 10-year scorecards deduct the debit from 2022 and add that debit to 2023.

V. Sequestration Order

As shown on the scorecards, the budgetary effects of PAYGO legislation enacted in the first session of the 117th Congress, combined with section 7 of Public Law 117–71, resulted in no costs on either the 5-year or the 10-year scorecard in the budget year, which is 2022 for the purposes of this Report. Because the costs for the budget year, as shown on the scorecards, were set to zero for the budget year, there is no ''debit'' on either scorecard under section 3 of the PAYGO Act, 2 U.S.C. 932, and a sequestration order is not required.[5]

[FR Doc. 2022–01516 Filed 1–25–22; 8:45 am]

BILLING CODE 3110–01–C

[5] Sequestration reductions pursuant to the Balanced Budget and Deficit Control Act (BBEDCA) Section 251A for 2022 were calculated and ordered in a separate report and are not affected by this determination. See: *https://www.whitehouse.gov/wp-content/uploads/2021/05/BBEDCA_251A_Sequestration_Report_FY2022.pdf*

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0087]

Preparing Probabilistic Fracture Mechanics Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 1.245 (Revision 0), ''Preparing Probabilistic Fracture Mechanics Submittals'' and accompanying NUREG/CR–7278, ''Technical Basis for the use of Probabilistic Fracture Mechanics in Regulatory Applications.'' This RG describes a framework to develop the contents of a licensing submittal that the staff of the NRC considers acceptable when performing probabilistic fracture mechanics (PFM) analyses in support of regulatory applications. The NUREG provides the technical basis for RG 1.245.

DATES: Revision 0 to RG 1.245 is available on January 26, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0087 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0087. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

Revision 0 to RG 1.245, the associated regulatory analysis, and NUREG/CR–7278 may be found in ADAMS under Accession Nos. ML21334A158, ML21034A261, and ML22014A406, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Patrick Raynaud, telephone: 301–145–1987, email: *Patrick.Raynaud@nrc.gov* and Kyle Song, telephone: 301–415–3612, email: *Kyle.Song@nrc.gov.* Both are staff in the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 1.245 was issued with a temporary identification of Draft Regulatory Guide, DG–1382, ADAMS Accession No. ML21034A328.

II. Additional Information

The NRC published a notice of the availability of DG–1382 in the **Federal Register** on September 23, 2021 (86 FR 52927) for a 30-day public comment period. The public comment period closed on October 25, 2021. Public comments and the staff responses to the public comments on DG–1382 are available in ADAMS under Accession No. ML21306A292.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

RG 1.245 and NUREG/CR–7278 do not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests;'' do not constitute forward fitting as that term is defined and described in MD 8.4; and do not affect the issue finality of any approval issued under 10 CFR part 52. As explained in RG 1.245, applicants and licensees are not be required to comply with the positions set forth in the RG.

Dated: January 20, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–01493 Filed 1–25–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0217]

Monitoring Criteria and Methods to Calculate Occupational Radiation Doses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; extension of comment period.

SUMMARY: On December 17, 2021, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft regulatory guide (DG), DG–8060, ''Monitoring Criteria and Methods to Calculate Occupational Radiation Doses.'' The public comment period was originally scheduled to close on January 31, 2022. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date for comments requested in the document published on December 17, 2021 (86 FR 71676) is extended until March 2, 2022. Comments should be filed no later than March 2, 2022. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0217. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven Garry, Office of Nuclear Reactor Regulation, telephone: 301–415–2766, email: *Steven.Garry@nrc.gov,* and Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0217 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action, by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0217.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For questions regarding use of ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, or 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0217 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

This DG, titled ''Monitoring Criteria and Methods to Calculate Occupational Radiation Doses,'' is temporarily identified by its task number, DG–8060. The DG is a proposed Revision 1 of RG 8.34 (ADAMS Accession No. ML21068A160). The proposed revision of RG 8.34 (Revision 1) describes acceptable methods for calculating the total effective dose equivalent. Proposed Revision 1 also provides acceptable methods for:

- Performing prospective dose evaluations,
- monitoring of unintended doses,
- monitoring dose from hot particles,
- assessing dose from wound injuries,
- calculating soluble uranium intakes, and
- processing of dosimetry devices.

On October 25, 2013, the NRC staff issued DG–8031, ''Monitoring Criteria and Methods to Calculate Occupational Radiation Doses,'' (ADAMS Accession No. ML13168A098), for public comment (78 FR 64030). DG–8031 was the proposed Revision 1 to RG 8.34. The NRC staff has elected not to finalize DG–8031 and is issuing DG–8060 as a replacement. The staff notes that DG–8060 considers and addresses technical issues and public comments related to the issuance of DG–8031.

III. Discussion

On December 17, 2021, the NRC published in the **Federal Register** (86 FR 71676) requesting comments on DG–8060, ''Monitoring Criteria and Methods to Calculate Occupational Radiation Doses.'' Upon the request of the Nuclear Energy Institute, the NRC has decided to extend the public comment period on this document until March 2, 2022, to allow more time for members of the public to submit their comments.

Dated: January 20, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–01492 Filed 1–25–22; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 11 a.m., January 19, 2022.[i]

PLACE: 844 North Rush Street, Chicago, Illinois 60611.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Internal Personnel Matters

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Authority: 5 U.S.C. 552b.

Dated: January 21, 2022.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022–01563 Filed 1–24–22; 11:15 am]

BILLING CODE 7905–01–P

[i] By unanimous, recorded vote of the Board members of the Railroad Retirement Board, such Board members determined that agency business required that this meeting be called with less than one week notice. 5 U.S.C. 552b(e)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94012; File No. SR-CboeBYX–2021–024]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To Make Clarifying Changes Regarding Its Periodic Auctions

January 20, 2022.

On October 14, 2021, Cboe BYX Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make certain clarifying changes regarding its Periodic Auctions. The proposed rule change was published for comment in the **Federal Register** on October 26, 2021.[3] On January 12, 2022, the Exchange filed Amendment No. 1 to the proposed rule change. On January 14, 2022, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2, which replaces in its entirety the proposal as originally submitted on October 14, 2021.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change [5]

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

This Amendment No. 2 to SR–CboeBYX–2021–024 amends and replaces in its entirety the proposal as originally submitted on October 14, 2021.[6] The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The purpose of this proposed rule change is to make certain clarifying changes to Exchange Rule 11.25 related to periodic auctions for the trading of U.S. equity securities (''Periodic Auctions'').[7] The Commission approved the Exchange's proposal to introduce Periodic Auctions on March 26, 2021.[8] The Exchange has not yet implemented Periodic Auctions. The Exchange is submitting this proposal in order to simplify certain portions of the Periodic Auction process and to add clarity to the rule text prior to implementation.

Specifically, the Exchange is proposing that: (i) Periodic Auction Eligible Orders [9] will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders [10] and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders [11] will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size. The Exchange is also proposing to make a simplifying change to reject Periodic Auction Orders that are immediate-or-cancel (''IOC''). Finally, the Exchange is proposing to make certain clean-up changes to Rule 11.25(b)(1), (2), and (3) to eliminate certain typos from the rule text.

Ranking Periodic Auction Eligible Orders

Rule 11.25(b)(2) currently reads as follows:

Periodic Auction Eligible Orders. A ''Periodic Auction Eligible Order'' is a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25. An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.

The first sentence makes clear that Periodic Auction Eligible Orders are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93390 (October 20, 2021), 86 FR 59202.

[4] The amendments to the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebyx-2021-024/srcboebyx2021024.htm.*

[5] This description of the proposed rule change was substantially prepared by the Exchange.

[6] The Exchange notes that it submitted Amendment No. 1 to this proposal on January 12, 2022, which it subsequently withdrew on January 14, 2022.

[7] The term ''Periodic Auction'' shall mean an auction conducted pursuant to Rule 11.25. *See* Rule 11.25(a)(4).

[8] *See* Securities Exchange Act Release No. 91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR–BYX–2020–021, Amendments No. 3 and 4) (the ''Approved Proposal''). The Exchange also notes that the original proposal to adopt Periodic Auctions (the ''Original Proposal'') was submitted on July 17, 2020. *See* Securities Exchange Act Release No. 89424 (July 29, 2020), 85 FR 47262 (August 4, 2020).

[9] The term ''Periodic Auction Order'' shall mean a ''Periodic Auction Only Order'' or ''Periodic Auction Eligible Order'' as those terms are defined in Rules 11.25(b)(1)–(2), and the term ''Periodic Auction Book'' shall mean the System's electronic file of such Periodic Auction Orders. *See* Rule 11.25(a)(6).

[10] The term ''Continuous Book Order'' shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term ''Continuous Book'' shall mean System's electronic file of such Continuous Book Orders. *See* Rule 11.25(a)(2).

[11] *See* BYX Rule 11.9(c)(5).

eligible to trade on the Continuous Book and suggests that Periodic Auction Eligible Orders would be ranked as non-displayed limit orders by referring to such as orders as types of non-displayed limit orders. However, reading this sentence together with the second sentence could make it unclear as to how Periodic Auction Eligible Orders are ranked and how an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Orders and resting orders on the Continuous Book.[12]

As such, the Exchange is proposing to add a new sentence in between the two sentences that reads ''Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a).''[13] This will make explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders, as further discussed below. Practically, the Exchange believes this clarifying change is reasonably inferred from the definition of Periodic Auction Eligible Orders, which defines a Periodic Auction Eligible Order as (emphases added) ''*a Non-Displayed Limit Order* eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25.'' If such orders are eligible to trade on the Continuous Book, they would need to be prioritized by the System and it would only make sense for them to be prioritized in accordance with the Exchange's existing priority rules. Rather than rely on this implication, the Exchange is proposing to explicitly state this in the Rules by adding the language proposed above.

Example 1:

NBBO: $10.00 × $10.05

Order 1: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 2: Buy 100 shares @ $10.02 Displayed—Continuous Book Order

Order 3: Sell 100 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 2 is ranked ahead of Order 1 because it is a displayed limit order in accordance with Rule 11.12(a)(1), meaning that Order 3 would execute 100 shares against Order 2.

Incoming Periodic Auction Eligible Orders

As described above, Rule 11.25(b)(2) currently states that ''An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.'' This language was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders before interacting with Periodic Auction Only Orders, as made clear in Example 3 in the Approved Proposal (''AP Example 3'').[14] While part of the rule is made clear by the surrounding rule text and the clarifying context from the Approved Proposal, on its own it could be read to imply that all resting Periodic Auction Eligible Orders would either be prioritized behind any executable Continuous Book Order or that such resting orders should immediately execute against an incoming Periodic Auction Eligible Order instead of initiating a Periodic Auction, which is not the case. Additionally, another example from the Approved Proposal laid out circumstances under which an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order.[15] The Exchange is proposing to add language to Rule 11.25(b)(2) in order to change the outcome of that example such that an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a more aggressively priced Periodic Auction Only Order will initiate a Periodic Auction (the ''Aggressive PAO Change'').

Specifically, the Exchange is proposing to add language to Rule 11.25(b)(2) such that it will instead read (additions in *italics*): ''An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction *against a Periodic Auction Only Order at the same price* will trade immediately

[12] The Exchange notes that in the Original Proposal the second sentence of Rule 11.25(b)(2) originally said ''An incoming PAE Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will initiate a Periodic Auction.'' In Amendment 1 of the Original Proposal, the Exchange instead proposed the current language which remained in the Approved Proposal. The intent of this change in the rule text was to make clear that the Exchange would not prioritize a Periodic Auction Order over every other resting order, which is made clear in the examples and in the Approved Proposal. The proposed new language further clarifies this intent from Amendment 1 of the Original Proposal in the rule text.

[13] Rule 11.12(a)(1) and (2) relate to the priority and ranking of orders and specifically state: ''(a) Ranking. Orders of Users shall be ranked and maintained in the BYX Book based on the following priority: (1) Price. The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases. (2) Time. Subject to the execution process described in Rule 11.13(a) below, where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. The System shall rank equally priced trading interest within the System in time priority in the following order: (A) Displayed size of limit orders; (B) Non-Displayed limit orders; (C) Non-Displayed Pegged Orders; (D) Mid-Point Peg Orders; (E) Reserve size of orders; (F) Discretionary portion of Discretionary Orders as set forth in Rule 11.9(c)(9); (G) Supplemental Peg Orders.''

[14] AP Example 3 specifically provides the following example:

NBBO: $10.00 × $10.10

Order 1: Buy 100 shares @ $10.05 Midpoint Peg—Periodic Auction Only

Order 2: Buy 100 shares @ $10.05 Midpoint Peg—Continuous Book Order

Order 3: Sell 100 shares @ $10.05 Midpoint Peg—Periodic Auction Eligible

A Periodic Auction is not initiated. Instead, Order 3, which is a Periodic Auction Eligible Order, would trade immediately with the Continuous Book and execute 100 shares against Order 2 at $10.05. Although Order 1 is available to initiate a Periodic Auction, a Periodic Auction Eligible Order would trade immediately with Continuous Book Orders on entry if it can do so instead of initiating a Periodic Auction.

[15] The Exchange notes that the functionality captured in Example 6 as laid out in Amendment No. 3 to the Approved Proposal as corrected in Amendment No. 4 to the Approved Proposal (''Corrected Example 6 from Amendment No. 3'') provided that even where a Periodic Auction Only Order was priced more aggressively than a Continuous Book Order, the incoming Periodic Auction Eligible Order would trade immediately with the Continuous Book. While this example was technically replaced as part of Amendment No. 4, it was laid out in Amendment No. 3 with an incorrect outcome and Amendment No. 4 provided some explanation about what should have happened before laying out a new replacement Example 6. What follows is the example as laid out in Amendment No. 3 and followed by the explanation from Amendment No. 4.

NBBO: $10.00 × $10.10

Order 1: Buy 500 shares @ $10.05 Non-Displayed—Periodic Auction Only

Order 2: Buy 300 shares @ $10.04 Non-Displayed—Continuous Book Order

Order 3: Sell 100 shares @ $10.04 Non-Displayed—Periodic Auction Eligible

Order 4: Sell 200 shares @ $10.04 Non-Displayed—Periodic Auction Eligible

Specifically, Amendment No. 4 stated ''the amended functionality would require that Order 3 and Order 4, which are Periodic Auction Eligible Orders, each trade immediately with Order 2, which is a Non-Displayed Continuous Book Order.''

As such, current functionality provides that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, which is consistent with Corrected Example 6 from Amendment No. 3.

with the Continuous Book. *Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a).*'' [16] This language will: (i) Make explicit in the rule text the outcome described in AP Example 3; and (ii) change the functionality from how it was described in the Approved Proposal such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively priced Continuous Book Order. Further, this proposed change will provide additional clarity to the language in Rule 11.25(c) describing when a Periodic Auction will be initiated. Specifically, Rule 11.25(c) provides that a Periodic Auction will be initiated in a security when ''one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell.'' The proposed amendment to Rule 11.25(b)(2) to specifically describe how incoming Periodic Auction Eligible Orders will interact with resting orders will add clarity regarding what it means when Periodic Auction Orders become ''executable'' against one another in this context.

Example 2:
NBBO: $10.00 × $10.05
Order 1: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible
Order 2: Buy 100 shares @ $10.02 Displayed—Continuous Book Order
Order 3: Sell 400 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 3 would execute 100 shares against Order 2 (consistent with Example 1). Order 3 and Order 1 would then be executable against one another and are both Periodic Auction Eligible Orders, so the remaining 300 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.[17]

Example 3:
NBBO: $10.00 × $10.05
Order 1: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible
Order 2: Buy 100 shares @ $10.02 Non-Displayed—Continuous Book Order
Order 3: Sell 400 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

This example is identical to Example 2 except that Order 2 is Non-Displayed rather than Displayed. Upon entry, Order 3 would be executable against Order 1 and both are Periodic Auction Eligible Orders, so the 400 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.[18]

Example 4:
NBBO: $10.00 × $10.05
Order 1: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Only
Order 2: Buy 100 shares @ $10.02 Non-Displayed—Continuous Book Order
Order 3: Sell 100 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Because an incoming Periodic Auction Eligible Order that ''is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,'' Order 3 would execute 100 shares against Order 2 and a Periodic Auction would not be initiated.

Example 5:
NBBO: $10.00 × $10.05
Order 1: Buy 200 shares @ $10.03 Non-Displayed—Periodic Auction Only
Order 2: Buy 100 shares @ $10.02 Non-Displayed—Continuous Book Order
Order 3: Sell 100 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Because an incoming Periodic Auction Eligible Order that ''is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,'' and Order 1 is priced more aggressively than Order 2 (*i.e.,* not against a Periodic Auction Only Order at the same price), the 100 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.[19]

Example 6:
NBBO: $10.00 × $10.05
Order 1: Buy 200 shares @ $10.03 Non-Displayed—Periodic Auction Only
Order 2: Buy 100 shares @ $10.02 Non-Displayed—Continuous Book Order
Order 3: Sell 100 shares @ $10.03 Non-Displayed—Periodic Auction Eligible

This example is identical to Example 5 except that Order 3 has a limit of $10.03 instead of $10.02. Because the only orders that are able to execute against one another are Order 3 and Order 1, Order 3 would post and the System would check to see whether a Periodic Auction could be initiated (which it could because Order 3 and Order 1 are executable against one another), and the Periodic Auction initiation process would begin.

Periodic Auction Eligible Orders With a Minimum Quantity

Rule 11.25(b)(2)(C) describes how Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not address how such orders will be handled in initiating Periodic Auctions. It states that ''Minimum Quantity Orders, as defined in Rule 11.9(c)(5),[20] will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order cannot be entered as Periodic Auction Eligible Orders.''

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they ''will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders''), but as noted above they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange is proposing to explain how it intends to handle such orders by adding a sentence that states ''A Periodic Auction Eligible Order entered with a minimum execution quantity will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size.'' This provides a

[16] *See supra* note 12.

[17] As noted in the Approved Proposal, Periodic Auctions would operate alongside trading on the Continuous Book. The Exchange has therefore developed its system for processing Periodic Auctions with the goal of minimizing interference with trading in the continuous market. Thus, in rare circumstances where a number of Periodic Auctions could potentially be triggered at or around the same time, the Exchange may throttle the initiation of such Periodic Auctions if needed to maintain appropriate system performance and latency. In the event that the System was throttling Periodic Auctions during this example, it would delay the Periodic Auction initiation process. *See* Approved Proposal at 17234.

[18] *See supra* note 15.

[19] *See supra* note 15.

[20] *See* Rule 11.9(c)(5).

straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution quantity functionality. The following examples represent basic illustrations of the unique issues and explanation of how the Exchange will manage incoming Periodic Auction Eligible Orders with minimum size requirements.

Example 7:

NBBO: $10.00 × $10.05

Order 1: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 2: Buy 100 shares @ $10.02 Displayed—Continuous Book Order

Order 3: Buy 400 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 4: Sell 1000 shares @ $10.02 Non-Displayed—Periodic Auction Eligible; Minimum Quantity = 500

Order 4 would execute 700 shares upon entry against Orders 2, 1, and 3, and would post 300 shares. Even though there are a collective 600 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order satisfies the Minimum Quantity of 500 shares.

Example 8:

NBBO: $10.00 × $10.05

Order 1: Buy 300 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 2: Buy 500 shares @ $10.02 Non-Displayed—Continuous Book Order

Order 3: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 4: Sell 800 shares @ $10.02 Non-Displayed—Periodic Auction Eligible; Minimum Quantity = 500

Order 4 would execute 800 shares upon entry against Orders 1 and 2. Even though there are a collective 500 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order would satisfy the Minimum Quantity of 500 shares.

Example 9:

NBBO: $10.00 × $10.05

Order 1: Buy 500 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 2: Buy 500 shares @ $10.02 Non-Displayed—Continuous Book Order

Order 3: Buy 200 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 4: Sell 800 shares @ $10.02 Non-Displayed—Periodic Auction Eligible; Minimum Quantity = 500

The only difference between this Example 9 and Example 8 above is that Order 1 has 500 shares instead of 300. This change means that Order 1 would on its own satisfy the 500 share minimum size requirement of Order 4 and would thus be ''a single contra-side Periodic Auction Order'' that ''would satisfy the specified minimum size'' of the incoming order. As such, Order 4 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.[21] Similarly, where a Periodic Auction Eligible Order with a minimum size requirement is already on the book, incoming orders that do not individually satisfy the minimum size requirements will not execute immediately. However, consistent with the Exchange's treatment of Minimum Quantity Orders generally, such orders will aggregate after posting.

Example 10:

NBBO: $10.00 × $10.05

Order 1: Buy 1000 shares @ $10.02 Non-Displayed—Periodic Auction Eligible; Minimum Quantity = 500

Order 2: Sell 400 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Order 3: Sell 400 shares @ $10.02 Non-Displayed—Periodic Auction Eligible

Orders 2 and 3 do not satisfy the minimum size requirement of Order 1 and therefore would not execute or initiate a Periodic Auction upon entry. After the orders are resting, however, the System will aggregate the size of Orders 2 and 3, check whether a Periodic Auction can be initiated (which it could because the minimum size requirement for Order 1 is satisfied), and the Periodic Auction initiation process would begin.[22]

IOC Orders

The Exchange is also proposing to amend Rule 11.25(b)(2)(A) in order to reject Periodic Auction Orders that are IOC. Based on industry feedback, the Exchange believes that the majority of participants would use RHO[23] orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the Periodic Auction process.[24] Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. As such, the Exchange is proposing to reject Periodic Auction Orders that are IOC orders.

Clean-Up Changes

The Exchange is also proposing to make non-substantive clean-up changes to make references to ''Non-Displayed Limit Order'' in Rules 11.25(b)(1) and (2) instead read ''non-displayed limit order'' and to delete an extra instance of the word ''be'' from Rule 11.25(b)(3).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[25] in general, and Section 6(b)(5) of the Act,[26] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. As further described below, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would help to clarify and simplify the Exchange's Periodic Auction process, which itself is intended to facilitate improved price formation and provide additional execution opportunities for investors, particularly in securities that may suffer from limited liquidity, including thinly-traded securities. Specifically, the Exchange believes that its proposed changes to the rule text that: (i) Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with

[21] *See supra* note 15.

[22] *See supra* note 15.

[23] As provided in Rule 11.9(b)(7), an RHO order is an order that is designated for execution only during Regular Trading Hours.

[24] The Exchange notes that it may consider adding IOC functionality in the future in the event that there was meaningful interest from participants.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders [27] and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size, are all consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes make the rules of the Exchange more straightforward and easily understandable. The Exchange also believes that its simplifying change to reject Periodic Auction Orders that are IOC is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility. Finally, the Exchange believes that its proposed non-substantive clean-up changes to Rule 11.25(b)(1), (2), and (3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

Ranking Periodic Auction Eligible Orders

The Exchange believes that the proposed change to add a new clarifying sentence to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders. As described above, the point that is being clarified could reasonably be inferred from the definition of Periodic Auctions Orders and is consistent with the intent of current Rule 11.25(b)(2). The Exchange believes that adding the clarifying change will promote just and equitable principles of trade and remove impediments to a free and open market by making explicit how Periodic Auction Eligible Orders will be ranked and how incoming orders will interact with resting orders.

Incoming Periodic Auction Eligible Orders

The Exchange believes that the proposed change to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making more clear how incoming Periodic Auction Eligible Orders will interact with resting orders. The current rule text was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders before interacting with Periodic Auction Only Orders, as made clear in AP Example 3. The Exchange believes that the proposed new language is consistent with the Act in that it will make the rule text more clear and easily understandable. The proposed rule text will also change the existing functionality from how it was described in Corrected Example 6 from Amendment No. 3 such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively priced Continuous Book Order. The Exchange believes that this proposed new language will specify how resting Periodic Auction Only Orders will interact with incoming Periodic Auction Eligible Orders by specifying that immediate executions will occur where a Periodic Auction Only Order and Continuous Book Order are at the same price, but a Periodic Auction will be initiated when the Periodic Auction Only Order is priced more aggressively than the Continuous Book Order. The Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the change strikes a middle ground between prioritizing immediate executions and initiating Periodic Auctions as it relates to incoming Periodic Auction Eligible Orders and how they interact with resting Periodic Auction Only Orders and Continuous Book Orders. Further, the Exchange also notes that the proposed change will also clarify what it means when Periodic Auction Orders become ''executable'' against one another. Additionally, this proposal specifies that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, but where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, the incoming Periodic Auction Eligible Order will be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin. The Exchange believes that such proposed functionality would promote just and equitable principles of trade and remove impediments to a free and open market by incentivizing the entry of aggressively priced Periodic Auction Only Orders, which the Exchange believes will add additional detail already memorialized in the Approved Proposal and making the Exchange's rules related to Periodic Auctions more explicit.

Periodic Auction Eligible Orders With a Minimum Quantity

The Exchange believes that its proposed change to Rule 11.25(b)(2)(C) is also consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making clear how Minimum Quantity Orders will be handled in initiating Periodic Auctions. Specifically, Rule 11.25(b)(2) currently describes how Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not explicitly address how such orders will be handled in initiating Periodic Auctions.

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they ''will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders''), but they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because

[27] The term ''Continuous Book Order'' shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term ''Continuous Book'' shall mean System's electronic file of such Continuous Book Orders. *See* Rule 11.25(a)(2).

Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange believes that it will benefit investors to explain how it intends to handle such Minimum Quantity Orders. The Exchange believes that having a Periodic Auction Eligible Order entered with a minimum execution quantity only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size represents a straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution quantity functionality. As such, the Exchange believes that the proposed change to Rule 11.25(b)(2)(C) related to Minimum Quantity Orders is consistent with the Act.

IOC Orders

The Exchange believes that the proposed change to reject Periodic Auction Orders that are IOC orders will remove impediments to and perfect a national market system by simplifying the Periodic Auction process without meaningfully impacting its functionality. Specifically, based on industry feedback, the Exchange believes that the majority of participants would use RHO orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the Periodic Auction process. Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. The Exchange also believes that eliminating this order instruction is consistent with the public interest and the protection of investors given the expected limited demand for use of this order instruction upon implementation. As such, the Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility.

Clean-Up Changes

Finally, the Exchange believes that making the non-substantive clean up changes including changing references to ''Non-Displayed Limit Order'' in Rules 11.25(b)(1) and (2) instead read ''non-displayed limit order'' and to delete an extra instance of the word ''be'' from Rule 11.25(b)(3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would allow the Exchange to make certain clarifying and simplifying changes to the Exchange's rules and functionality related to Periodic Auctions in a manner consistent with the current Rules (and the Approved Proposal), making the Periodic Auction functionality more straightforward and transparent prior to implementation. The Exchange's Periodic Auction functionality is designed to introduce innovative functionality to allow competition and to improve market quality in thinly-traded and other securities. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow and this proposal will allow the Exchange to implement certain simplifying and clarifying changes to its Periodic Auction rules and functionality that will allow it to better compete in this market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[29] which requires that a national securities exchange be so organized as to have the capacity to be able to (among other things) carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. These changes, including the clean-up changes, will allow BYX to continue to be organized to have the capacity to be able to comply with its rules. The Commission also finds that the clarifications regarding the operation of Periodic Auctions are consistent Section 6(b)(5) of the Act,[30] which requires that the proposed rule change be designed to (among other things) remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the Exchange's effort to help market participants' understand how order types will interact and the operation of Periodic Auctions is consistent with the protection of investors and the public interest.

Similarly, the Commission finds that the proposal to reject Periodic Auction Orders that are IOC, as well as the proposal to permit a Periodic Auction Eligible Order entered with a minimum execution quantity to initiate a Periodic Auction upon entry only where a single contra-side Periodic Auction Order satisfies the specified minimum size, are consistent with Section 6(b)(5) of the Act. The rejection of Periodic Auction Orders that are IOC should simplify

[28] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(1).

[30] 15 U.S.C. 78f(b)(5).

Periodic Auctions without negatively affecting their utility and therefore the Commission believes this proposal is consistent with the protection of investors and the public interest. The Commission believes that the new provision that allows a Periodic Auction Eligible Order entered with a minimum execution quantity to initiate a Periodic Auction upon entry only where a single contra-side Periodic Auction Order satisfies the specified minimum size clarifies the operation of Periodic Auctions and therefore is consistent with the protection of investors and the public interest. Lastly, the Commission finds that the Aggressive PAO Change is consistent with Section 6(b)(5) of the Act.[31] The Commission believes that this discrete change may incentivize entry of aggressively priced Periodic Auction Only Orders and should in this particular circumstance improve the opportunity for price improvement for incoming orders, which is consistent with the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, the promotion of just and equitable principles of trade, and the protection of investors and the public interest.

III. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Exchange 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–CboeBYX–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 Number SR–CboeBYX–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2021–024, and should be submitted on or before February 16, 2022.

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange proposed the Aggressive PAO Change in place of a clarification it sought in the original proposal. As discussed above, the Aggressive PAO Change is consistent with the requirements of the Act,[32] and does not raise novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[33] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change, as modified by Amendment No. 2 (SR-CboeBYX–2021–024), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01465 Filed 1–25–22; 8:45 am]

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[31] As approved by the Approved Proposal, an immediate execution will occur where a Periodic Auction Only Order and Continuous Book Order are at the same price.

[32] *See supra* text following note 31.

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94016; File No. SR–LCH SA–2022–001]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the New Swaption Standard Terms Supplement

January 20, 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 January 18, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(i) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), is proposing to amend its CDS Clearing Supplement (the ''Clearing Supplement'') to incorporate new terms and to make conforming, clarifying, and clean-up changes intended to take into account the new iTraxx and CDX swaption documentation, to be published by the relevant Markit entity, updating swap curve references and model inputs to the relevant risk-free rates and making references to the new 2021 ISDA Interest Rate Derivatives Definitions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

published by the International Swaps and Derivatives Association, Inc. (''ISDA'') (the ''Proposed Rule Change'').[5]

The text of the Proposed Rule Change has been annexed as Exhibit 5.

The launch of this initiative will be contingent upon LCH SA's receipt of all necessary regulatory approvals, including the approval by the Commission of the proposed rule change described herein.

(b) Not applicable.

(c) Not applicable.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the Proposed Rule Change is to make the necessary amendments to the Clearing Supplement to take into account upcoming versions of the:

—iTraxx® Europe Untranched Transactions Swaption Standard Terms Supplement; and

—CDX Untranched Transactions Swaption Standard Terms Supplement, due to be published respectively by Markit Indices GmbH and Markit North America, Inc., in December 2021 and later in 2022 (together the ''New Swaption STSs'').

Minimal changes have been made to the New Swaption STSs mainly in order to (i) update the model inputs to risk-free rates, and (ii) incorporate the new 2021 ISDA Interest Rate Derivatives Definitions.

The new amendments proposed to be made to Part C of the Clearing Supplement in order to take into account the New Swaption STSs have been replicated in Part B for consistency purposes.

(1) Proposed Amendments To Reflect the New Swaption STSs

In Part C of the Clearing Supplement, the definitions of ''CDX Swaption Standard Terms Supplement'' and ''iTraxx® Swaption Standard Terms Supplement'' as set out in Section 1.2 have been amended to refer to the latest version in force as published by the relevant Markit entity or any affiliate hereof. Similar changes have been made to the definition of ''Index Swaption Cleared Transaction Confirmation''.

Consequently, Section 1.2 of Part C has been also amended to include the new defined term of ''2021 Definitions'' which mean the 2021 ISDA Interest Rate Derivatives Definitions published by ISDA as the New Swaption STSs to be published in 2022 will refer to them instead of the 2006 Definitions. Therefore the defined term ''ISDA Swap Transaction Definitions'' has been also added in Section 1.2 of Part C to refer to the 2021 Definitions or the 2006 Definitions which are incorporated by reference in the Markit Standard Terms Supplement.

Any reference to the ''2006 Definitions'' in the Clearing Supplement has been replaced with a reference to the new defined term ''ISDA Swap Transaction Definitions'' so that depending on the version of the iTraxx® or CDX Swaption Standard Terms Supplement in force, either the 2006 Definitions or the 2021 Definitions will apply.

The definition of ''Exercise Notice'' in Section 1.2. of Part C has been amended to add a reference to the relevant provisions of the 2021 Definitions.

The new defined term ''Markit Standard Terms Supplement'' has been included in Section 1.2 of Part C, for the purpose of referring to the iTraxx® Swaption Standard Terms Supplement and/or the CDX Swaption Standard Terms Supplement, as the context requires.

A new Section 2.4 ''Markit Standard Terms Supplement Updates'' has been added in Section 2 of Part C to allow LCH SA to compress Index Swaption Cleared Transactions subject to different versions of the Markit Standard Terms Supplement, provided they are of the same Swaption Type, following consultation with the CDSClear Product Committee. For consistency purpose, we have added a reference to this new Section 2.4 in the definition of ''Swaption Type'' in Section 1.2 of Part C. The purpose of the amendment is to make the link between the new Section 2.4 that would allow for the compression of the relevant transactions and the definition of ''Swaption Type'' which is a condition to be complied with for compression purpose in accordance with the CDS Clearing Rule Book and Section 5 of the Procedures.

In the 2021 Definitions and the New Swaptions STSs, the defined term of ''Underlying Swap Transaction'' is replaced by ''Underlying Transaction'': This change has been replicated in Sections 7.2, 7.3 and 7.4 and Appendix VIII of Part C of the Clearing Supplement by making an additional reference to this equivalent defined term in the 2021 Definitions so that the correct defined term will apply depending on whether the 2006 Definitions or the 2021 Definitions are applicable.

(2) Proposed Amendments for Consistency Purpose

In Part B of the Clearing Supplement, the definition of ''Index Cleared Transaction Confirmation'' has been amended to reflect the proposed changes made to equivalent definitions in Part C. that would only apply to index transaction as they are subject to the relevant standard terms supplement published by Markit (contrary to the single name transactions). Thus, the sub-paragraphs of the definition refers to the last version of the confirmation or relevant Standard Terms Supplement which is published by the relevant Markit entity or its affiliate. The reference to the Implementation Date of the 2019 ISDA Narrowly Tailored Credit Event Protocol has been removed from these sub-paragraphs as the Implementation Date has already passed.

Fungibility provisions which are equivalent to the new Section 2.4 of Part C have been included in a new Section 2.6 for consistency purposes so that should there be two versions of the relevant Markit Standard Terms Supplement that would apply, there would be the necessary provisions for allowing LCH SA to proceed with the compression of transactions subject to different versions. Consequently, the new defined term of ''Markit Standard Terms Supplement'' has been added in Section 1.2 of Part B and shall mean any of the published Standard Terms Supplements as referred to in the definition of ''Index Cleared Transaction Confirmation'' in this Section 1.2 and a reference to the new Section 2.6 has been added in the definition of ''CDS Type'' in Section 1.2 of Part B. The purpose of the amendment is to make the link between the new Section 2.6 that would allow for the compression of the relevant transactions and the definition of ''CDS Type'' which is a condition to be complied with for

[5] Capitalized terms not defined or modified in this rules proposal will have the same meaning as in LCH SA's existing CDS Clearing Rule Book or Clearing Supplement.

compression purpose in accordance with the CDS Clearing Rule Book and Section 5 of the Procedures.

(b) Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 [6] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22 [7]. In particular, Section 17(A)(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[8] Consistent with this requirement, the Proposed Rule Change is needed so that LCH SA can duly continue clearing the CDS products referencing the new standard terms supplement properly, promptly and accurately. In addition, making the Proposed Rule Change would not require changes to the existing margin methodology, default management policies and procedures and operational process. All products proposed for clearing by CDSClear will continue to be cleared pursuant to LCH SA's existing clearing arrangements and related financial safeguards, protections and risk management procedures which is consistent with Exchange Act Rule 17Ad–22(e)(17).[9]

Further, Rule 17Ad–22(e)(1) [10] requires a covered clearing agency to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. Rule 17Ad–22(e)(2)(iii) [11] also requires a covered clearing agency to support the objectives of participants.

LCH SA believes that this Proposed Rule Change would help to ensure that LCH SA CDSClear service is referencing the current version in force of the standard terms supplement, and therefore would help to establish a clear, transparent, and enforceable legal basis for such products to be cleared contributing to the objectives of market participants to use the industry standard documentation and which is also fully consistent with the requirement for a covered clearing agency to have a clear, transparent and enforceable legal aspect for each aspect of its activities.

As explained above, the Proposed Rule Change is only intended to take into account the upcoming versions of the New Swaption STSs in order to duly update the model inputs to risk-free rates, and incorporate the new 2021 ISDA Interest Rate Derivatives Definitions under the CDS Clearing rules to make it up to date, clear and duly enforceable.

Further, the Proposed Rule Change will also permit market participants to have certainty over the fungibility of options executed under different versions of the STS, and clear options expiring in April 2022 and beyond using the market standard terms. As LCH SA lists the next three expiries, the April 2022 expiry options should be made available to clear the day after the January expiry, *i.e.,* 20 January 2022.

For all the reasons above, LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 [12] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22 [13] discussed above.

B. Clearing Agency's Statement on Burden on Competition.

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[14]

As mentioned above, the Proposed Rule Change is reflecting the New Swaption STSs including the ISDA Definitions that are an industry response and initiative applicable to all CDS market participants.

Further, this Proposed Rule Change would apply equally to all clearing members and their clients and would not adversely affect their ability to engage in cleared transactions or to access LCH SA's clearing services as LCH SA will continue to apply its existing fair and open access criteria to the CDSClear service.

Therefore, LCH SA does not believe that the proposed rule would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LCH SA–2022–001 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–LCH SA–2022–001. 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

[6] 15 U.S.C. 78q–1.
[7] 17 CFR 240.17Ad–22.
[8] 15 U.S.C. 78q–1(b)(3)(F).
[9] 17 CFR 240.17Ad–22(e)(17).
[10] 17 CFR 240.17Ad–22(e)(1).
[11] 17 CFR 240.17Ad–22(e)(2)(iii).
[12] 15 U.S.C. 78q–1.
[13] 17 CFR 240.17Ad–22.
[14] 15 U.S.C. 78q–1(b)(3)(I).

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 LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rulebooks/proposed-rule-changes.*

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–LCH SA–2022–001 and should be submitted on or before February 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01461 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94008; File No. SR–CboeEDGX–2021–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report, Modify the Name of Rule 13.8 to "Data Products", and Add a Preamble to Rule 13.8

January 20, 2022.

On November 17, 2021, Cboe EDGX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report, modify the name of Rule 13.8 to ''Data Products'', and add a preamble to Rule 13.8. The proposed rule change was published in the **Federal Register** on December 7, 2021.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 7, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGX–2021–049).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01469 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93696 (December 1, 2021), 86 FR 69306. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedgx-2021-049/srcboeedgx2021049.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94014; File No. SR–ICC–2021–023]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures

January 20, 2021.

I. Introduction

On November 19, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4,[2] a proposed rule change to revise Rule 26R–319 of the ICC Clearing Rules (''Rules'') and the ICC Exercise Procedures (''Exercise Procedures'') [3] in connection with the clearing of credit default index options (''Index Swaptions''). The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

Pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.

B. Revisions to Rule 26R–319

ICC Rule 26R–319 describes what happens upon the exercise of an Index Swaption. ICC Rule 26R–319 consists of three parts: 26R–319(a), 26R–319(b), and 26R–319(c). 26R–319(a) applies when a Swaption Buyer effectively exercises an Index Swaption and the underlying index is not subject to a restructuring due to a credit event, while (b) and (c) apply when an Index Swaption is effectively exercised and the underlying index is subject to a restructuring due to a credit event.

Under 26R–319(a), upon the effective exercise of an Index Swaption, a contract in the form of the underlying index comes into effect between the Swaption Buyer and ICC and an exactly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules and Exercise Procedures.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures; Exchange Act Release No. 34–93690 (Dec. 1, 2021); 86 FR 69308 (Dec. 7, 2021) (SR–ICC–2021–023) (''Notice'').

offsetting contract comes into effect between ICC and the Swaption Seller. The proposed rule change would not amend 26R–319(a).

26R–319(b) describes what happens when an Index Swaption is effectively exercised and one or more Event Determination Dates have occurred with respect to the underlying index on or prior to the Expiration Date. In that case, in addition to the new contracts that come into effect under 26R–319(a), certain additional settlements may be required, as further described in 26R–319(b).

The proposed rule change would make two amendments to 26R–319(b). The proposed rule change would add a parenthetical to clarify that 26R–319(b) does not apply to an Event Determination Date in respect of an M(M)R Restructuring Credit Event because 26R–319(c) would apply in that case, as described below. The proposed rule change would further modify subpart (i) of 26R–319(b) by adding a note that the settlement contemplated by that subsection would be subject to any modification with respect to fixed rate payments or accrual rebates as specified by ICC by Circular.

26R–319(c) describes what happens when an Index Swaption is effectively exercised and one or more M(M)R Restructuring Credit Events have occurred with respect to the underlying index on or prior to the Expiration Date. 26R–319(c) is only applicable to iTraxx Index Swaptions. Under 26R–319(c) as currently written, upon settlement the Swaption Buyer would receive a re-versioned underlying index plus a single name CDS contract.

The proposed rule change would amend 26R–319(c) so that, in certain circumstances, the Swaption Buyer would receive a re-versioned underlying index plus a single name CDS contract *and* a cash payment. Settlement under 26R–319(c) as amended therefore could result in the re-versioned underlying index and a blend of single name position and cash. This settlement would be similar to what occurs when a buyer and seller settle an index swaption bilaterally. Thus, the proposed amendments would make settlement of a cleared Index Swaption at ICC similar to the settlement that occurs in the bilateral market, outside of the clearinghouse.[5]

26R–319(c) as currently written has an introductory sentence and four subparts. The proposed rule change first would revise the introductory sentence of 26R–319(c) to incorporate text currently found in subparts (ii) and (iii) of 26R–319(c). Specifically, the proposed rule change would incorporate from subpart (ii) language referring to the effective exercise of the Index Swaption and rights and obligations under 26–319(b). The proposed rule change also would incorporate from subpart (iii) language regarding the Relevant Index Swaption Untranched Terms Supplement.

Subpart (i) of 26R–319(c) as currently written is intentionally omitted. The proposed rule change would not revise subpart (i).

Under subpart (ii) as currently written, if an Index Swaption is effectively exercised, then in addition to the rights and obligations under 26R–319(b), a Contract constituting an Underlying New Trade for purposes of the Relevant Index Swaption Untranched Terms Supplement comes into effect between the exercising Swaption Buyer and ICC and an exactly offsetting Contract constituting an Underlying New Trade comes into effect between ICC and the assigned Swaption Seller. As mentioned above, the proposed rule change would move to the introductory clause of 26R–319(c) language currently found in subpart (ii), and therefore, the proposed rule change would delete this language from subpart (ii). The proposed rule change also would add a statement to subpart (ii) that it would be subject to a new subpart (v), as applicable (discussed below).

Subpart (iii) as currently written applies to two situations. First, it applies when the Expiration Date occurs prior to the commencement of the CEN Triggering Period (as defined in the Restructuring Procedures) for Open Positions in single-name Contracts referencing the relevant Reference Entity. Second, it applies when the Expiration Date occurs on or following the commencement of the CEN Triggering Period for Open Positions in single-name Contracts referencing the relevant Reference Entity. The proposed rule change would split current subpart (iii) into a revised subpart (iii) and a new subpart (iv).

Like the current subpart (iii), revised subpart (iii) would apply when the Expiration Date occurs prior to the commencement of the CEN Triggering Period (as defined in the Restructuring Procedures) for Open Positions in single-name Contracts referencing the relevant Reference Entity. Under subpart (iii) as revised, the Underlying New Trade described in subpart (ii) would be subject to the provisions of the CDS Restructuring Rules (and may become a Triggered Restructuring CDS Transaction thereunder) in the same manner as other Open Positions in single-name Contracts referencing the relevant Reference Entity. This would be the same as currently found in subpart (iii). Moreover, the proposed rule change would delete from subpart (iii) language regarding the Relevant Index Swaption Untranched Terms Supplement, which would be moved to the introductory sentence of 26R–319(c), as described above. The proposed rule change also would add a reference to the Existing Restructuring (a termed defined in the introductory sentence of 26R–319(c)) and a reference to subpart (ii) of 26R–319(c).

New subpart (iv) generally would apply to the second situation described in current subpart (iii)—when the Expiration Date occurs on or following the commencement of the CEN Triggering Period. The proposed rule change would specify further that subpart (iv) only applies when the Expiration Date occurs on or following the commencement of the CEN Triggering Period *and* prior to the Auction Settlement Date. Under new subpart (iv), with respect to the Underlying New Trade described in subpart (ii), neither party would be permitted to deliver an MP Notice in respect of the Existing Restructuring for such Underlying New Trade, such Underlying New Trade could not become a Triggered Restructuring CDS Transaction with respect to the Existing Restructuring, and no Event Determination Date or settlement would occur in respect of the Existing Restructuring for purposes of the Underlying New Trade. This language generally would be the same as currently found in subpart (iii).

New subpart (v) would apply in the situation not covered by subpart (iii) or subpart (iv)—if the Expiration Date occurs on or following the Auction Settlement Date. In that situation, ICC would: (a) determine the extent to which positions in relevant single-name CDS contracts of the relevant tenor referencing the Reference Entity subject to the Existing Restructuring are settled based on CDS auctions for particular maturity categories and (b) determine, if applicable, a cash settlement amount payable from one party to the other with respect to the corresponding portion of the notional amount of the Index Swaption applicable to such Reference Entity, with such settlement to be based on the applicable final settlement prices under such auctions. Moreover, with respect to the remaining portion of such notional amount, an Underlying New Trade would come into effect, provided that neither party would be permitted to deliver an MP Notice in respect of the Existing Restructuring for such

[5] Notice, 86 FR at 69309.

Underlying New Trade, such Underlying New Trade could not become a Triggered Restructuring CDS Transaction with respect to the Existing Restructuring, and no Event Determination Date or settlement would occur in respect of the Existing Restructuring for purposes of the Underlying New Trade, as set forth in further detail in the ICC Exercise Procedures or other applicable ICC Procedures. Thus, this new subpart (v) would set out the framework for the blend of deliverables described above and would be applicable if the expiration date occurs on or following the Auction Settlement Date.

C. Revisions to the Exercise Procedures

The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions. The proposed rule change would amend the Exercise Procedures in connection with amended 26R–319 discussed above, as well as to incorporate a new defined term, ''Minimum Intrinsic Value''.

With respect to amended 26R–319, the proposed rule change would add a new paragraph 3 (Restructuring Settlement) to the Exercise Procedures. New paragraph 3 would apply in connection with 26R–319(c)(v), discussed above. Under new paragraph 3.1, however, ICC could modify or supplement these provisions pursuant to an ICC Circular.

New paragraph 3.3 (Settlement with respect to Existing Restructuring under Exercised Index Swaption) would describe how ICC would determine the amount of the cash settlement and the notional amount of the Underlying New Trade contemplated under new 26R–319(c)(v). ICC would determine these amounts using the Triggered Portion and Untriggered Portion of the aggregate notional amount of Relevant CDS Transaction. New paragraph 3.2 (Determination of Settled Portions) would describe how ICC would determine such Triggered Portion and Untriggered Portion.

With respect to the new defined term Minimum Intrinsic Value, the proposed rule change would define it as a minimum intrinsic value below which an Index Swaption position would not be identified as ''in the money'' for paragraph 2.2(e)(ii) or 2.8. ICC could establish a Minimum Intrinsic Value and/or permit an exercising party to specify a Minimum Intrinsic Value for its Index Swaptions for a relevant pre-exercise notification period or exercise period.

The proposed rule change would incorporate this new term into the existing fallback provisions described in paragraphs 2.2(e)(ii) and 2.8 of the Exercise Procedures. Specifically, ICC would take into account any applicable Minimum Intrinsic Value as part of its procedures for submitting preliminary exercise notices on behalf of the Exercising Party during the pre-exercise notification period (during which preliminary exercise notices can be submitted, modified, and/or withdrawn) in paragraph 2.2(e)(ii). ICC also would take into account any applicable Minimum Intrinsic Value in determining whether an Index Swaption is ''in the money'' for automatic exercise during an Exercise System Failure in paragraph 2.8.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rule 17Ad–22(e)(1).[8]

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[9]

As discussed above, the proposed rule change would revise Rule 26R–319 and the Exercise Procedures to allow for a settlement consisting of the re-versioned underlying index and a blend of single name position and cash, similar to settlement in the bilateral market outside of the clearinghouse. The Commission believes that increasing consistency between cleared and non-cleared transactions should in general encourage market participants to clear transactions in Index Swaptions. The Commission therefore believes these changes would promote the prompt and accurate clearance and settlement of such transactions.

Similarly, the Commission believes that amending the Exercise Procedures to incorporate the new defined term Minimum Intrinsic Value should encourage market participants to clear transactions in Index Swaptions. As discussed above, Minimum Intrinsic Value would be a value below which an Index Swaption position would not be identified as ''in the money,'' and therefore would not be exercised by ICC under paragraphs 2.2(e)(ii) and 2.8 of the Exercise Procedures. The Commission therefore believes that incorporating this new defined term could help establish a threshold below which ICC would not exercise Index Swaptions, thereby allowing Clearing Participants to better understand and anticipate when ICC would exercise their Index Swaption positions. The Commission believes that this change should in general encourage market participants to clear transactions in Index Swaptions, thereby promoting the prompt and accurate clearance and settlement of such transactions.

Moreover, the Commission believes that both sets of changes would establish clear and predictable procedures for settlement and exercise of Index Swaptions by ICC, thereby promoting ICC's prompt and accurate clearance and settlement of such transactions. Specifically, the Commission believes the amendments to Rule 26R–319 and the Exercise Procedures would establish clear and effective procedures for ICC to use in effecting settlement with a re-versioned underlying index and a blend of single name position and cash. Similarly, the Commission believes that incorporating a Minimum Intrinsic Value below which ICC would not exercise Index Swaptions positions, in the circumstances contemplated by paragraphs 2.2(e)(ii) and 2.8 of the Exercise Procedures, would make ICC's exercise of Index Swaptions in such situations more predictable and reliable.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(e)(1) Under the Act

Rule 17Ad–22(e)(1) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[11] As discussed above, the Commission believes that the amendments to Rule 26R–319 and the Exercise Procedures would establish

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(1).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(1).

clear and effective procedures for ICC to use in effecting settlement with a re-versioned underlying index and a blend of single name position and cash, and therefore would provide a clear and transparent basis for ICC's settlement of Index Swaptions. Moreover, the Commission believes that incorporating Minimum Intrinsic Value into paragraphs 2.2(e)(ii) and 2.8 of the Exercise Procedures would make ICC's exercise of Index Swaptions in such circumstances more predictable and reliable, and therefore well-founded and clear.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(1).[12]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[13] and Rule 17Ad–22(e)(1).[14]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[15] that the proposed rule change (SR–ICC–2021–023), be, and hereby is, approved.[16]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01463 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.17Ad–22(e)(1).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(1).

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 94007; File No. SR–CboeEDGA–2021–025]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report, Modify the Name of Rule 13.8 to "Data Products", and Add a Preamble to Rule 13.8

January 20, 2022.

On November 17, 2021, Cboe EDGA Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report, modify the name of Rule 13.8 to ''Data Products'', and add a preamble to Rule 13.8. The proposed rule change was published in the **Federal Register** on December 7, 2021.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 7, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGA–2021–025).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01462 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93694 (December 1, 2021), 86 FR 69299. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedga-2021-025/srcboeedga2021025.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94018; File No. SR–FINRA–2022–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Years 2020 and 2021, and Through June 30 of Calendar Year 2022) Under FINRA Rule 3110 (Supervision)

January 20, 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 January 10, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 (Supervision) to include calendar year 2022 inspection obligations through December 31, 2022 within the scope of the supplementary material.[4] The proposed additional six-month extension of Rule 3110.17 is necessary to address the operational challenges resulting from the COVID–19 pandemic that many member firms continue to face in planning for and timely conducting, during the second half of calendar year 2022, the on-site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The proposed rule text changes to Rule 3110.17 are applied to the version that becomes operative on January 1, 2022 and automatically sunsets on June 30, 2022.

inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2022.[5]

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

* * *

Supplementary Material: ————

.01 through .16 No Change.

.17 Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through [June 30]*December 31* of Calendar Year 2022.

(a) Use of Remote Inspections. Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in calendar years 2020, 2021 and 2022 pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must be completed on or before March 31, 2021 and inspections for calendar year 2021 must be completed on or before December 31, 2021. With respect to a member's obligation to conduct an inspection of an office or location in calendar year 2022, a member has the option to conduct those inspections remotely [only] through [June 30]*December 31,* 2022. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) Written Supervisory Procedures for Remote Inspections. Consistent with a member's obligation under Rule 3110(b)(1), a member that elects to conduct its inspections remotely for any of the calendar years specified in this supplementary material must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable FINRA rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (1) A description of the methodology, including technologies permitted by the member, that may be used to conduct remote inspections; and (2) the use of other risk-based systems employed generally by the member firm to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member's overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.,* ''red flags''), the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the member's operational difficulties associated with COVID–19 abate, nationally or locally as relevant, and the challenges a member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by this Rule 3110.17 does not extend to a member's inspection requirements beyond [June 30]*December 31,* 2022 and such inspections must be conducted in compliance with Rule 3110(c).

(d) Documentation Requirement. A member must maintain and preserve a centralized record for each of calendar years 2020 and 2021, and for calendar year 2022 through [June 30]*December 31,* 2022 [only] that separately identifies: (1) all offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Rule 3110.17(c). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

In the midst of the global COVID–19 pandemic where the United States recorded its first case of COVID–19 in early 2020,[6] and the attendant logistical challenges member firms were encountering to satisfy the on-site inspection component of their Rule 3110(c) requirements, FINRA adopted Rule 3110.17 to provide a tailored regulatory alternative for member firms to have the option, subject to specified conditions, to complete their inspection obligations remotely.[7] While there were some signs that the pandemic was receding for a subsequent period of time, much uncertainty still remained. The emergence of the Delta variant, dissimilar vaccination rates throughout the U.S., and the significant uptick in transmissions in many locations during the summer of 2021 indicated that COVID–19 remained an active and real public health concern.[8] Against this setting, FINRA understood the complexity firms were facing in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (*e.g.,* personal residence).[9] Accordingly, in September

[5] The proposed rule change will automatically sunset on December 31, 2022. FINRA will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2022.

[6] *See generally* Centers for Disease Control and Prevention (''CDC''), CDC Museum COVID–19 Timeline, *https://www.cdc.gov/museum/timeline/covid19.html* (last visited January 10, 2022).

[7] *See* Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–040) (citing SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and *Regulatory Notice* 11–54 (November 2011) for the expectation that firms must conduct their inspections on-site).

[8] *See* Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508, 52509 nn.7 & 8 (September 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–023) (''Extension No. 1'') (becoming operative on January 1, 2022).

[9] Since March 2020, FINRA staff, with limited exceptions, have continued to work remotely to protect their health and safety. As indicated in its previous filings concerning other pandemic-related temporary relief from specified FINRA rules and requirements, FINRA has established a COVID–19 task force to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695, 71696 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–031). Similarly, the SEC has remained in a

Continued

2021, FINRA extended Rule 3110.17 through June 30, 2022 to give firms clarity on their inspection requirements at least for the first half of 2022 and to account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.[10]

The emergence of the new Omicron variant in November 2021 and its rapid spread in the U.S. since December 1, 2021, the date on which the first confirmed case of Omicron in the U.S. was identified,[11] indicate that the active and real public health concerns about COVID–19 are unabated.[12]

Due to the continued logistical challenges of going on-site to branch offices or locations while these public health and safety concerns related to COVID–19 persist, and the continued risk from the Delta and new Omicron variants, the need for firms to establish inspection schedules for the second half of 2022 and ensure there is adequate, experienced staff available to travel and conduct on-site inspections within the context of fluid work locations continues to present a unique complexity for many firms in terms of planning and deploying resources. Even with increased availability of vaccines, FINRA understands that many firm personnel are still working from alternative work locations, and have not resumed traveling or are reluctant to do so at pre-pandemic levels amid persistent significant health and safety concerns. As a result of the new Omicron variant, many employers have further delayed or modified their return to office plans.[13] For unvaccinated persons in particular, health and safety risks in connection with returning to the office with other personnel still remain worrisome and travel still poses a risk of contracting and spreading COVID–19.[14] FINRA believes extending Rule 3110.17 through December 31, 2022 represents a prudent accommodation.[15] The proposed additional six-month extension would provide further clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By further extending Rule 3110.17 to cover the second half of calendar year 2022 inspection obligations through December 31, 2022, FINRA is not proposing to amend the other conditions of the temporary rule. The proposed amendments to Rule 3110.17 would provide that for calendar year 2022, a member has the option to conduct those inspections remotely through December 31, 2022. The current conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: Such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also enable FINRA to further monitor the effectiveness of remote inspections and their impacts—positive or negative—on firms' overall supervisory systems in the evolving workplace.

FINRA continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 3110(c) obligations during the ongoing pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing to make the proposed rule change operative on July 1, 2022.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing impact of COVID–19, and the emergence of the Delta variant and, more recently, the new Omicron variant, on performing the on-site inspection

telework posture since March 2020 and has recently indicated that in 2022, it ''will continue to monitor the scientific data about COVID–19 and national, state, and local guidance to determine the appropriate operating posture for the agency's workforce.'' *See* the SEC's Fiscal Year 2021 Agency Financial Report, *https://www.sec.gov/files/sec-2021-agency-financial-report.pdf.*

[10] *See* Extension No. 1, *supra* note 8.

[11] *See* CDC, Omicron Variant: What You Need to Know, *https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html* (updated December 20, 2021).

[12] In November 2021, the U.S. Office of Personnel Management (''OPM''), which serves as the chief human resources agency and personnel policy manager for the Federal Government, released an updated guide to telework and remote work, noting, among other things, that ''[t]he COVID–19 pandemic forced even more adoption of telework and sparked a nationwide focus on telework as an important tool for safely and efficiently delivering mission-critical services in the public and private sectors during both short- and long-term emergencies . . . . As we look to the future, OPM is encouraging agencies to strategically leverage workplace flexibilities such as telework, remote work, and alternative/flexible work schedules as tools to help attract, recruit, and retain the best possible workforce.'' *See* OPM, 2021 Guide to Telework and Remote Work in the Federal Government: Leveraging Telework and Remote Work in the Federal Government to Better Meet Our Human Capital Needs and Improve Mission Delivery (November 2021), *https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf.* Further, on December 2, 2021, President Biden announced new actions to protect Americans against the Delta and Omicron variants. *See https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-president-biden-announces-new-actions-to-protect-americans-against-the-delta-and-omicron-variants-as-we-battle-covid-19-this-winter/. See also* Lena H. Sun, Joel Achenbach, Laurie McGinley & Tyler Pager, Omicron spreading rapidly in U.S. and could bring punishing wave as soon as January, CDC warns, Washington Post (December 14, 2021), *https://www.washingtonpost.com/health/2021/12/14/omicron-us-spread/.*

[13] *See* Jennifer Surane & Angelica Peebles, 'I Was Wrong': Omicron Wrecks CEOs' Plans for Office Return (describing how the ''new wave of Covid uncertainty is upending business plans from Wall Street to Silicon Valley.''), Bloomberg (December 16, 2021), *https://www.bloomberg.com/news/articles/2021-12-16/-i-was-wrong-omicron-wrecks-ceos-plans-for-u-s-office-return; see also* Nne D'Innocenzio, Omicron Cases Have Companies Rethinking Return to Work Plans (noting, in part, ''how difficult it is for companies to set firm plans for their employees' mandatory return as worries about a spike in new cases or new variants keep shifting deadlines. This fall, the delta variant spurred many big companies to postpone a mandatory return to early next year.''), Time (December 10, 2021), *https://time.com/6127429/omicron-companies-rethinking-return-to-work/.*

[14] *See generally* CDC, Workplaces and Businesses, *https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html* (updated October 18, 2021); CDC, Domestic Travel During COVID–19 (stating, among other things, ''You might have been exposed to COVID–19 on your travels. You might feel well and not have any symptoms, but you can still be infected and spread the virus to others. People who are not fully vaccinated are more likely to get COVID–19 and spread it to others.''), *https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html* (updated January 4, 2022).

[15] *See supra* note 5.

[16] 15 U.S.C. 78*o*–3(b)(6).

component of Rule 3110(c), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely during the second half of calendar year 2022. This temporary proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID–19 pandemic and the emergence of new variants, FINRA believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The potential economic impacts of Rule 3110.17 as described in File No. SR–FINRA–2020–040 continue to have applicability to the proposed rule change herein. The proposed rule change would extend the temporary relief to include calendar year 2022 inspection obligations through December 31, 2022 within the scope of the supplementary material without making substantive changes to the other aspects of the provision. FINRA believes that the proposed temporary extension would afford firms the time needed to determine when and how to effectively and safely implement their work re-entry plans, which must take into account multiple factors, including local health and safety conditions, without diminishing investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–001 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–FINRA–2022–001. 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 Number SR–FINRA–2022–001 and should be submitted on or before February 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01467 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94010; File No. SR-CboeBZX–2021–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

January 20, 2022.

On November 17, 2021, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published in the **Federal Register** on December 7, 2021.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93688 (December 1, 2021), 86 FR 69319. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2021-078/srcboebzx2021078.htm.*

[4] 15 U.S.C. 78s(b)(2).

to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 7, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX–2021–078).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01458 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94013; File No. SR–FINRA–2021–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036

January 20, 2022.

I. Introduction

On May 7, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the requirements for covered agency transactions under FINRA Rule 4210.[3] The proposed rule change was published for comment in the **Federal Register** on May 25, 2021.[4] The Commission received comments in response to the Notice.[5] On June 30, 2021, FINRA extended 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 August 23, 2021.[6] On August 9, 2021, FINRA responded to the comments and submitted Amendment No. 1 to the proposed rule change.[7] The Commission subsequently issued an Order Instituting Proceedings (''OIP'') to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission received additional comment letters in response to the OIP.[9] On September 16, 2021, FINRA responded to these additional comment letters.[10] On October 26, 2021, FINRA extended the time period in which the Commission must approve or disapprove the proposed rule change to January 20, 2022.[11] This order approves the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The full text of the proposed rule change and the exhibits filed by FINRA (collectively referred to as the ''Proposal'') are available at: *https://www.finra.org/sites/default/files/2021-05/sr-finra-2021-010.pdf.*

[4] *See* Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28167 (''Notice'').

[5] Comments received on the Notice are available at: *https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010.htm.*

[6] *See* Extension No. 1, available at: *https://www.finra.org/sites/default/files/2021-06/SR-FINRA-2021-010-extension1.pdf.*

[7] *See* Amendment No. 1 to the proposed rule change, dated August 9, 2021 (''Amendment No. 1''). The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010-9147461-247526.pdf.*

[8] *See* Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036, Exchange Act Release No. 92713 (Aug. 20, 2021), 86 FR 47655 (Aug. 26, 2021).

[9] Comments received on the OIP are available on the Commission's website at: *https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010.htm.*

[10] *See* Letter to Vanessa Countryman, Secretary, Commission, from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA (Sep. 16, 2021) (''FINRA Letter''), available at: *https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010-9244962-250787.pdf.*

[11] *See* Extension No. 2, available at *https://www.finra.org/sites/default/files/2021-10/sr-finra-2021-010-extension2.pdf.*

II. Description of the Proposed Rule Change

A. Summary of Proposed Amendments

FINRA has proposed revisions to the Covered Agency Transaction[12] requirements as approved pursuant to SR–FINRA–2015–036.[13] Broadly, FINRA has proposed:

- To eliminate the two percent maintenance margin requirement that applies to non-exempt[14] accounts pursuant to paragraph (e)(2)(H)(ii)e. under FINRA Rule 4210. This would eliminate the need for members to distinguish exempt account customers from other customers (''non-exempt accounts'') for purposes of Covered Agency Transaction margin. As such, without regard to a counterparty's exempt or non-exempt account status, members would collect margin for each counterparty's excess mark to market loss, as discussed in further detail

[12] Covered Agency Transactions are: (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates transactions''). The proposed rule change would re-designate the current definition of Covered Agency Transactions, as set forth in paragraph (e)(2)(H)(i)c., as paragraph (e)(2)(H)(i)b., without any change. *See* Exhibit 5 to the Proposal. *See also* Notice, 86 FR 28161–62.

[13] *See* Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036) (approving SR–FINRA–2015–036, referred to as the ''2016 Approval Order''). The rule text as approved in the 2016 Approval Order is referred to in this order as the ''current rule'' or ''original rulemaking.'' The proposed rule change, as described in Section II.A. and B., is excerpted, in part, from the Notice, which was substantially prepared by FINRA.

[14] The term ''exempt account'' is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, non-FINRA member registered broker-dealer, account that is a ''designated account'' under FINRA Rule 4210(a)(4) (specifically, a bank as defined under Exchange Act Section 3(a)(6), a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of at least $45 million and financial assets of at least $40 million for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of the rule, as set forth under paragraph (a)(13)(B)(i) of FINRA Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii). *See* Notice, 86 FR 28163, n.18.

below, unless otherwise provided by the rule;

• Subject to specified conditions and limitations, to permit members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions. FINRA has designed these conditions and limitations to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital in lieu of collecting margin to compete unfairly with smaller members; [15] and

• To make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language. FINRA believes these revisions will preserve and clarify key exceptions to the requirements, including for example the $250,000 de minimis transfer exception [16] and the $10 million gross open position exception [17] established pursuant to SR–FINRA–2015–036.[18]

The proposed amendments are discussed in detail below.[19]

B. Detailed Discussion of Proposed Amendments

1. Elimination of Maintenance Margin Requirement; Application of Mark to Market Loss to Both Exempt and Non-Exempt Accounts

Paragraph (e)(2)(H)(ii)e. of current FINRA Rule 4210 addresses Covered Agency Transactions with counterparties that are non-exempt accounts and broadly provides that maintenance margin, defined under the current rule to mean margin equal to two percent of the contract value of the net long or net short position, by CUSIP, with the counterparty, plus any net mark to market loss on such transactions, shall be required margin, subject to specified exceptions under the rule.[20] By contrast, paragraph (e)(2)(H)(ii)d. of the current rule broadly provides that on transactions with counterparties that are exempt accounts no maintenance margin shall be required. Such transactions must be marked to the market daily and the member must collect any net mark to market loss, subject to specified exceptions under the current rule.[21]

According to FINRA, member firms expressed concern that the two-track treatment of exempt versus non-exempt accounts is burdensome because members are obliged under the current rule to obtain and assess the financial information needed to determine which counterparties must be treated as non-exempt accounts.[22] Further, based on feedback from members since the approval date and additional observation of market conditions, FINRA believes that the potential risk that the maintenance margin requirement was intended to address when originally proposed is not significant enough to warrant the burdens and competitive disadvantage that the requirement imposes.[23] According to FINRA, members pointed out that, in practice, the maintenance margin requirement would apply to relatively few accounts that participate in the Covered Agency Transaction market. Yet, FINRA believes that monitoring and collecting maintenance margin for such accounts is operationally burdensome and out of proportion with the number and size of the affected accounts.[24] Further, according to FINRA, bank dealers are not subject to the requirement to collect maintenance margin from their customers, which would significantly disadvantage FINRA members in competition with bank dealers.[25] To address these concerns, FINRA is proposing to eliminate paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of FINRA Rule 4210 as established pursuant to the 2016 Approval Order, and to adopt in lieu new paragraph (e)(2)(H)(ii)c., which provides that members shall collect margin for each counterparty's [26] excess net mark to market loss,[27] unless

[15] *See* Notice, 86 FR 28163.

[16] *See* Notice, 86 FR 28163. Subject to specified conditions, the current rule provides for an aggregate $250,000 de minimis transfer amount with a single counterparty, so that if the aggregate required but uncollected maintenance margin or mark to market loss does not exceed that amount, the margin need not be collected or charged to net capital. *See* 2016 Approval Order, 81 FR 40367; *see also* paragraph (e)(2)(H)(ii)f. of the current rule in Exhibit 5 to the Proposal.

[17] The current rule provides that the margin requirements for Covered Agency Transactions do not apply to a counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $10 million or less if the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment (''DVP'') basis or for cash and meets other specified conditions. *See* paragraph (e)(2)(H)(ii)c. of the current rule in Exhibit 5 to the Proposal.

[18] *See* Notice, 86 FR 28163.

[19] Section II.B. describes the proposed rule change prior to the proposed amendments in Amendment No. 1, which are summarized in Section II.C. below.

[20] *See* 2016 Approval Order, 81 FR 40367; *see also* paragraph (e)(2)(H)(ii)e. of the current rule in Exhibit 5. The rule further sets forth specified requirements for net capital deductions and the liquidation of positions in the event the uncollected maintenance margin and mark to market loss (defined together under paragraph (e)(2)(H)(i)d. of the current rule as the ''deficiency'') is not satisfied. In short, the rule provides that if the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in Exchange Act Rule 15c3–1 until such time the deficiency is satisfied; under the rule, if such deficiency is not satisfied within five business days from the date the deficiency was created, the member must promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time. As discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)e. in its entirety.

[21] *See* 2016 Approval Order, 81 FR 40367; *see also* paragraph (e)(2)(H)(ii)d. of the current rule in Exhibit 5 to the Proposal. Similar to paragraph (e)(2)(H)(ii)e., the current rule provides that if the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member is required to deduct the amount of the mark to market loss from net capital as provided in Exchange Act Rule 15c3–1 until such time the mark to market loss is satisfied; if such mark to market loss is not satisfied within five business days from the date the loss was created, the member must promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time. Again, as discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)d. in its entirety.

[22] *See* Notice, 86 FR 28163. Further, members expressed concern that some asset manager counterparties face constraints with regard to custody of assets at broker-dealers and that, because of these constraints, some members need to enter into separate custodial agreements with third party banks to hold the maintenance margin that they collect from these asset managers. Members expressed concern that this imposes operational burdens both on themselves and their client counterparties, who may, as a consequence, choose to limit their dealings with smaller broker-dealers. *Id.,* at n.23.

[23] *See* Notice, 86 FR 28163.

[24] *Id.*

[25] *Id.*

[26] Current paragraph (e)(2)(H)(i)b. defines the term ''counterparty'' to mean any person that enters into a Covered Agency Transaction with a member and includes a ''customer'' as defined in paragraph (a)(3) under FINRA Rule 4210. The proposed rule change would redesignate the definition of counterparty as paragraph (e)(2)(H)(i)a. under the rule and revise the definition to provide that the term ''counterparty'' means any person, including any ''customer'' as defined in paragraph (a)(3) of the rule, that is a party to a Covered Agency Transaction with, or guaranteed by, a member. FINRA believes that including transactions guaranteed by a member is a useful clarifying change in the context of Covered Agency Transactions. In connection with this change, FINRA proposes to add new Supplemental Material .02, which would provide that, for purposes of paragraph (e)(2)(H), a member is deemed to have ''guaranteed'' a transaction if the member has become liable for the performance of either party's obligations under the transaction. *See* proposed new Supplemental Material .02 in Exhibit 5 to the Proposal. Accordingly, if a clearing broker were to guarantee to an introduced customer an introducing broker's obligations under a Covered Agency Transaction between that introducing firm and customer, the introducing broker would be considered a ''counterparty'' of the clearing broker for purposes of paragraph (e)(2)(H). *See also* Notice, 86 FR 28163–64, n.25.

[27] FINRA proposes to delete the current definition of ''mark to market loss'' under paragraph (e)(2)(H)(i)g. as adopted pursuant to the 2016 Approval Order and to replace it with a definition of ''net mark to market loss'' under proposed new

Continued

otherwise provided under proposed new paragraph (e)(2)(H)(ii)d. of the rule, as discussed further below. As such, both exempt and non-exempt accounts would receive the same margin treatment for purposes of Covered Agency Transactions under paragraph (e)(2)(H).[28]

2. Option for Capital Charge in Lieu of Mark to Market Margin

Proposed new paragraph (e)(2)(H)(ii)d. of the rule is designed, subject to specified conditions and limitations, to permit members the option to take a capital charge in lieu of collecting margin for a counterparty's excess net mark to market loss (that is, as discussed above, the net mark to market loss to the extent it exceeds $250,000). Informed by FINRA's engagement with members, FINRA believes this approach is appropriate because it would help alleviate the competitive disadvantage of smaller firms vis-à-vis larger firms.[29] According to FINRA, smaller firms expressed concern that larger firms can leverage their greater size and scale in obtaining margining agreements with their counterparties, and that counterparties would prefer to transact with larger firms with which margining agreements can more readily be obtained, or with banks that are not subject to margin requirements under FINRA Rule 4210. Smaller firms told FINRA that having the option to take a capital charge, in lieu of collecting margin, would help alleviate the competitive disadvantage of needing to obtain margining agreements with such counterparties because there would be an alternative to collecting margin.[30] To this end, as stated above, the proposed rule change includes conditions and limitations that FINRA believes are designed to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital to compete unfairly with smaller members.[31] Specifically, the proposed new paragraph provides that a member need not collect margin for a counterparty's excess net mark to market loss under paragraph (e)(2)(H)(ii)c. of the rule, provided that:

- The member must deduct the amount of the counterparty's unmargined excess net mark to market loss from the member's net capital computed as provided in Exchange Act Rule 15c3–1, if the counterparty is a non-margin counterparty [32] or if the excess net mark to market loss has not been margined or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises; [33]
- If the member has any non-margin counterparties, the member must establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule, as proposed to be revised pursuant to this rule change,[34] and that the member's net capital deductions under proposed paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined will not exceed $25 million; [35]
- If the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed $25 million for five consecutive business days, the member must give prompt written notice to FINRA. If the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed the lesser of $30 million or 25% of the member's tentative net capital, as such term is defined in Exchange Act Rule 15c3–1, for five consecutive business days, the member may not enter into any new Covered Agency Transactions with any non-margin counterparty other than risk-reducing transactions, and must also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time; [36] and
- The member must submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication.[37]

3. Streamlining and Consolidation of Rule Language; Conforming Revisions

In support of the amendments discussed above, FINRA has proposed several amendments to the current rule designed to streamline and consolidate the rule language and otherwise make conforming revisions:

- The rule change consolidates language related to the $250,000 de minimis transfer exception and the $10 million gross open position exception while, as discussed above, preserving these exceptions in substance. The $250,000 de minimis transfer exception is preserved because paragraph (e)(2)(H)(ii)c. under the revised rule

paragraph (e)(2)(H)(i)d. Under the new definition, a counterparty's ''net mark to market loss'' means (1) the sum of such counterparty's losses, if any, resulting from marking to market the counterparty's Covered Agency Transactions with the member, or guaranteed to a third party by the member, reduced to the extent of the member's legally enforceable right of offset or security by (2) the sum of such counterparty's gains, if any, resulting from: (a) marking to market the counterparty's Covered Agency Transactions with the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest; and (b) any ''in the money,'' as defined in paragraph (f)(2)(E)(iii) of FINRA Rule 4210, amounts of the counterparty's long standby transactions written by the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest. Under proposed new paragraph (e)(2)(H)(i)c., a counterparty's ''excess'' net mark to market loss is defined to mean such counterparty's net mark to market loss to the extent it exceeds $250,000. As such, by specifying excess net mark to market loss, FINRA stated that the proposed rule preserves the $250,000 de minimis transfer exception set forth under paragraph (e)(2)(H)(ii)f. as adopted pursuant to the 2016 Approval Order. Further, FINRA stated that, in the interest of clarity, proposed new paragraph (e)(2)(H)(ii)c. expressly provides that members would not be required to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses. Last, as discussed further below, the proposed rule change would delete paragraph (e)(2)(H)(ii)f. in the interest of consolidating the rule language. *See* Notice, 86 FR 28164, n.26.

[28] Current paragraph (e)(2)(H)(ii)d. of the rule contains provisions designed to permit members to treat mortgage bankers, as defined pursuant to current paragraph (e)(2)(H)(i)h. of the rule, as exempt accounts under specified conditions. Because the proposed rule change eliminates the distinction between exempt and non-exempt accounts for purposes of Covered Agency Transactions, FINRA believes this language is no longer needed and will be deleted. *See* Notice, 86 FR 28164, n.27.

[29] *See* Notice, 86 FR 28164.

[30] *See* Notice, 86 FR 28164.

[31] *See* Notice, 86 FR 28164.

[32] Proposed new paragraph (e)(2)(H)(i)e. defines a counterparty as a ''non-margin counterparty'' if the member: (1) Does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises; or (2) does not regularly collect margin for such counterparty's excess net mark to market loss. *See* Amendment No. 1 discussed in Section II.C. below for discussions of modification to proposed definition of non-margin counterparty.

[33] *See* proposed paragraph (e)(2)(H)(ii)d.1. in Exhibit 5 to the Proposal.

[34] Current paragraph (e)(2)(I) sets forth specified concentration thresholds. As discussed further below, the rule change would make conforming revisions to the rule.

[35] *See* proposed paragraph (e)(2)(H)(ii)d.2. in Exhibit 5 to the Proposal.

[36] *See* proposed paragraph (e)(2)(H)(ii)d.3. in Exhibit 5 to the Proposal.

[37] *See* Notice, 86 FR 28164. *See also* proposed paragraph (e)(2)(H)(ii)d.4. in Exhibit 5 to the Proposal.

specifies that the members shall collect margin for each counterparty's excess net mark to margin loss, unless otherwise provided under paragraph (e)(2)(H)(ii)d. of the rule (that is, as discussed above, the provisions under the proposed rule change that permit a member to take a capital charge in lieu of collecting margin, subject to specified conditions).[38] The proposed rule change deletes paragraph (e)(2)(H)(ii)f., which currently addresses the de minimis exception and would be rendered redundant. With respect to the current $10 million gross open position exception, FINRA proposes to revise paragraph (e)(2)(H)(ii)a. of the rule, which specifies counterparties that are excepted from the rule's margin requirements, to include a ''small cash counterparty'' among the enumerated entities included in the exception. Proposed new paragraph (e)(2)(H)(i)h. would provide that a counterparty is a ''small cash counterparty'' if:

○ The absolute dollar value of all of such counterparty's open Covered Agency Transactions with, or guaranteed by, the member is $10 million or less in the aggregate, when computed net of any settled position of the counterparty held at the member that is deliverable under such open Covered Agency Transactions and which the counterparty intends to deliver;[39]

○ The original contractual settlement date for all such open Covered Agency Transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;[40]

○ The counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash;[41] and

○ The counterparty does not, in connection with its Covered Agency Transactions with, or guaranteed by, the member, engage in dollar rolls, as defined in Rule 6710(z), or round robin trades,[42] or use other financing techniques.[43]

The above elements, according to FINRA, are substantially similar to the elements that are currently associated with the exception as set forth under current paragraph (e)(2)(H)(ii)c.2., which would be deleted, along with the definition of ''gross open position'' under paragraph (e)(2)(H)(i)e., which would be rendered redundant.[44] The new proposed language reflects that the scope of transactions addressed by the rule include Covered Agency Transactions with a counterparty that are guaranteed by the member.

• FINRA proposes to delete the definition of ''bilateral transaction'' set forth in current paragraph (e)(2)(H)(i)a. The definition is in connection with the provisions under the current rule relating to margin treatment for exempt accounts under paragraph (e)(2)(H)(ii)d. and for non-exempt accounts under paragraph (e)(2)(H)(ii)e., both of which paragraphs, as discussed above, FINRA proposes to delete pursuant to the rule change. Further, FINRA notes that the term ''bilateral transaction'' is unduly narrow given that the proposed revised definition of ''counterparty,'' as discussed above, would have the effect of clarifying that the rule's scope includes transactions guaranteed by the member.[45]

• FINRA proposes to delete the definition of the term ''deficiency'' set forth in current paragraph (e)(2)(H)(i)d. Under the current rule, the term is designed in part to reference required but uncollected maintenance margin for Covered Agency Transactions. Because the rule change proposes to eliminate such maintenance margin, FINRA believes that the term is not needed.[46]

• Current paragraph (e)(2)(H)(ii)a. addresses the scope of paragraph (e)(2)(H) and certain types of counterparties that are excepted from the rule, provided the member makes and enforces written risk limits pursuant to paragraph (e)(2)(H)(ii)b. Current paragraph (e)(2)(H)(ii)b. contains the core language under the rule relating to risk limits. FINRA is proposing to revise both paragraphs so as to conform with the rule change and to consolidate the language relating to written risk limits in these paragraphs within paragraph (e)(2)(H)(ii)b. Paragraph (e)(2)(H)(ii)a.1. would be revised to read: ''1. a member is not required to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and . . .''[47] Paragraph (e)(2)(H)(ii)a.2. would be revised to read: ''2. a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss, provided . . .''[48] Paragraph (e)(2)(H)(ii)a.2.A. would not be changed, other than to be redesignated as part of part of (e)(2)(H)(ii)a.2. Paragraph (e)(2)(H)(ii)a.2.B. would be eliminated as redundant[49] because, correspondingly, paragraph (e)(2)(H)(ii)b. would be revised to read: ''A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty, including any counterparty specified in paragraph (e)(2)(H)(ii)a.1. of this Rule, that the member shall enforce. The risk limit for a counterparty shall cover all of the counterparty's Covered Agency Transactions with the member or guaranteed to a third party by the member, including Covered Agency Transactions specified in paragraph (e)(2)(H)(ii)a.2. of this Rule. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the

[38] *See* Notice, 86 FR 28165.

[39] *See* proposed paragraph (e)(2)(H)(i)h.1. in Exhibit 5 to the Proposal.

[40] *See* proposed paragraph (e)(2)(H)(i)h.2. in Exhibit 5 to the Proposal.

[41] *See* proposed paragraph (e)(2)(H)(i)h.3. in Exhibit 5 to the Proposal.

[42] The term ''round robin'' is defined under current paragraph (e)(2)(H)(i)i. of the rule and, pursuant to the rule change, would be redesignated as paragraph (e)(2)(H)(i)g., without any change.

[43] *See* proposed paragraph (e)(2)(H)(i)h.4. in Exhibit 5 to the Proposal.

[44] *See* Notice, 86 FR 28165.

[45] *See* Notice, 86 FR 28165.

[46] *See* Notice, 86 FR 28165.

[47] The proposed new term ''small cash counterparty'' is discussed above. The proposed language in the paragraph reflects FINRA's proposed establishment of the option to take a net capital charge in lieu of collecting margin. Further, FINRA stated that, for clarity, the proposed rule change adds registered clearing agencies to the types of counterparties that are within the exception pursuant to paragraph (e)(2)(H)(ii)a. as revised. FINRA believes that this preserves the treatment of registered clearing agencies under the rule in light of the proposed deletion of current paragraph (e)(2)(H)(ii)c. In this regard, also in the interest of clarity, FINRA proposes to add new paragraph (e)(2)(H)(i)f. by way of defining the term ''registered clearing agency.'' *See* Notice, 86 FR 28165, n.39.

[48] Under current paragraph (e)(2)(H)(ii)a.2., a member is not required to apply the margin requirements of paragraph (e)(2)(H) to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided the securities meet the specified conditions under the rule and the member makes and enforces the written risk limit determinations as specified under the rule. FINRA stated that the proposed rule change does not change the treatment of multifamily housing securities or project loan program securities under the current rule other than to clarify, in express terms, that a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss. *See* Notice, 86 FR 28165, n.40.

[49] *See* proposed paragraph (e)(2)(H)(ii)a. in Exhibit 5 to the Proposal.

member's written risk policies and procedures.'' [50]

• Paragraph (e)(2)(I) under FINRA Rule 4210 addresses concentration thresholds. FINRA is proposing to make revisions to align the paragraph with the proposed new language as to paragraph (e)(2)(H), in particular the elimination of the maintenance margin requirement and the introduction of the proposed new term ''small cash counterparty.'' Specifically, FINRA proposes to revise the opening sentence of the paragraph to read: ''In the event that (i) the net capital deductions taken by a member as a result of marked to the market losses incurred under paragraphs (e)(2)(F), (e)(2)(G) (exclusive of the percentage requirements established thereunder), or (e)(2)(H)(ii)d.1. of this Rule, plus any unmargined net mark to market losses below $250,000 or of small cash counterparties exceed . . .'' [51] Current paragraph (e)(2)(I)(i)c. would be redesignated as (e)(2)(I)(ii) and would read: ''(*ii*) such excess as calculated in *paragraph (e)(2)(I)(i)* of this Rule continues to exist on the fifth business day after it was incurred . . .'' The final clause of the paragraph would be revised to read: '' . . . the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess.''

• Paragraph (f)(6) under FINRA Rule 4210 addresses the time within which margin or ''mark to market'' must be obtained. FINRA proposes to delete the phrase ''other than that required under paragraph (e)(2)(H) of this Rule,'' so the rule, as revised, would read: ''The amount of margin or 'mark to market' required by any provision of this Rule shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member additional time.'' FINRA believes this is appropriate given the proposed elimination of current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule, both of which set forth, among other things, specified time frames for collection of mark to market losses or deficiencies, as appropriate, and liquidation of positions that are specific to Covered Agency Transactions.[52]

• Current Supplemental Material .02 addresses the requirement for monitoring procedures with respect to mortgage bankers, for purposes of treating them as exempt accounts pursuant to current paragraph (e)(2)(H)(ii)d. Current Supplemental Material .03 addresses how the cure of mark to market loss or deficiency, as defined under the current rule, may cure the need to liquidate positions. Current Supplemental Material .04 addresses determining whether an account qualifies as an exempt account. The proposed rule change would render each of these provisions unnecessary, given that the rule change eliminates the need to distinguish exempt versus non-exempt accounts, including, as discussed above, the language targeted toward mortgage bankers, and eliminates the liquidation provisions under current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule.[53] FINRA proposes to redesignate current Supplemental Material .05 as Supplemental Material .03.[54]

Subject to Commission approval of the proposed rule change, FINRA proposed it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. FINRA states that the effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.[55]

C. Summary of Amendment No. 1

In Amendment No. 1, FINRA proposed the following modifications to the proposed rule change: (1) Modify the definition of ''non-margin counterparty'' to exclude small cash counterparties and other exempted counterparties; and (2) define a FINRA member's ''specified net capital deductions'' as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.[56] In addition, Amendment No. 1 states that, if the Commission approves the proposed rule change, as modified by Amendment No. 1, FINRA will announce the effective date of the proposed rule change, as modified by Amendment No. 1, in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be between nine and ten months following the Commission's approval.[57]

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[58] Specifically, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act,[59] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

A. Elimination of Maintenance Margin Requirement; Capital in Lieu of Margin Charges; and Streamlining of Rule Text

As discussed above in Section II, FINRA has proposed: (1) To eliminate the two percent maintenance margin requirement that would apply to non-exempt accounts under current FINRA Rule 4210; (2) subject to specified conditions and limitations, to permit FINRA members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered

[50] *See* proposed paragraph (e)(2)(H)(ii)b. in Exhibit 5 to the Proposal.

[51] *See* proposed paragraph (e)(2)(I) in Exhibit 5 to the Proposal.

[52] *See* Notice, 86 FR 28166.

[53] *See* Notice, 86 FR 28166.

[54] *See* Supplemental Material provisions in Exhibit 5 to the Proposal.

[55] *See* discussion of Amendment No. 1 in Sections II.C. and III.B.12. below for discussion of the proposed adjustment of the implementation date. *See also* Amendment No. 1 at 20. FINRA stated that the proposed rule change would not impact members that are funding portals or that have elected to be treated as capital acquisition brokers (''CABs''), given that such members are not subject to FINRA Rule 4210. *See* Notice, 86 FR 28166, n.45.

[56] Amendment No. 1 also contains several conforming changes to paragraph numbering to accommodate the proposed modifications to the rule text. *See* Exhibit 4 to Amendment No. 1.

[57] *See* Amendment No. 1. *See also* OIP, 86 FR 47665.

[58] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See, e.g.,* Section III.A. (discussing competitive concerns raised by commenters regarding smaller firms exiting the market resulting in a concentration of larger firms, and enhancements in efficiency in streamlining and consolidating the rule text).

[59] 15 U.S.C. 78o–3(b)(6).

Agency Transactions; and (3) to make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language.

Some commenters stated that they appreciated the efforts that FINRA made to modify the Covered Agency Transaction margin requirements,[60] and acknowledged the substantial efforts FINRA made to engage with industry participants and to adjust the Covered Agency Transaction margin requirements to address concerns about competitive equality, cost, and the impact on the market for mortgage securities.[61] One commenter expressed support for the proposed change eliminating the maintenance margin requirement.[62]

Some commenters, however, raised concerns or objected to the proposed rule change on the grounds that imposing margin requirements with regard to Covered Agency Transactions would cause smaller and mid-sized firms to exit the Covered Agency Transaction market, thereby causing greater concentration among fewer market participants, reducing access to the Covered Agency Transaction market or negatively affecting market liquidity.[63] These commenters expressed concerns that customers would not be inclined to transact with smaller and mid-sized broker-dealers and would prefer to transact with banks that are not subject to margin requirements, that many customers would be unwilling to enter into margin agreements, that the costs of engaging in Covered Agency Transactions would increase significantly and excessive margin requirements and capital charges would be involved, or that the proposed requirements, either in whole or in part, are not suitable for Specified Pool Transactions and CMOs.[64] Further, in response to the OIP, one commenter reiterated its position that the amendments that are the subject of the proposed rule change are unnecessary and an abuse of discretion in that they are unworkable, increase systemic risk, and will have a catastrophic effect on regional broker-dealers, and that the proposed rule change will impose burdens on competition that are neither necessary nor appropriate.[65]

In response to the comments to the Notice, FINRA stated that it has engaged with industry participants extensively on these concerns, and has addressed them on multiple occasions, since the process of soliciting comment on requirements for Covered Agency Transactions began in January 2014 with the publication of Regulatory Notice 14–02 and in 2015 with FINRA's original rulemaking for Covered Agency Transactions.[66] FINRA also stated that it believes that the rulemaking is necessary because of the risks posed by unsecured credit exposures in the Covered Agency Transactions market.[67] FINRA also stated that it has addressed, on multiple occasions, the need to include Specified Pool Transactions and CMOs within the scope of the requirements,[68] and stated that it made key revisions in finalizing the original rulemaking expressly to mitigate any potential impact on smaller firms and on activity in the Covered Agency Transaction market, including the following:

- FINRA initially proposed an exception in the original rulemaking pursuant to which the new margin requirements would not apply to a counterparty if its gross open positions in Covered Agency Transactions with a FINRA member is $2.5 million or less, subject to specified conditions. In response to commenters on the original rulemaking, and to ensure that a greater number of smaller firms and counterparties would benefit from the exception, FINRA increased the amount from $2.5 million to $10 million;[69]
- FINRA modified the two percent maintenance margin requirement, as adopted pursuant to the original rulemaking, to create an exception for cash investors that otherwise, by virtue of not being ''exempt accounts'' as defined under FINRA's margin rules, would have been subject to the requirement.[70] FINRA also made an exception from the maintenance margin requirements available to mortgage bankers in the original rulemaking;
- FINRA excepted multifamily housing securities and project loan program securities from the new margin requirements;[71]
- FINRA established a $250,000 de minimis transfer amount, for a single counterparty, subject to specified conditions, up to which members would not need to collect margin or take a charge to their net capital.[72]

Additionally, FINRA stated that the 2016 Approval Order was issued for the original rulemaking on June 15, 2016, and FINRA stated that, upon the Commission's approval (of the original rulemaking), FINRA would monitor the impact of the new requirements and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[73] Industry participants requested that FINRA reconsider the potential impact of the requirements pursuant to SR–FINRA–2015–036 on smaller and mid-sized firms, and that FINRA extend the implementation date of the requirements pending such reconsideration. In response to the

[60] *See* Letter from Chris Melton, to Commission (Aug. 2, 2021) (''Melton Letter'').

[61] *See* Letter from Christopher B. Killian, Managing Director, Securitization, Corporate Credit, Libor, Securities Industry and Financial Markets Association, to J. Matthew DeLesDernier, Assistant Secretary, Commission (June 15, 2021) (''SIFMA Letter'') at 1.

[62] *See* Letter from Christopher B. Killian, Managing Director, Securitization, Corporate Credit, Libor, Asset Management Group of SIFMA, to Secretary, Commission (June 15, 2021) (''SIFMA AMG Letter'') at 1.

[63] *See* SIFMA Letter at 2–3; Letter from Michael Decker, Senior Vice President, Public Policy, Bond Dealers of America, to Vanessa Countryman, Secretary, Commission (June 15, 2021) (''BDA Letter'') at 2–5; Letter from Thomas J. Fleming & Adrienne M. Ward, Olshan, on behalf of Brean Capital, LLC, to Vanessa Countryman, Secretary, Commission (June 15, 2021) (''Brean Capital Letter'') at 10–21. *See also* Letter from Kirk R. Malmberg, President and Chief Executive Officer, Federal Home Loan Bank of Atlanta, to Vanessa Countryman, Secretary, Commission at 1–2 (Jan. 18, 2022); Letter from Senator John Boozman, Senator Thom Tillis, and Senator Cynthia M. Lummis, to Gary Gensler, Chairman, Commission (Jan. 10, 2022) (''Boozman et al Letter'') at 1–2.

[64] *Id. See also* Melton Letter at 1 (stating Specified Pools do not represent systemic risk in and among themselves and should not be included in the definition of ''Covered Agency Transaction'').

[65] *See* Letter from Thomas J. Fleming and Adrienne M. Ward, Olshan, and David H. Thompson and Harold Reeves, Cooper & Kirk, PLLC on behalf of Brean Capital, LLC, and the Bond Dealers of America, Inc. to Vanessa Countryman, Secretary, Commission (Sep. 10, 2021) (''BDA and Brean Capital Letter'') at 20–42. The BDA and Brean Capital Letter appears twice in the comment file.

[66] *See* Exchange Act Release No. 76148 (Oct. 14, 2015), 80 FR 63603 (Oct. 20, 2015) (Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market; File No. SR–FINRA–2015–036) (''2015 Notice''); *see also Regulatory Notice* 14–02 (Jan. 2014). Even before the publication of these materials, as discussed in SR–FINRA–2015–036, FINRA highlighted that it had engaged in extensive outreach and consultation with market participants and staff of the Federal Reserve Bank of New York and the Commission staff. *See* 2015 Notice, 80 FR, at 63604–05. In Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA stated that up to that point there had been four opportunities for public comment on the original rulemaking, beginning with *Regulatory Notice* 14–02, available at: *https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036. See also* Amendment No. 1 at 4.

[67] *See, e.g.,* 2015 Notice, 80 FR 63615–16. *See also* Amendment No. 1 at 4–5.

[68] *See* 2016 Approval Order, 81 FR 40371.

[69] *See* Partial Amendment No. 3 to SR–FINRA–2015–036, available at: *https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036.*

[70] *See* 2015 Notice, 80 FR 63608.

[71] *See* Partial Amendment No. 1 to SR–FINRA–2015–036, available at: *https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036.*

[72] *See* 2016 Approval Order, 81 FR 40368. *See also* Amendment No. 1 at 5–6.

[73] *See* Partial Amendment No. 3 to SR–FINRA–2015–036. *See also* Amendment No. 1 at 6.

concerns of industry participants, FINRA engaged in extensive dialogue, both with industry participants and other regulators, including staff of Commission and the Federal Reserve System, for the purpose of reconsidering the requirements.[74] Further, FINRA has extended the implementation date of the margin collection requirements pursuant to SR–FINRA–2015–036 on multiple occasions.[75]

FINRA stated that it developed the proposed rule change in direct response to the concerns of industry participants, and in citing the risks posed by unsecured credit exposures that exist in the Covered Agency Transaction market, stated that it has proposed two key revisions designed to afford relief to industry participants.[76] Specifically, FINRA proposed to eliminate the two percent maintenance margin requirement with respect to non-exempt accounts for purposes of their Covered Agency Transactions and, subject to specified conditions and limits, to permit members to take a capital charge in lieu of collecting margin for each counterparty's excess mark to market loss.[77] FINRA believes that, over the course of prolonged engagement with industry participants, and in light of the multiple rounds of responding to concerns already expressed, and answered, in connection with the original rulemaking, and as further addressed in the proposed rule change, it does not serve the public interest to further delay the proposed rule change. FINRA believes the revisions to the original rulemaking as set forth more fully in the proposed rule change, with the additional clarifications provided to commenters, afford industry participants appropriate relief and clarity, and that the rulemaking should proceed.[78]

Further, in response to the additional comments received in response to the OIP, FINRA stated that commenters have expressed these same points repeatedly, including during the original rulemaking. FINRA further stated these concerns have repeatedly been addressed.[79] FINRA also stated that the rulemaking is necessary because of the risk posed by unsecured credit exposures in the Covered Agency Transaction market, and that FINRA has addressed concerns of industry participants in finalizing the original rulemaking, as well as through this proposed rule change.[80] FINRA also stated that events in connection with market volatility and other stress stemming from the COVID–19 pandemic have once again illustrated the importance of risk and exposure limits.[81] FINRA stated that the recent default of Archegos Capital Management, and related multi-billion dollar losses incurred by Credit Suisse, is yet another case in point. FINRA stated that these events reinforce that FINRA's attention to unsecured exposures in the Covered Agency Transaction market, in view of its significance to the U.S. mortgage market and financial system generally, is rationally founded. FINRA stated that the Covered Agency Transaction market today is substantial. As of the second quarter of 2021, FINRA stated that total average daily dollar trading volume for these types of products as reflected in FINRA Trade Reporting and Compliance Engine (''TRACE'') data was approximately $300 billion.[82] FINRA stated that the regulatory need for attention to this area is no less than when FINRA initiated the original rulemaking.[83]

In the proposed rule change, FINRA has reasonably balanced the goal of reducing firm exposure to counterparty credit risk stemming from unsecured credit exposures in the Covered Agency Transaction market, with the potential competitive impacts and costs on smaller and medium-sized broker-dealers. The risks posed by unsecured credit exposures in the Covered Agency Transaction market justify the imposition of margin requirements on Covered Agency Transactions. Further, as highlighted by FINRA above, the current rule, as approved in the 2016 Approval Order, already incorporates a number of exceptions designed to alleviate the impact of the Covered Agency Margin requirements on smaller firms and counterparties, including the small cash counterparty exception.[84] These exceptions remain in the rule as modified by the proposed rule change.

Moreover, while the proposed rule change will not fully resolve the disparity that results from being subject to FINRA Rule 4210, when non-FINRA member banks are not, the proposed rule change to eliminate the maintenance margin requirement and the option to take a capital charge in lieu of margin should help to alleviate this disparity. The continued requirement to collect mark to market losses or take a capital charge in lieu of collecting margin will mitigate the risk that FINRA members will compete by implementing lower margin levels for Covered Agency Transactions and will help ensure that margin levels are set at sufficiently prudent levels across FINRA members.

The Commission agrees with FINRA that some comments have been previously addressed in the original rulemaking, including whether to impose any margin requirements on Covered Agency Transactions or exclude certain products from the scope of the rule, such as Specified Pools and CMOs.[85] These commenters provided comments about the rules that the Commission has previously approved, but those rules are not before the Commission in this filing.[86] As described above, the only amendments to the current rule before the Commission under the proposed rule change are to eliminate the maintenance margin requirement, permit capital in lieu of margin charges subject to a cap, and to reorganize and streamline the rule text. Because the margin requirements set forth in the original rulemaking were approved in the 2016 Approval Order, without this proposed rule change, the margin collection requirements in the original rule would become effective in 2022.

Further, the Commission agrees with FINRA that the regulatory need for attention to this area is no less than when FINRA initiated the original rulemaking. Recent events have reinforced the need to address unsecured exposures in the Covered Agency Transaction market, in view of its significance to the U.S. mortgage market and the financial system, more generally. Moreover, permitting counterparties to participate in the Covered Agency Transaction market without posting variation margin could facilitate increased leverage by customers, thereby posing a risk to the broker-dealer engaging in an unsecured transaction with a counterparty, and to the marketplace as a whole. The imposition of margin requirements on Covered Agency Transactions also is consistent with other regulatory efforts that have sought to address the risk of uncollateralized exposures arising from

[74] *See* Amendment No. 1 at 6.

[75] *See* Notice, 86 FR 28162. *See also* Amendment No. 1 at 6.

[76] *See* Notice, 86 FR 28162–63. *See also* Amendment No. 1 at 6.

[77] *See* Amendment No. 1 at 6–7.

[78] *See* Amendment No. 1 at 7.

[79] *See* FINRA Letter at 3.

[80] *See* FINRA Letter at 4–7.

[81] *See* FINRA Letter at 5.

[82] *See* FINRA Letter at 5–6.

[83] *See* FINRA Letter at 6.

[84] *See* 2016 Approval Order, 81 FR 40375.

[85] *See, e.g.,* 2016 Approval Order, 81 FR 40375–76 (''[E]xcluding additional products from the rule or modifying the settlement dates in the definition of Covered Agency Transactions potentially may ''undermine the effectiveness of the proposal'' if counterparties are permitted to maintain unsecured credit exposures on these positions'').

[86] *See* 2016 Approval Order.

different types of bilateral transactions with counterparties.[87]

Eliminating the two percent maintenance margin requirement will reduce operational burdens on FINRA member firms by eliminating the need to obtain and assess information regarding a counterparty's exempt or non-exempt status. Further, FINRA member firms will continue to be required to collect variation margin under the proposed rule change from a counterparty or take a capital charge, subject to a cap. This requirement will further the goal of reducing firm exposure to counterparty credit risk stemming from unsecured credit exposures in the Covered Agency Transaction market. The elimination of the two percent maintenance margin charge also reduces potential competitive disparities between FINRA broker-dealers and large bank dealers that are not subject to a maintenance margin requirement.[88]

The proposed rule change to permit FINRA members to take a capital charge in lieu of collecting margin, subject to a cap, will provide an alternative for firms that are concerned, due to their size, about facing competitive disadvantages. For example, to the extent smaller broker-dealers face difficulties obtaining margin agreements with counterparties, the capital charge provides an alternative. The capital in lieu of margin charges under the proposed rule change will require a broker-dealer to set aside net capital to address the risk of unsecured exposures in the Covered Agency Transaction market that can otherwise be mitigated through the collection of variation margin. The set aside of net capital will serve as an alternative to obtaining margin collateral for this purpose.

Additionally, the proposed caps and concentration limits on the proposed capital in lieu of margin charges will permit smaller broker-dealers to utilize the capital charge alternative, while limiting the amount of capital charges that large firms would be able to take under the proposed rule change. This will prohibit larger broker-dealers from using their size advantage (and larger capital base) to compete with smaller firms by using the capital charge in lieu of margin charge. Moreover, by providing the choice of either the collection of variation margin or a capital charge for the amount of the variation margin, the proposed rule change provides alternatives to broker-dealers with respect to their counterparties, while also protecting FINRA members from risks of unsecured credit exposures to Covered Agency Transactions.

Some commenters stated that a member with a Covered Agency Transaction position that is hedged from a market risk perspective, but is unhedged from a credit risk perspective, would have significantly higher capital charges or margin requirements under the proposed rule change than they would otherwise have absent the rule. The commenters described scenarios to illustrate this result.[89] FINRA stated that some of the scenarios involve firms that are fully hedged from a market risk perspective, like a firm that purchases a TBA, Specified Pool, or CMO from one party and enters into an offsetting sale transaction with another party, with the same settlement date. Commenters described these transactions as ''riskless,'' but FINRA stated that it disagrees with such characterization. FINRA stated that such a firm is exposed to the credit risk of both the buyer and seller, and the offsetting transactions provide no protection against those risks. FINRA stated that paragraph (e)(2)(H) of FINRA Rule 4210 requires members to protect themselves against that counterparty credit risk by collecting margin for their counterparties' excess net mark to market losses or taking capital charges in lieu of such collection.[90]

According to FINRA, in some of these scenarios, commenters attributed the higher margin or capital requirements to the fact that the transactions (termed ''non-netting'' by one commenter and ''non-nettable'' by another) will not net under the proposed rule change. Under the proposed rule change, however, FINRA stated there is no category of transactions that cannot be netted in the determination of a counterparty's ''net mark to market loss.'' According to FINRA, the only requirement is that the member have a legal right to offset losses on one transaction against gains on the other (or a security interest that would allow it to apply gains on one transaction to the counterparty's losses on the other).[91]

FINRA stated that the ''non-netting'' or ''non-nettable'' transactions, as referenced by the commenters, appear to be transactions that are not eligible to be cleared by the Mortgage-Backed Securities Division of the Fixed Income Clearing Corporation (''MBSD''). However, FINRA stated that when an eligible transaction is submitted to the MBSD for clearing, that transaction is novated to the MBSD, so that instead of a transaction between the original buyer and seller, there are two mirror transactions: One in which the original buyer is buying from the MBSD; and one in which the original seller is selling to the MBSD. Accordingly, FINRA stated that when a firm executes with a single counterparty an MBSD-eligible transaction and a transaction that is not MBSD-eligible, and the eligible transaction is submitted for clearing (but the non-eligible transaction is not), the firm ends up with two transactions with two separate counterparties. These transactions cannot be netted against each other, according to FINRA, because they are with separate counterparties, rather than because of FINRA's proposed rule change, which in fact would allow gains and losses on the transactions to be netted to the extent of a perfected, first priority, security interest in the transaction with the gain.[92]

Further, according to FINRA, the current rule, as approved under the 2016 Approval Order, would, subject to specified exceptions, require members to collect margin whenever their counterparties' mark to market losses (and two percent maintenance margin deficiency, where applicable) exceeds $250,000, and would require them to take a capital charge to the extent such margin is not collected by the close of business on the business day after such mark to market loss (or maintenance margin deficiency) arose.[93] FINRA stated that the proposed rule change preserves all of the exceptions in the current rule, eliminates the two percent maintenance margin requirement, provides an option, subject to specified conditions, to take capital charges in lieu of collecting margin for net mark to market losses in excess of $250,000, and requires a capital charge to the extent margin for excess net mark to mark losses has not been collected by the close of business on the business day after such mark to market losses arose. Because the proposed rule change

[87] *See, e.g.,* Exchange Act Rule 18a–3 (imposing margin requirements on non-cleared security-based swap transactions for security-based swap dealers and major security-based swap participants).

[88] *See* Treasury Market Practices Group (''TMPG''), Margining in Agency MBS Trading (Nov. 2012), available at *https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/margining_tmpg_11142012.pdf* (''TMPG Report''). The TMPG report recommends the exchange of variation margin for dealer banks. The TMPG is a group of market professionals that participate in the Covered Agency Transaction market and is sponsored by the Federal Reserve Bank of New York.

[89] *See* BDA Letter at 2–4; Brean Capital Letter at 15–18.

[90] *See* Amendment No. 1 at 7.

[91] *See* Amendment No. 1 at 7–8.

[92] *See* Amendment No. 1 at 8.

[93] *See* Amendment No. 1 at 8.

eliminates the two percent maintenance margin requirement (and as such eliminates the related capital charges for uncollected maintenance margin), FINRA stated that the margin requirements and capital charges under the proposed rule change are less than the requirements under the current rule.[94]

The Commission agrees with FINRA's analysis. The proposed rule change will reduce the current rule's requirements by permitting capital charges in lieu of margin and eliminating the two percent maintenance margin requirement. In addition, all of the exceptions in the current rule are preserved in the proposed rule change. Further, the proposed rule change allows a FINRA member to offset transactions where the member has a legal right to offset losses on one transaction against gains on the other. This permits a member the flexibility to net certain transactions, while protecting broker-dealers against counterparty credit risk by requiring them to collect margin for each counterparty's excess net mark to market losses or taking capital charges in lieu of such collection when transactions cannot be netted. Where transactions cannot be legally netted, the broker-dealer would be exposed to counterparty credit risk and, consequently, should collect variation margin from its counterparty or take a capital charge in lieu of collecting margin, unless an exception applies.

FINRA acknowledged that the margin requirements and capital charges under both the proposed rule change and the current rule are higher in certain scenarios (and lower in others) than they would be under a commenter's suggestion that (1) there should be no margin requirements applicable to Covered Agency Transactions (up to the second monthly SIFMA settlement date), and (2) members should be required to take capital charges for only ten percent of their counterparties' unmargined mark to market losses.[95] FINRA stated that it believes that this suggestion would significantly undercut the objective of the rule.[96] FINRA also stated that a proposed alternative approach a commenter suggested that would not require margin to be posted until the next two ''SIFMA good day settlements'' and apply capital charges for 10 percent of the mark to market loss, instead of the 100 percent of the mark to market loss set forth in the proposed rule change, would significantly undercut the objective of the Covered Agency Transaction margin requirements.[97]

The Commission agrees with FINRA's analysis regarding the proposed capital charges or margin requirements. Reducing the proposed capital charges or margin requirements, or extending the time under which margin would not need to be collected until the next two good settlement dates would undermine the purposes of the rule to reduce the risk of unsecured exposures from Covered Agency Transactions. The proposed rule change will require a broker-dealer to collect variation margin from a customer or take a dollar-for-dollar capital charge for variation margin that is not collected from a counterparty, unless an exception applies. This requirement addresses the risk of a broker-dealer's unsecured exposures in the Covered Agency Transaction market that can be mitigated through the collection of variation margin or the set aside of net capital.

Some commenters raised concerns that FINRA and the Commission lack the authority to prescribe margin requirements for Covered Agency Transactions.[98] The commenters argued that Section 7 of the Exchange Act identifies the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') as the entity responsible for regulating margin, and that Congress never intended the Commission to administer margin regimes.[99] Further, one commenter stated that Section 3(a)(12) of the Exchange Act defines Covered Agency Transactions as ''exempted securities'' and, therefore, not subject to the authority of the Federal Reserve Board or the Commission.[100] Another commenter stated that Senate Report in connection with the adoption of the Secondary Mortgage Market Enhancement Act of 1984 (including Section 7(g) of the Exchange Act) supports the view that the Federal Reserve Board has sole authority, and that Congress did not intend to grant FINRA authority to require margin for trades in exempt securities.[101]

FINRA addressed this assertion in the original rulemaking, and stated that the requirements are consistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act.[102] FINRA stated that Section 7 of Securities Exchange Act sets forth the parameters of the margin setting authority of the Federal Reserve Board and does not bar action by FINRA.[103] The Commission agrees with FINRA that it is within FINRA's authority to impose margin requirements on its members.[104]

The Commission agrees with FINRA that the proposed rule change relating to streamlining and reorganizing the current rule enhances the transparency of the Covered Agency Transaction margin requirements. The consolidation of the rule text and deletion of unnecessary language may reduce costs and enhance efficiencies for broker-dealers, while preserving the exceptions in the current rule, such as the exception from collecting variation margin for net mark to market losses below $250,000 and the small cash counterparty exception. For example, the proposed rule change streamlines the language regarding the $250,000 exception making it easier to determine the applicable margin, which in turn, may reduce costs associated with calculating margin requirements when establishing trading relationships.

B. Other Comments, Clarifications; Technical Revisions to the Proposed Rule Change

In response to the Notice and the OIP, commenters raised additional issues regarding other aspects of the proposed

[94] *See* Amendment No. 1 at 8.

[95] According to FINRA, under the current rule and the proposed rule change, members are not required to collect margin, or take capital charges in lieu of collecting margin, to cover the net mark to market losses of small cash counterparties, registered clearing agencies, Federal banking agencies (as defined in 12 U.S.C. 1813(z)), central banks, multinational central banks, foreign sovereigns, multilateral development banks, or the Bank for International Settlements. FINRA stated that these exceptions mean that some members engaging in Covered Agency Transactions with these counterparties may have lower margin and capital requirements under the current rule and the proposed rule change than they would under the commenter's suggestion. *See* Amendment No. 1 at 9.

[96] *See* Amendment No. 1 at 9.

[97] *See* Amendment No. 1 at 8–9.

[98] *See* Brean Capital Letter at 21–23; Melton Letter; BDA and Brean Capital Letter at 20–25. *See also* Boozman et al Letter at 2.

[99] *See* Brean Capital Letter at 22–23; Melton Letter.

[100] *See* Brean Capital Letter at 22.

[101] *See* Melton Letter; BDA and Brean Capital Letter at 21–22.

[102] *See* 2016 Approval Order, 81 FR 40373.

[103] *See* Amendment No. 1 at 7.

[104] *See* 12 CFR 220.1(b)(2) (''This [Regulation T] . . . does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.''); *See also* 2016 Approval Order, 81 FR 40374 (''The stated goals of the proposal are consistent with the purposes of the Exchange Act and with FINRA's authority to impose margin requirements on its members.''); paragraphs (e)(2)(A), (B), and (F) of FINRA Rule 4210 (imposing maintenance margin requirements on exempted securities, and requirements on transactions with exempt accounts involving certain good faith securities); and Federal Reserve Board Ruling (June 28, 1972), FRRS 5–622 (''Although the Board does not have authority to set margin requirements on exempted securities (FNMA stock is an exempted security), brokers and national securities exchanges can establish margin requirements more restrictive than those of the Board.'').

rule change or requested clarifications or technical revisions to the proposed rule change. These comments are discussed in the following sections below.

1. Concerns Regarding Liquidation

Commenters expressed concern about requirements to liquidate Covered Agency Transactions stating that market participants often engage in long ''chains'' of Specified Pool or CMO transactions, where the initial seller contracts to sell a Specified Pool or CMO to the initial buyer, the initial buyer contracts to sell the Specified Pool or CMO to a second buyer, who contracts to sell it to a third buyer, who contracts to sell it to a fourth buyer, etc.[105] The commenters stated that if any party in the chain (except for the last buyer) terminates its purchase or sale transaction, the buyer in the terminated transaction is unlikely to be able to buy the Specified Pool or CMO elsewhere, and therefore will be unable to perform on its sale transaction—and so will every subsequent buyer and seller in the chain. These commenters stated that FINRA should eliminate or suspend the liquidation requirement under the proposed rule change to avoid the prospect of a ''daisy chain'' of fails.

FINRA responded that, under the current rule, if a counterparty's unmargined mark to market loss (and two percent maintenance margin deficiency, where applicable) exceeds $250,000 and is not margined or eliminated within five business days from the date it arises, the member is required to liquidate the counterparty's positions to satisfy the mark to market loss (and two percent maintenance margin deficiency where applicable), unless FINRA specifically grants additional time. FINRA also stated that the proposed rule change has eliminated this liquidation requirement.[106]

In addition, FINRA stated that, under the proposed rule change, a member can opt to take a capital charge in lieu of collecting margin to cover a counterparty's excess net mark to market loss. FINRA stated that if these capital charges [107] exceed the lesser of 25 percent of the member's tentative net capital or $30 million [108] for five consecutive business days, then the member:

- May not enter into new Covered Agency Transactions with non-margin counterparties other than risk reducing transactions;
- Must, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss; and
- Must, to the extent of its rights, promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time.[109]

Moreover, FINRA stated that if the member does not have the right to liquidate a counterparty's Covered Agency Transactions, the proposed rule change does not require the member to liquidate those transactions, even after the member has exceeded the threshold for five business days.[110] However, according to FINRA, if the member has exceeded the threshold for five business days and the member does have a right to liquidate a counterparty's Covered Agency Transactions and the counterparty's excess mark to market loss has not been margined or eliminated within five business days, only then would a member be required to enforce its liquidation right or obtain an extension from FINRA.[111]

The Commission agrees with FINRA that the changes described above provide for greater flexibility with respect to the liquidation requirement, and also provide an appropriate amount of time, via the ability take a capital charge in lieu of margin and to obtain an extension from FINRA, to permit firms to adequately address unmargined positions without requiring an immediate liquidation of positions. The proposed rule change eliminates the liquidation requirement under the current rule and replaces it with a requirement to liquidate a counterparty's Covered Agency Transactions in limited circumstances (*e.g.,* only if the broker-dealer has a right to liquidate the transaction and only if certain conditions are met, including exceeding the specified cap on net capital deductions).

FINRA has also stated that this limited liquidation obligation should not lead to a daisy chain of fails, except possibly in circumstances where a counterparty's unwillingness or inability to perform its undisputed obligations makes it equally likely that a daisy chain or fails will occur whether or not the member liquidates a transaction with the counterparty.[112] According to FINRA, there are four categories of reasons why a counterparty would fail to margin its excess net mark to market loss by the fifth business day after it arises, and FINRA stated that it believes only one of them has any prospect of leading to a liquidation requirement under the proposed rule change:

- *First Category*—The counterparty may not have an obligation, under an agreement or otherwise, to margin its excess net mark to market losses within five business days after they arise. In this case, the member would not have a right to liquidate the counterparty's Covered Agency Transactions when excess net mark to market losses are not margined or eliminated within five business days after they arise, and so would have no obligation under the proposed rule change to liquidate the counterparty's Covered Agency Transactions.
- *Second Category*—An operational issue may cause the counterparty to fail to satisfy its obligation to margin its excess net mark to market losses. FINRA believes that five business days should be more than enough time to resolve any operational issue. However, in the event an extended operational issue, or series of operational issues, prevents a counterparty from providing margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC/$30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency

[105] *See* Brean Capital Letter at 12–13, 20; SIFMA Letter at 3.

[106] *See* Amendment No. 1 at 9.

[107] As discussed in more detail in Section II.C. above, FINRA stated that it is modifying the proposed rule change so that capital charges for a counterparty's unmargined excess net mark to market loss do not count toward this threshold to the extent that the member, in good faith, expects such excess net mark to market loss to be margined by the close of business on the fifth business day after it arose. *See* Amendment No. 1 at 10.

[108] Collectively referred to as the ''25% TNC/$30MM Threshold''.

[109] *See* Amendment No. 1 at 10.

[110] FINRA stated that a member is not required to have a right to liquidate a counterparty's Covered Agency Transactions. However, if the member does not have that right, the counterparty would be a ''non-margin counterparty,'' and paragraph (e)(2)(H)(ii)d.1. under the proposed rule change would require the member to establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule as amended by the proposed rule change and that the member's capital charges in lieu of margin on Covered Agency Transactions for all accounts combined will not exceed $25 million. These procedures would likely involve limitations on the extent of the member's business with such non-margin counterparties. FINRA stated that when the firm's risk management procedures function as they are required to be designed, the member will rarely cross the 25% TNC/$30MM Threshold, much less exceed it for five consecutive business days. *See* Amendment No. 1 at 10.

[111] *See* Amendment No. 1 at 10.

[112] *See* Amendment No. 1 at 10–11.

Transactions. FINRA expects that an operational issue should not continue long enough to prevent a counterparty from satisfying its margin obligation past the expiration of a 14-day extension.[113]

• *Third Category*—There may be a disagreement over the amount of the counterparty's excess mark to market loss, leading the counterparty to believe that it has satisfied its obligation to provide margin but the firm to believe that it has not. Commenters suggested that relatively unique assets, like Specified Pools and CMOs, are more likely to be the subject of valuation disputes. FINRA stated that five business days should be more than enough time to resolve any valuation dispute. Firms whose business involves a significant volume of transactions that are prone to operational disputes should analyze whether their risk management procedures should require their contracts for such transactions to include or incorporate a procedure for the prompt resolution of valuation disputes.[114] FINRA stated that if an extended valuation dispute leads a counterparty to fail to provide margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC/$30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions. FINRA stated that a margin valuation dispute should not continue past the expiration of a 14-day extension.

• *Fourth Category*—The counterparty may be unwilling or unable to satisfy an undisputed obligation to margin its excess net mark to market loss. FINRA believes that, when a counterparty is unwilling or unable to satisfy its undisputed margin obligations, there is also reason for significant doubt that the counterparty would be willing and able to satisfy its obligations to pay or deliver on the settlement date of the transaction. When facing such an unreliable counterparty, FINRA stated that it believes it is possible the daisy chain of fails may occur even if the member does not liquidate. FINRA further stated that this could be just as easily triggered by the counterparty's unwillingness or inability to perform its obligations as by the member's liquidation of its transaction.[115]

According to FINRA, with regard to this fourth category, to the extent feasible, members should terminate transactions with such counterparties in order to protect themselves against further exposure. However, FINRA stated that if a member believes that it would not be feasible to terminate a transaction with such a counterparty, or that such termination would be unduly disruptive to the member's business or the market, extensions may be available from FINRA if the member has exceeded the 25% TNC/$30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions.[116]

According to FINRA, as described above, in the first category, members have no liquidation obligation under the proposed rule change. In the second and third categories, FINRA believes that the reason why the counterparty has not margined its excess net mark to market loss should be eliminated before the five business day period has ended, and generally before the expiration of a 14-day extension from FINRA. FINRA stated that only in the fourth category, where the counterparty is demonstrably unwilling or unable to perform its obligations to the member, should liquidation of counterparty's Covered Agency Transactions be required under the proposed rule change, provided that the member has exceeded the 25% TNC/$30MM Threshold for five consecutive business days—and, even in that case, extensions may be available if liquidation is infeasible or would unduly disrupt the member's business or the market.[117]

The Commission agrees that the responses provided by FINRA appropriately address the concerns raised by commenters concerning the potential for daisy chain fails. As described above, the requirement to liquidate a counterparty's position is limited under the proposed rule change to instances where the member has the right to liquidate a counterparty's Covered Agency Transactions. Otherwise, the proposed rule change does not require the member to liquidate those transactions where the member does not have a right to liquidate, even after the member has exceeded the 25% TNC/$30MM Threshold for five consecutive business days. Further, FINRA members may apply to FINRA to receive an extension of time beyond the five business day period. The ability to receive extensions of time beyond the five business day period will help to protect broker-dealers where liquidation is infeasible or would unduly disrupt the FINRA member's business or the market. Finally, in cases where a counterparty is unlikely or unwilling to satisfy a variation margin requirement, the broker-dealer's counterparty credit risk to its counterparty may increase, as well as the risk that the counterparty may be unable or unwilling to settle the transaction. In such cases, the likelihood of counterparty default may occur even if the broker-dealer does not liquidate the Covered Agency position or if it is not part of a chain of transactions.

2. Definition of ''Excess Net Mark to Market Loss''

Some commenters requested confirmation that, under the proposed rule change, members would only be required to collect margin (or take capital charges for uncollected margin) to cover the amount by which a counterparty's net mark to market loss exceeds the $250,000 threshold.[118]

In response, FINRA stated that this is correct. According to FINRA, under the proposed rule change, paragraph (e)(2)(H)(ii)c. of FINRA Rule 4210 states that members are not required by the rule ''to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses'' and a counterparty's ''excess net mark to market losses'' are defined in paragraph (e)(2)(H)(i)c. as ''such counterparty's net mark to market loss to the extent it exceeds $250,000.''[119] FINRA stated that, for example, if a member's counterparty has a net mark to market loss of $300,000, its excess net mark to market loss is $50,000, which would be the amount of margin the proposed rule change would require the member to collect, or take a

[113] *See* Amendment No. 1 at 11.

[114] FINRA stated, by way of example, the current Credit Support Annex to the ISDA Master Agreement contains a provision under which the parties generally agree to resolve disputes over the valuation of over-the-counter derivatives for margin purposes by seeking four actual quotations at mid-market from third parties and taking the average of those obtained. FINRA stated that the OTC derivatives documented under ISDA Master Agreements can be much more difficult to value than any Specified Pool or CMO transaction. *See* Amendment No. 1 at 11–12.

[115] *See* Amendment No. 1 at 12.

[116] FINRA stated that although an initial 14-day extension will be granted upon application citing the applicable circumstances, any application for a lengthy extension, or series of extensions, must describe the reason for the request and the member's plans for protecting itself (now and in the future) against the risk posed by a counterparty that has demonstrated itself to be unwilling or unable to perform its undisputed obligations. *See* Amendment No. 1 at 12.

[117] *See* Amendment No. 1 at 12–13.

[118] *See* SIFMA Letter at 4; SIFMA AMG Letter at 4.

[119] *See* Amendment No. 1 at 13.

capital charge in lieu of collecting (unless there is an applicable exemption). FINRA stated that the counterparty's excess net mark to market loss is the minimum amount of margin that (subject to the exceptions set forth in the proposed rule change) the member must collect (or take a capital charge in lieu of collecting). According to FINRA, the proposed rule change does not prevent members and their counterparties from agreeing that the counterparty will transfer additional margin. For example, FINRA stated that a member and its counterparty could agree that, when the counterparty's net mark to market loss exceeds $250,000, the counterparty will transfer to the member margin that covers the counterparty's entire mark to market loss, rather than only enough to cover its excess net mark to market loss. Similarly, FINRA stated that a member may exclude a counterparty's in the money amounts on long standby positions from its computation of net mark to market.[120]

FINRA's response appropriately responds to the commenters' request for confirmation by specifically confirming that under the proposed rule change members would only be required to collect margin to cover the amount by which a counterparty's net mark to market loss exceeds the $250,000. Also, FINRA's response is consistent with the definition of the term excess net mark to market losses under the proposed rule change.

3. Definition of ''Net Mark to Market Loss''

A commenter requested confirmation that the definition of ''net mark to market loss'' would include the calculations used under the form of Master Securities Forward Transaction Agreement (''MSFTA'') published by SIFMA.[121] In response, FINRA stated that it does not require or endorse any particular form of agreement for margining Covered Agency Transactions, and as such declines to provide the requested confirmation, as this relates to what is a commercial matter among the parties.[122]

A commenter also suggested that FINRA should remove the phrase ''legally enforceable right of offset or security'' from the definition of ''net mark to market loss.''[123] In response, FINRA stated that this phrase is necessary.[124] According to FINRA, if the phrase is removed, then the amount of the counterparty's mark to market losses which are subject to margining would be reduced by the counterparty's mark to market gains on other transactions, without regard to whether the member has any legally enforceable right to apply those gains to cover the counterparty's losses. FINRA stated, for example, that if a counterparty defaults when it has a mark to market loss of $10 million on one transaction and a mark to market gain of $10 million on another transaction, having a legally enforceable right of offset would allow the member to apply the counterparty's gains to cover its losses. In the absence of a legally enforceable right of offset or security, however, FINRA stated that the member could face the prospect of having an obligation to pay the counterparty $10 million for its gains, without any guaranty of collecting the full amount of the counterparty's $10 million loss. According to FINRA, if the counterparty enters insolvency proceedings, the lack of a legally enforceable right of offset or security could result in the member being obliged to pay the full $10 million of the defaulted counterparty's gains and being only able to collect cents on the dollar for the counterparty's losses.[125]

The Commission agrees that FINRA's response to the commenter's request for confirmation regarding the MSFTA as the proposed rule change does not require any particular form of agreement or contract. Further, the Commission agrees with FINRA that including the phrase ''legally enforceable right of offset or security'' in the definition of net mark to market loss is appropriate because it will allow a FINRA member to apply the counterparty's gains to cover its losses, which will reduce a broker-dealer's financial exposure to a counterparty in the event the counterparty enters insolvency.

4. Definition of ''Non-Margin Counterparty''

With respect to the five business day period, paragraph (e)(2)(h)(i)e.1. under FINRA Rule 4210 under the proposed rule change provides in part that a counterparty is a non-margin counterparty if the member ''does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises.''[126] A commenter stated that this effectively requires imposing a margin collection timing which is stricter than required under other rules or the standard under FINRA Rule 4210(f)(6).[127]

In response, FINRA stated that it disagrees for several reasons. First, FINRA stated that current rule requires members to liquidate positions whenever a mark to market loss (or maintenance deficiency) on Covered Agency Transactions is not margined or otherwise eliminated within five business days (and no extension has been obtained). According to FINRA, the proposed rule change uses a five business day period but, as discussed above, applies it more flexibly than the current rule.[128] FINRA stated that if the member lacks a right to liquidate a counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days, that counterparty is a ''non-margin counterparty.'' As consequence, the member would become subject to the risk management requirements under paragraph (e)(2)(H)(ii)d.2. of the rule as modified by the proposed rule change (if not already subject to that requirement); and if the member's specified net capital deductions[129] exceed the 25% TNC/$30MM Threshold for five consecutive business days, FINRA stated that the member would not be able to enter into transactions with the non- margin counterparty, other than risk reducing transactions, while those net capital deductions continue to exceed the 25% TNC/

[120] *See* Amendment No. 1 at 13–14.

[121] *See* SIFMA Letter at 4.

[122] *See* Amendment No. 1 at 14. Similarly, FINRA stated that it also declines a commenter's request to confirm that an MSFTA with a cure period (or similar provision after the expiration of which liquidating action may be taken) of less than or equal to five business days would provide the rights described in the definition of ''non-margin counterparty'' under paragraph (e)(2)(H)(i)e. under the proposed rule change. *See* Amendment No. 1 at 14 and SIFMA AMG Letter at 4.

[123] *See* SIFMA Letter at 4.

[124] *See* Amendment No. 1 at 14.

[125] *See* Amendment No. 1 at 14. In response to a commenter, FINRA stated that the phrase ''first-priority perfected security interest'' in paragraph (e)(2)(H)(i)d.2. under the proposed rule change only applies to pledges of a counterparty's rights under Covered Agency Transactions with third parties. *See* Amendment No. 1 at 14–15 and SIFMA Letter at 4.

[126] In response to a commenter, FINRA stated that if a member has a right under a written agreement to collect margin for a counterparty's entire net mark to market loss whenever the amount of that loss exceeds $250,000. FINRA stated that, for purposes of the proposed rule change, it would view this as a right under a written agreement to collect margin for such counterparty's excess net mark to market loss, since the counterparty's excess net mark to market loss is $250,000 less than the counterparty's entire net mark to market loss (or zero if the net mark to market loss does not exceed $250,000). *See* Amendment No. 1 at 15 and SIFMA AMG Letter at 4.

[127] *See* SIFMA Letter at 4.

[128] *See* Amendment No. 1 at 15.

[129] *See infra* note 143.

$30MM Threshold.[130] According to FINRA, if the member has a right to liquidate a counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days, the member is not required to enforce that right (that is, not required to liquidate the counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss has not been margined or eliminated within five business days), unless and until the member's specified net capital deductions exceed the 25% TNC/$30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA).[131]

Second, FINRA also stated that even if members were required to have a contractual right to liquidate when margin is not collected within five business days, that would not, in the commenter's terms, ''impos[e] a margin collection timing that is stricter than that which is required under the rules (or other aspects of FINRA Rule 4210 generally).'' Further, FINRA stated that FINRA Rule 4210(f)(6) requires margin to be collected ''as promptly as possible,'' and the rule as approved pursuant to the original rulemaking (as stated above) requires liquidation when a mark to market or maintenance deficiency has not been margined or eliminated within five business days (unless an extension has been obtained).[132]

The Commission agrees with FINRA's response to a comment that the reference to a five business day requirement in the definition of non-margin counterparty effectively imposes a margin collection timing requirement that is stricter than under current rules. A counterparty is a non-margin counterparty under the proposed rule change if the broker-dealer does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises. The five business day reference in the definition of non-margin counterparty is used to classify counterparties as non-margin counterparties and does not impose a five-day margin collection requirement.

Further, the current rule contains a liquidation requirement if a mark to market loss (or maintenance deficiency) on Covered Agency Transactions is not margined or otherwise eliminated within five business days (and no extension has been obtained). The proposed rule eliminates this requirement and provides for more flexibility with respect to whether a broker-dealer must liquidate a counterparty's positions if it has a right to do so, (*i.e.,* only after certain conditions occur and only if no extensions of time have been granted). Therefore, the proposed rule changes does not effectively impose a margin collection or liquidation requirement whenever that counterparty's excess net mark to market loss is not margined or eliminated within five business days.

5. Exempted Counterparties

A commenter suggested that FINRA should explicitly exclude small cash counterparties and other counterparties covered by paragraph (e)(2)(H)(ii)a.1. under the proposed rule change from the definition of ''non- margin counterparty.''[133] FINRA stated that this request is consistent with the purpose of paragraph (e)(2)(H)(ii)a.1. and has modified the definition of ''non-margin counterparty'' to implement the requested exclusion.[134]

Modifying the definition of ''non-margin counterparty'' is appropriate as it enhances transparency of the scope of the term to specifically exclude small cash counterparties.

6. Exemption for Certain Counterparties

A commenter suggested that the exceptions in paragraph (e)(2)(H)(ii)a.1. be expanded to encompass the U.S. Federal Home Loan Banks.[135] FINRA responded that it does not propose to make the suggested modification because it would undermine the rule's purpose of reducing risk.[136] The Commission agrees with FINRA's response regarding the expansion of the exceptions in paragraph (e)(2)(H)(ii)a.1., as including U.S. Federal Home Loan Banks in the exceptions would undermine the effectiveness of the proposed rule change, and would not be consistent with the purpose of the proposed rule change of reducing risk of unsecured exposures to Covered Agency Transactions.[137]

7. The 25% TNC/$30 MM Threshold

Regarding small cash counterparties, a commenter requested confirmation that margin not collected from small cash counterparties does not count toward the 25% TNC/$30MM Threshold.[138] In response, FINRA stated that margin not collected from small cash counterparties does not count toward the 25% TNC/$30MM Threshold.[139] Further FINRA stated that paragraph (e)(2)(H)(ii)d.3. only counts capital charges under paragraph (e)(2)(H)(ii)d.1. toward the 25% TNC/$30MM Threshold. And, pursuant to paragraph (e)(2)(H)(ii)a.1., FINRA stated that members are not required under the proposed rule change ''to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements.'' FINRA stated that because the proposed rule change does not require members to take capital charges for these counterparties' unmargined excess net mark to market losses, they do not count toward the 25% TNC/$30MM Threshold.[140]

The Commission agrees with FINRA's response to the commenter's request for confirmation regarding whether margin not collected from small cash

[130] *See* Amendment No. 1 at 16.

[131] *See* Amendment No. 1 at 16. In response to a commenter, FINRA stated that classification of a counterparty as a non-margin counterparty depends on (a) whether the member has the right to collect margin for the counterparty's excess net mark to market loss, (b) whether the member regularly collects margin for the counterparty's excess net mark to market loss, and (c) whether the member has the right to liquidate such counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days from the date it arises. According to FINRA, classification of a counterparty as a margin counterparty (that is, as not a non-margin counterparty) does not require the member to exercise the right to liquidate whenever that counterparty's excess net mark to market loss is not margined or eliminate within five business days. However, FINRA stated that the counterparty would need to be reclassified as a non-margin counterparty if the member does not regularly collect margin for the counterparty's excess net mark to market loss. FINRA stated that the exercise of the right to liquidate is only required by the proposed rule change if the member's capital charges have exceeded the 25% TNC/$30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA). *See* Amendment No. 1 at 16 and SIFMA Letter at 4–5.

[132] *See* Amendment No. 1 at 16–17.

[133] *See* SIFMA Letter at 5.

[134] *See* Amendment No. 1 at 17 and Exhibit 4 to Amendment No. 1.

[135] *See* SIFMA Letter at 6.

[136] *See* Amendment No. 1 at 17.

[137] *See also* 2016 Approval Order, 81 FR 40375–76 (discussion scope of exemptions under the current rule).

[138] *See* SIFMA Letter at 5.

[139] *See* Amendment No. 1 at 17.

[140] *See* Amendment No. 1 at 17.

counterparties counts toward the 25% TNC/$30MM Threshold. FINRA's response appropriately addresses the commenter's concerns and is consistent with the purposes of the proposed rule change, because the proposed rule change also prescribes overall concentration thresholds under paragraph (e)(2)(I) of FINRA Rule 4210.[141]

With respect to counterparties yet to post margin, a commenter suggested that the proposed rule change be modified so that any capital charge under paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 not count toward the 25% TNC/$30MM Threshold until the fifth business day after the relevant excess net mark to market loss arose. The capital charge is required whenever a counterparty's excess net mark to market loss is not margined or eliminated by the close of business on the business day after the business day on which it arises. The commenter stated that many counterparties that are regularly margined are unable to post margin on a consistent T+1 basis due, for example, to those counterparties being in an overseas jurisdiction or to operational or custodial issues. Moreover, the commenter stated good faith disputes over the amount of margin to be posted may mean that a counterparty does not post margin by T+1 even when the counterparty is ready, willing, and able to post margin promptly after the proper amount is determined. Finally, the commenter stated that, without the grace period the commenter is requesting, members may be continuously over the 25% TNC/$30MM Threshold solely based on ordinary course levels of margin not yet collected from counterparties who are expected to post required margin.[142]

In response, FINRA stated that it agrees that the purpose of the proposed rule change does not require counting toward the 25% TNC/$30MM Threshold capital charges taken for excess net mark to market losses that the member in good faith expects to be margined by the fifth business day after they arise. Accordingly, FINRA revised paragraph (e)(2)(H)(ii)d.3. so that capital charges under paragraph (e)(2)(H)(ii)d.1. with respect to a counterparty's unmargined excess net mark to market loss do not count towards the thresholds in paragraph (e)(2)(H)(ii)d.3. to the extent that the member, in good faith, expects such unmargined excess net mark to market losses to be margined within five business days.[143] According to FINRA, members would still be required to protect themselves by taking net capital deductions while the excess net mark to market losses are unmargined, but, under the proposed rule change, as modified by Amendment No.1, will have more flexibility to address operational issues and valuation disputes before they impact the 25% TNC/$30MM Threshold.[144]

The proposed change related to the 25% TNC/$30 MM Threshold is appropriate as it provides additional time and flexibility for member firms to address operational and related issues related to the collection of margin, thereby avoiding unnecessary disruptions to the Covered Agency Transaction market. The proposed change related to the 25% TNC/$30 MM Threshold also enhances transparency with respect to the scope of transactions which count toward such threshold.

8. Requirement To Enforce Rights To Collect Margin and Liquidate Covered Agency Transactions

A commenter requested clarification with respect to the scope of the requirement under paragraph (e)(2)(H)(ii)d.3. of the proposed rule change, which provides that a member whose specified net capital deductions[145] exceed the 25% TNC/$30MM Threshold for five consecutive business days ''shall also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time.''[146]

According to FINRA, these requirements begin to apply once the member's specified net capital deductions exceed the 25% TNC/$30MM Threshold for five consecutive business days and cease to apply as soon as those capital charges fall below that threshold. Accordingly, FINRA stated, once the member's specified net capital deductions fall below that threshold (for example, because of market movements, or because the member collects enough margin from some, but not all, of its counterparties), the member is under no further obligation to enforce its contractual rights to collect margin or liquidate Covered Agency Transactions (and could, if it chooses, rescind outstanding margin calls and halt any liquidations of its counterparties' Covered Agency Transactions).[147]

FINRA's clarification relating to requirement to enforce rights to collect margin and liquidate Covered Agency Transactions appropriately addresses the commenter's request for clarification and enhances transparency with respect to the application of the proposed rule change as to when a FINRA member is under no further obligation to enforce its contractual rights to collect margin or liquidate positions.

9. Reporting by Members With Non-Margin Counterparties

FINRA stated that, pursuant to paragraph (e)(2)(H)(ii)d.4. under the proposed rule change, members with non-margin counterparties would be required to ''submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication.'' A commenter stated that the building of systems and information tracking is a significant build for many firms and requested FINRA to clarify in advance what information may be required.[148] FINRA stated that it is considering what information will be required to be submitted and expects to engage members and industry participants in developing appropriately tailored reporting pursuant to this provision.[149]

The Commission believes that FINRA's response is appropriate. FINRA is currently considering what information will be required and FINRA expects to engage with member firms and industry participants in developing

[141] *See* Section II.B. above (discussing paragraph (e)(2)(I) of FINRA Rule 4210 under the proposed rule change).

[142] *See* SIFMA Letter at 5–6.

[143] *See* Amendment No. 1 at 18. More specifically, FINRA has revised paragraph (e)(2)(H)(ii)d.3. of FINRA Rule 4210 to refer to a member's ''specified net capital deductions'' (rather than to all net capital deductions under paragraph (e)(2)(H)(ii)d.1.) and inserted the following definition into paragraph (e)(2)(H)(i): i. A member's ''specified net capital deductions'' are the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of this Rule with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose. *Id.*

[144] *See* Amendment No. 1 at 18.

[145] *See supra* note 143.

[146] *See* SIFMA Letter at 5–6.

[147] *See* Amendment No. 1 at 19. FINRA also stated that a member, so long as it acts promptly to bring itself below the 25% TNC/$30MM Threshold, may choose the manner and order in which it enforces its rights to collect margin or liquidate Covered Agency Transactions, and may halt those actions once its specified net capital deductions fall below the 25% TNC/$30MM Threshold. *Id.*

[148] *See* SIFMA Letter at 6.

[149] *See* Amendment No. 1 at 19.

tailored reporting requirements. This engagement will provide industry participants the opportunity to provide input into the reporting requirements.

10. Introducing and Clearing Firm Issues

A commenter stated said that the proposed rule change does not address the role of the clearing broker or reflect that FINRA has considered the actual way in which introducing brokers clear trades.[150] Another commenter suggested that FINRA should continue to facilitate dialogue among introducing and clearing firms to facilitate the implementation of the proposed rule change.[151]

FINRA responded by stating that it has conducted extensive dialogue with introducing and clearing firms regarding the requirements of the current rule and the proposed rule change in the context of introducing and clearing arrangements, and several of the proposed rule change's clarifying changes to the original rulemaking were informed by such dialogue.[152] Further, FINRA stated that it intends to continue to discuss the proposed rule change and its implementation with clearing and introducing firms, and to facilitate dialogue among them as the Covered Agency Transaction margin requirements are implemented.[153]

FINRA's response regarding issues involving clearing and introducing firms appropriately addresses the commenters' concerns. Specifically, FINRA has engaged in extensive dialogue with introducing and clearing firms regarding the requirements of the original rulemaking and with respect to the proposed rule change. Further, FINRA has indicated it will continue to facilitate dialogue with introducing and clearing firms as the margin requirements for Covered Agency Transactions are implemented.

11. Status of Published Frequently Asked Questions (''FAQs'')

A commenter requested confirmation as to whether the FAQs regarding Covered Agency Transactions, maintained on FINRA's website,[154] will apply in the event the proposed rule change is approved.[155] FINRA stated that if the Commission approves the proposed rule change, FINRA will revisit the FAQs with Commission staff, members, and industry participants as appropriate.[156] The Commission agrees that FINRA's response to the status of the FAQs appropriately addresses the commenter's request for confirmation with respect to the application of the FAQs under the proposed rule change.

12. Implementation Period

In response to the proposed rule change, several commenters requested that FINRA provide an implementation period of at least 18 months after publication of a final rule text before compliance is required, stating that a constrained time period for implementation could present market access risk, and citing the need to build operations and technology and to negotiate necessary documentation.[157] FINRA responded to these concerns as part of Amendment No. 1 by stating while it believes that the subject matter is well understood by member firms and industry participants, FINRA would announce the effective date no later than 60 days following approval, if the Commission approves the proposed rule change, and would provide an effective date between nine and ten months following such approval.[158]

In response to Amendment No. 1, a commenter reiterated its previous comments regarding the implementation date, again requesting that FINRA provide an implementation period of 18 months, or in the alternative an implementation timeframe of at least one year.[159] FINRA responded to the comment stating that in connection with Amendment No. 1, it provided a longer implementation timeframe than originally proposed as part of the proposed rule change. FINRA stated that Covered Agency Transactions have been under discussion for a considerable time, both prior to and since approval of the original rulemaking in 2016, and that this subject matter is well understood by members and industry participants. As a result FINRA believes that the public interest would not be served by continuing delay and that the timeframe set forth in Amendment No. 1 is appropriate.[160]

FINRA's proposed implementation schedule is appropriate and consistent with the requirements of the Exchange Act. The Covered Agency Transaction margin requirements were approved in 2016 under the 2016 Approval Order. FINRA member firms and industry participants are aware of the requirements of the Covered Agency Transaction margin rule and have had time to work toward implementation. Consequently, the proposed implementation timeframe of nine to ten months from the approval date as described in Amendment No. 1 should provide sufficient time for FINRA firms to comply with the rule's requirements.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[161] that the proposed rule change (SR–FINRA–2021–010), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[162]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01471 Filed 1–25–22; 8:45 am]

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[150] *See* Brean Capital Letter at 13.

[151] *See* SIFMA Letter at 3.

[152] *See* Amendment No. 1 at 20.

[153] *Id.*

[154] After the original rulemaking was approved, FINRA made available a set of FAQs and guidance clarify certain of the requirements, available at: *www.finra.org.*

[155] *See* SIFMA Letter at 6–7.

[156] *See* Amendment No. 1 at 20.

[157] *See* SIFMA AMG letter at 1–3; SIFMA Letter at 2; BDA Letter at 5.

[158] *See* Amendment No. 1 at 20.

[159] *See* Letter from Chris Killian, Managing Director, Securitization, Corporate Credit, Libor, Securities Industry and Financial Markets Association, to Secretary, Commission (Sep. 10, 2021). The comment letter was submitted jointly by SIFMA and SIFMA AMG.

[160] *See* FINRA Letter at 7–8.

[161] 15 U.S.C. 78s(b)(2).

[162] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94015; No. SR–NYSEArca–2022–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

January 20, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 12, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the ''Fee Schedule'') regarding the Floor Broker Fixed Cost Prepayment Incentive Program. The Exchange proposes to implement the fee change effective January 12, 2022.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program''), a prepayment incentive program that allows Floor Broker organizations (each, a ''Floor Broker'') to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates, as set forth in the Fee Schedule.[5]

Currently, the FB Prepay Program offers participating Floor Brokers an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the ''Percentage Growth Incentive''). Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume (''ADV'') in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the ''Total Percentage Reduction of pre-paid annual Eligible Fixed Costs'' or the annualization of the montly ''Alternative Rebate.''[6] In either case, participating Floor Brokers receive their annual rebate amount in the following January.[7] Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.[8]

As further described below, the Exchange proposes to modify the qualifying benchmarks, growth percentage requirements, and rebate amounts for the FB Prepay Program, and further proposes to adjust the basis for the calculation of a participating Floor Broker's Eligible Fixed Costs for the following calendar year.

The Exchange proposes to implement the fee changes effective January 12, 2022.

Proposed Rule Change

The Exchange proposes to modify the benchmarks that Floor Brokers that participate in the FB Prepay Program must meet to qualify for the Percentage Growth Incentive. Currently, to qualify for the Percentage Growth Incentive, a Floor Broker must increase their ADV for the calendar year above the greater of (1) 20,000 contract sides in billable manual ADV, or (2) 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017.[9] The Exchange proposes to modify each of the minimum thresholds to qualify for the Percentage Growth Incentive. Specifically, the Exchange proposes to (1) modify the first benchmark to increase the requisite minimum contract sides in billable manual ADV from 20,000 to 30,000, and (2) modify the second benchmark from 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017 (*i.e.,* July through December 2017) to the Floor Broker's total billable manual ADV in contract sides during the second half of 2020 (*i.e.,* July through December 2020).[10]

The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume to earn a rebate under the FB Prepay Program, particularly in light of the increased options volume executed by Floor Brokers in the past year. The Exchange notes that Floor Brokers that are new to the Exchange would also be eligible to qualify for the Percentage Growth Incentive based on this minimum threshold. For Floor Brokers that exceed 30,000 ADV in growth, the Exchange believes that it is reasonable to continue to use each Floor Broker's historical volume as a benchmark against which to measure growth and also believes that updating the benchmark to account for the Floor Broker's more recent activity on the Exchange is reasonable. The Exchange further believes that, in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021, Floor Broker activity in the second half of 2020 would be an appropriate benchmark against which to measure volume for purposes of the FB Prepay Program. All Floor Brokers that aim to achieve the rebate would still be required to increase volume executed on the Exchange, and the total annual rebate available for achieving each Tier would continue to be the same regardless of whether the Floor Broker qualifies based on growth over 30,000 ADV contract sides or its second half of 2020 volume, as proposed.

The Exchange also proposes a series of modifications to the percentage growth requirements for the Percentage Growth Incentive, the percentage reductions of annual fixed costs, and the Alternative Rebate amounts. The Exchange believes the proposed modifications would continue to incentivize Floor Brokers to participate in the FB Prepay Program and would generally make the rebates offered pursuant to the FB Prepay Program more achievable for participating Floor Brokers. First, the Exchange proposes to decrease certain of the percentage growth requirements for the Percentage Growth Incentive Tiers. Specifically, the

[4] The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR–NYSEArca–2021–108) and withdrew such filing on January 12, 2022.

[5] *See* Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program''), *available here: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* ''Eligible Fixed Costs,'' as set forth in the Fee Schedule, include the OTP Trading Participant Rights fee for a Floor Broker, Floor Broker Order Capture Device—Market Data Fees, Floor Booth fees, the Options Floor Access Fee, and Wire Services fees.

[6] *See id.* The Percentage Growth Incentive excludes Customer volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions, will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. *See id.*

[7] *See* Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program'').

[8] *See id.*

[9] *See* Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program'').

[10] *See* proposed Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program'').

Exchange proposes to reduce the requirement for Tier 2 from 25% to 15% and for Tier 3 from 50% to 30%. Second, the Exchange proposes to modify the total percentage reduction of pre-paid annual Eligible Fixed Costs offered for certain Tiers. Specifically, the Exchange proposes to modify the percentage for Tier 1 from 25% to 10% and for Tier 3 from 75% to 80%. Third, the Exchange proposes to increase the Alternative Rebate offered for Tiers 1 through 3, as set forth in the table below. Finally, the Exchange proposes to eliminate Tiers 4 and 5. The Exchange believes eliminating these Tiers is reasonable in light of the proposed changes described above, including because Tier 3, as modified, would offer participating Floor Brokers an Alternative Rebate amount greater than the amount currently offered by either Tier 4 or 5.

The following table reflects the proposed changes (with deletions in brackets and new text italicized):

FB PREPAYMENT PROGRAM INCENTIVES

[Based on annual ADV in contract sides for the calendar year]

Tier	Percentage growth incentive	Total percentage reduction of pre-paid annual Eligible Fixed Costs	Alternative rebate
Tier 1	5%	[25%] *10%*	[$4,000] *$8,000*/month.
Tier 2	[25%] *15%*	50%	[$6,000] *$18,000*/month.
Tier 3	[50%] *30%*	[75%] *80%*	[$8,000] *$24,000*/month.
[Tier 4	100%	80%	$14,000/month].
[Tier 5	150%	100%	$18,000/month].

Thus, as proposed, a participating Floor Broker would qualify for the Percentage Growth Incentive by executing ADV growth in manual billable contract sides that is 5%, 15%, or 30% over the greater of (1) 30,000 contract sides ADV, or (2) their ADV during the second half of 2020 (*i.e.,* July through December 2020). A Floor Broker that participates in the FB Prepay Program and achieves a Percentage Growth Incentive Tier, as modified, will continue to be eligible for an annual rebate that is the greater of the ''Total Percentage Reduction of pre-paid annual Eligible Fixed Costs'' or the ''Alternative Rebate'' based on the Tier achieved. A Floor Broker that is new to the Exchange (or one that did not execute at least 30,000 contract sides in billable manual ADV in the second half of 2020) would continue to have the ability to qualify for the Percentage Growth Incentive by executing at least 30,000 contract sides in manual billable ADV, increased by the specified percentages during the year. The total rebate available for achieving each Tier would be the same regardless of whether the Floor Broker qualifies based on 100% of its second half of 2020 volume or the minimum 30,000 ADV contract sides benchmark.

The Exchange also proposes to modify the date it will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in the previous November.[11] The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2020. The Exchange believes that Floor Brokers' costs as of November 2020 would more accurately reflect Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[16]

[11] The Fee Schedule also currently provides that the ''Exchange will not issue any refunds in the event that a Floor Broker organization's prepaid Eligible Fixed Costs exceeds such actual costs, except that the Exchange will refund certain of the prepaid Eligible Fixed Costs that were waived for Qualifying Firms as defined, and set forth in, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO–LOCATION FEES.'' *See* Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program''). The Exchange proposes clarifying changes to (1) delete the word ''such'' from the description of actual Eligible Fixed Costs, and (2) delete the reference to the circumstances under which the Exchange would refund certain prepaid Eligible Fixed Costs, as the Fee Schedule no longer provides for a waiver to Qualifying Firms in connection with COVID–19 related considerations. *See* Securities Exchange Act Release No. 92614 (August 9, 2021), 86 FR 44765 (August 13, 2021) (SR–NYSEArca–2021–69) (removing language from the Fee Schedule associated with COVID–19 related fee waivers).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[16] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed modifications to the FB Prepay Program are reasonable because participation in the program is optional, and Floor Brokers can elect to participate and seek to qualify for the Percentage Growth Incentive as they see fit. The Exchange also believes that the proposed change is reasonably designed to encourage Floor Brokers to provide liquidity on the Exchange, to continue to incent Floor Brokers to participate in the FB Prepay Program, and to ensure that Floor Brokers that are new to the Exchange (or Floor Brokers that did not execute more than 30,000 ADV in contract sides) could also participate in the program, including by continuing to offer two alternative means to achieve the same rebate at each Tier. The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume in order to realize the Percentage Growth Incentive (and is on a similar playing field with Floor Brokers that exceeded this volume requirement in 2020). For Floor Brokers that exceeded the 30,000 ADV in the second half of 2020, the Exchange believes it is reasonable to use each Floor Broker's historical volume as a benchmark against which to measure future growth to achieve the Percentage Growth Incentive and further believes that activity in the second half of 2020 would provide an appropriate updated benchmark in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021.

In addition, the Exchange believes that the proposed changes to the Percentage Growth Incentive are reasonable because they are designed to continue to incent Floor Broker participation in the FB Prepay Program by making the rebates offered under the FB Prepay Program generally more achievable and by offering increased rebate amounts and are therefore designed to encourage increased executions by Floor Brokers on the Exchange, which activity would benefit all market participants.

The Exchange also believes that the proposed change with respect to the date used for the calculation of Eligible Fixed Costs is reasonable because it expects Floor Broker organizations' November 2020 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange Floor, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business that Floor Brokers transact on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or attempt to trade sufficient volume to qualify for one of the Percentage Growth Incentive Tiers. In addition, all participating Floor Brokers have the opportunity to qualify for the same rebate at each Tier through two alternatives means (*i.e.,* growth over the greater of at least 30,000 contract sides in billable ADV or the Floor Broker's total billable manual ADV in the second half of 2020). The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program.

Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the important role performed by Floor Brokers in facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2020 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

To the extent that the proposed change continues to incent Floor Brokers to participate in the FB Prepay Program and achieve the volume required to qualify for the Percentage Growth Incentive, the increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Similarly, to the extent the proposed change encourages Floor Brokers to participate in a greater variety of transactions on the Exchange, the resulting increased order flow would likewise continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed modifications to the FB Prepay Program are not unfairly discriminatory because they would apply to all similarly-situated Floor Brokers. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or try to achieve any of the Percentage Growth Incentive Tiers.

The Exchange also believes that the proposed change is not unfairly discriminatory to non-Floor Brokers because it is intended to encourage Floor Brokers to continue facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function that benefits all market participants.

To the extent that the proposed change continues to attract participation in the FB Prepay Program and incent Floor Brokers to increase volume to qualify for the Percentage Growth Incentive, the increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract

was 10.35% for the month of November 2020 and 12.99% for the month of November 2021.

more order flow to the Exchange thereby improving market-wide quality and price discovery.

In addition, to the extent that the proposed change attracts a variety of transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange Floor, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

Intramarket Competition. The Exchange believes the proposed change will continue to incent Floor Brokers to participate in the FB Prepay Program and encourage order flow to be directed to the Exchange Floor, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that the proposed change imposes an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because of Floor Brokers' important role in facilitating the execution of orders via open outcry and providing opportunities for price improvement, and the Exchange believes the proposed change is designed to encourage and support that function.

In addition, to the extent that the proposed change in fact encourages Floor Broker volume, all market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange believes that the proposed change would promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange Floor for execution. The proposed modifications to the FB Prepay Program are designed to continue to incent Floor Broker participation in the program, including by making the incentives more achievable and increasing the amounts of the rebates available. The Exchange thus believes that the proposed change would continue to encourage Floor Brokers to execute orders on the Floor of the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

Given the robust competition for volume among options markets, implementing programs to attract order flow, such as the proposed modifications to the FB Prepay Program, are consistent with the above-mentioned goals of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–02 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–NYSEArca–2022–02. 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/*

[17] *See* Reg NMS Adopting Release, *supra* note 14, at 37499.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2022–02, and should be submitted on or before February 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01470 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94017; No. SR–NYSEArca–2022–03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Cap Certain Port Fees

January 20, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 14, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the NYSE Arca Options Fee Schedule (the ''Fee Schedule'') to cap certain port fees in connection with the Exchange's migration to a new trading platform. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to cap certain port fees during the Exchange's migration of options trading to a new electronic trading platform.

Currently, the Exchange conducts options trading on an electronic platform known as ''OX.'' OX refers to the Exchange's electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.[4]

On or about February 7, 2022, the Exchange anticipates beginning the migration of its options trading to a new technology platform known as Pillar.[5] The Exchange proposes to adopt a cap on the monthly fees assessed for the use of certain ports connecting to the Exchange, which will go into effect on the day the Exchange commences its migration to the Pillar platform and remain in effect until the end of the month in which the migration is completed (the ''Migration Period'').

Specifically, the Exchange proposes to cap the monthly fees charged to an OTP Holder or OTP Firm (collectively, ''OTP Holders'') for the use of Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, the ''Port Fees'') during the Migration Period (the ''Migration Cap''). The Migration Cap will be based on the number of ports an OTP Holder is billed for in the month preceding the beginning of the Exchange's migration to the Pillar platform, except that if an OTP Holder reduces the number of ports used during the Migration Period (*i.e.,* incurs Port Fees below the Migration Cap), the OTP Holder would only be billed for the actual number of ports used.

Without this proposed rule change, the Fee Schedule provides that OTP Holders would be charged for the use of both legacy OX platform ports and new Pillar platform ports, which could significantly increase costs to OTP Holders during the Migration Period. Thus, the proposed Migration Cap is intended to encourage OTP Holders to maintain the same levels of interaction with Exchange during the Migration Period, as well as promptly migrate to the more efficient Pillar technology platform, without incurring additional Port Fees as a result of the transition.[6]

The Exchange proposes to implement this fee change on the day it commences its migration to the Pillar technology platform.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE Arca Rule 6.1A–O(a)(13).

[5] The Exchange has announced that, pending regulatory approval, it will begin migrating Exchange-listed options to Pillar on February 7, 2022, *available here: https://w0ww.nyse.com/trader-update/history#110000387355. See also* Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (July 9, 2021) (SR–NYSEArca–2021–47) (Notice of Filing of Proposed Rule Change for New Rules 6.1P–O, 6.37AP–O, 6.40P–O, 6.41P–O, 6.62P–O, 6.64P–O, 6.76P–O, and 6.76AP–O and Amendments to Rules 1.1, 6.1–O, 6.1A–O, 6.37–O, 6.65A–O and 6.96–O) and Amendment No. 2 to SR–NYSEArca–2021–47, *available here: https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20109876-264219.pdf.*

[6] The Exchange notes that the NYSE Arca Equities exchange adopted a similar fee cap in connection with its migration to the Pillar technology platform in 2017 so that its member organizations would not incur additional charges during the transition period. *See* Securities Exchange Act Release No. 81573 (September 11, 2017), 82 FR 43430 (September 15, 2017) (SR–NYSEArca–2017–97) (providing for a temporary cap on monthly fees for use of ports during Pillar transition).

[7] 15 U.S.C. 78f(b).

6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[10] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange fees, including fees for connectivity.

The Exchange believes that the proposed Migration Cap is reasonably designed to continue to incent OTP Holders to maintain sufficient active connections to the Exchange during its migration to a new trading platform. Without the proposed change, OTP Holders would be subject to fees for the use of both legacy ports and the new ports using Pillar technology during the Migration Period. Accordingly, the Exchange believes that the proposed Migration Cap is reasonably designed to lessen the impact of the migration on OTP Holders and will thus encourage OTP Holders to both promptly transition to the more efficient Pillar technology platform and maintain their current level of trading activity on the Exchange.

To the extent the proposed rule change encourages OTP Holders to migrate to the new Pillar technology platform while maintaining their level of trading activity, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate the expense of the migration without affecting its competitiveness.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed change is an equitable allocation of its fees and credits because the Migration Cap, which would apply equally to all OTP Holders, would be calculated based on the number of ports each OTP Holder uses. OTP Holders can opt to adjust their port usage, if desired, in advance of the Migration Period, and to the extent OTP Holders choose to use fewer ports during the Migration Period (*i.e.,* incur Port Fees below the Migration Cap), their Port Fees would be reduced accordingly. Thus, the Exchange believes the proposed rule change would facilitate a smooth transition to the Pillar technology platform for OTP Holders and mitigate the impact of the migration process for all market participants on the Exchange, thereby sustaining market-wide quality.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the Migration Cap is not unfairly discriminatory because it would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed Migration Cap would be based on an OTP Holder's Port Fees billed for the month preceding the beginning of the Exchange's migration to the Pillar technology platform and would be adjusted to the extent an OTP Holder chooses to utilize fewer such ports during the Migration Period. The Exchange believes that the Migration Cap will permit OTP Holders to maintain the same level of interaction with Exchange systems during the Migration Period without incurring additional Port Fees as a result of the transition from OX to the Pillar technology platform. The Exchange also believes that the Migration Cap would allow OTP Holders to maintain their existing level of connectivity to the Exchange at no additional cost during the Migration Period, thereby supporting continued trading opportunities for all market participants, which would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [12]

Intramarket Competition. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders, regardless of the number of ports they utilize, will be eligible for the Migration Cap beginning on the day the Exchange commences its

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[11] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.35% for the month of November 2020 to 12.99% for the month of November 2021.

[12] *See* Reg NMS Adopting Release, *supra* note 9, at 37499.

migration to the Pillar technology platform through the end of the Migration Period.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. 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. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[14]

The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges. Accordingly, the Exchange believes that the proposed Migration Cap would continue to make the Exchange a competitive venue for order execution by enabling OTP Holders to maintain their current levels of interaction with the Exchange during the Migration Period without incurring additional Port Fees and facilitating OTP Holders' migration to the newer, more efficient Pillar technology platform.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[13] *See supra* note 10.

[14] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.35% for the month of November 2020 to 12.99% for the month of November 2021.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–03 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–NYSEArca–2022–03. 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–NYSEArca–2022–03, and should be submitted on or before February 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01459 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94011; File No. SR–FINRA–2021–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend FINRA Rule 6730 To Require Members To Append Modifiers To Delayed Treasury Spot Trades and Portfolio Trades When Reporting to TRACE

January 20, 2022.

On November 22, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6730 to require members to append modifiers to delayed Treasury spot trades and portfolio trades when reporting to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The proposed rule change was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

published for comment in the **Federal Register** on December 7, 2021.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022. The Commission is extending this 45-day time period for Commission action.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act, the Commission designates March 7, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–FINRA–2021–030).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01466 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 93699 (December 1, 2021), 86 FR 69337. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2021-030/srfinra2021030.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94009; File No. SR–CboeBYX–2021–028]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

January 20, 2022.

On November 22, 2021, Cboe BYX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published in the **Federal Register** on December 7, 2021.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 7, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBYX–2021–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01460 Filed 1–25–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93689 (December 1, 2021), 86 FR 69335. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2021-028/srcboebyx2021028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0036]

Request for Comments of a Previously Approved Information Collection: MARAD Exercise Breakout Survey

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 19, 2021.

DATES: Comments must be submitted on or before February 25, 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: Patrick Dannaher, (202) 366–5427, Division of Sealift Operations and Emergency Response (MAR–612), Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: MARAD Exercise Breakout Survey.

OMB Control Number: 2133–0550.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: This survey will be conducted on a voluntary basis and is intended to provide vital information to the Ready Reserve Force Program. This exercise is designed to test MARAD's internal administrative procedures, as well as the coordination necessary for a complete activation of MARAD's Ready Reserve Force (RRF) and the Military Sealift Command (MSC) Surge Sealift Fleet to meet strategic sealift requirements. Periodic testing is necessary in view of the dynamics that affect the RRF program, which include changes in RRF fleet composition, readiness status, ship location as well as

changes to the seafaring manpower base. The mariner survey is an integral part of the Breakout Exercise. This survey will be used to measure mariner availability, training, and experience.

Respondents: Merchant Mariners.

Affected Public: Individuals and/or Households.

Estimated Number of Respondents: 150.

Total Estimated Number of Responses: 150.

Frequency of Collection: Annually.

Estimated Times per Respondent: Once.

Total Estimated Number of Annual Burden Hours: 7.5.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–01512 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0035]

Agency Request for Approval of a New Information Collection: Mariner Survey Pre-Test

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and approval. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on September 14, 2021. Only one supportive comment was received.

DATES: Comments must be submitted on or before February 25, 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: You may contact Matthew Mueller, Maritime Administration, at (202) 366–7173 or by electronic mail at *matthew.mueller@dot.gov.* You may send mail to Matthew Mueller at Office of Maritime Labor and Training, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: Mariner Survey Pre-Test.

OMB Control Number: 2133–NEW.

Type of Request: New information collection request.

Abstract: The Maritime Administration intends to conduct a Pre-Test for a survey of individuals who hold appropriate merchant mariner credentials issued by the U.S. Coast Guard. This voluntary Mariner Survey Pre-Test information collection is limited to cognitive interviews and a pilot survey of a sample of credentialed U.S. merchant mariners to validate and improve the design of a questionnaire and other components for a subsequent full Mariner Survey. Cognitive interviews will be conducted either online or over telephone; pilot survey responses will be primarily conducted online, with a mail survey option.

Upon completion of this Pre-Test collection and analysis, MARAD intends to request separate approval for the full biennial Mariner Survey of all appropriately credentialed U.S. merchant mariners to determine the number of qualified mariners who are available and willing to serve on short notice on U.S. government-owned sealift ships or commercial ships during a period of national need. The most recent survey of this scope was completed in 2002. The availability of a reliable, current estimate on the number of mariners willing to serve in times of war, armed conflict, or national emergency is critical to the U.S. national security.

Respondents: Individuals who hold appropriate merchant mariner credentials issued by the U.S. Coast Guard.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 690 (40 cognitive interviews; 650 pilot survey respondents).

Frequency of Collection: One-time.

Estimated Times per Respondent: 45 minutes for cognitive interviews; 20 minutes for pilot survey.

Total Estimated Number of Annual Burden Hours: 247.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–01513 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0086]

Agency Information Collection Activities; Notice and Request for Comment; Investigation-Based Crash Data Studies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on an extension with modification of a currently approved information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of

Management and Budget (OMB) for extension with modification of a currently approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on NHTSA's Investigation-Based Crash Data Studies: Crash Investigation Sampling System (CISS), Special Crash Investigation (SCI) and Special Study Data Collection.

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2021–0086 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Dinesh Sharma, Crash Investigation Division (NSA–110), (202) 366–2333, National Highway Traffic Safety Administration, W53–493, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Investigation-Based Crash Data Studies.

OMB Control Number: 2127–0706.

Form Number(s): Form 1278 and 1280.

Type of Request: Request for extension with modification of a currently approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information:

NHTSA is authorized, under 49 U.S.C. 30182 and 23 U.S.C. 403 to collect data on motor vehicle traffic crashes to aid in the identification of issues and the development, implementation, and evaluation of motor vehicle and highway safety countermeasures. For decades, NHTSA has been investigating crashes and collecting crash data through its Investigation-Based Crash Data Studies, namely the Crash Investigation Sampling System (CISS), Special Crash Investigation (SCI), and specific issue-based Special Study data collection studies. Although each of these systems satisfy different purposes and collect data in different manners, they all utilize the same core variables (*e.g.,* forms), procedures and protocols for data collection.

NHTSA is seeking approval to modify the existing information collection to: (a) Increase the number of crashes investigated by the crash technicians for 2021 and future years, (b) add Special Study cases into this package, and (c) add Special Crash Investigation cases into this package. NHTSA has also adjusted estimates to include the burden incurred by tow yards, hospitals, and law enforcement agencies in responding to the collections. The combined impact is a increase of 1,407 burden hours to NHTSA's overall total.

The CISS is a nationally representative sample of passenger vehicle crashes which focus on detailed investigation of passenger vehicle crashes. It provides nationally representative data on fatal and nonfatal motor vehicle crashes for use in developing and evaluating federal motor vehicle safety standards and other safety countermeasures. The CISS began implementation in 2015 and by 2018 was collecting crash data from thirty-two (32) fully operational sites. The CISS collects data at both the crash level through scene analysis and vehicle level through vehicle damage assessment together with injury source evidence and standardized coding.

The SCI Program is used to provide NHTSA with the most in-depth and detailed level of crash investigation data collected by the Agency. Generally, SCI investigations are conducted for crashes of special interest, such as those involving new or emerging safety technologies (*e.g.,* those involving vehicles equipped with crash avoidance technologies or Automated Driving Systems (ADS)), school buses, motorcoaches, alternative fuel and hybrid vehicles, adaptive control equipped vehicles, fires, child restraints, and those relevant to safety defect investigations. The crash investigations are conducted to document crash circumstances, identify

injury sources, evaluate safety countermeasure effectiveness and support Agency rulemaking actions. Investigations are also conducted to provide early detection of alleged or potential vehicle safety defects. Reports are generated from investigations and all are made available to the public. The crashes chosen for SCI investigation may be chosen throughout the year as they arise, or be part of a planned effort to look into a particular type of crash (such as crashes involving air bag deployment-related fatalities and injuries).

In addition to the above-referenced CISS and SCI data collections, NHTSA also conducts investigation-based special studies using the CISS and SCI infrastructure to answer questions on a specific topical aspect of vehicle and highway safety. In the special study cases, data is typically gathered remotely where documents and investigation details are requested from investigating agencies and the data is compiled, coded, and reported on collectively in a summary report detailing the issue. These special studies will utilize the same infrastructure CISS and SCI, as well as the same core variables (*e.g.,* forms) and procedures and protocols. The cases may be selected from an agency's data set (*i.e.,* CISS, SCI, or Fatality Analysis Reporting System (FARS)) or through other means (*i.e.,* internet searches, news articles, and public notification). The cases may or may not be selected to provide a nationally-representative sample of crashes. In the past, using the National Automotive Sampling System-Crashworthiness Data System (NASS–CDS) infrastructure, NHTSA conducted several investigation-based special studies, including studies on child occupant protection, air bag effectiveness, and pedestrian safety among others. NASS–CDS, operated from 1979 through 2015, and was the predecessor to CISS. Three currently-planned special studies will collect information on crashes that involve medium-duty trucks (trucks between 10,001 and 26,000 lbs.), pedestrians or pedalcyclists, and first responders or construction or maintenance workers struck while performing official duties on the road.

NHTSA will also use the information collected through the CISS infrastructure to support NHTSA's Non-Traffic Surveillance (NTS). CISS Technicians review over a hundred and fifty thousand crash reports each year, and some of these reports are not applicable to the CISS program, but they may be applicable to the NTS data collection. NTS is a virtual data collection system designed to provide counts and details regarding fatalities and injuries that occur in non-traffic crashes and in non-crash incidents. Non-traffic motor vehicle crashes are a class of crashes that occur off the public trafficways. These crashes, subsequently referred to as ''non-traffic crashes,'' are mostly single-vehicle crashes on private roads, two vehicle crashes in parking facilities, or collisions with pedestrians in driveways. In addition, there are non-traffic incidents such as a vehicle falling on a person underneath or an unintentional carbon monoxide poisoning inside the vehicle. Non-traffic crash data is obtained through NHTSA's CISS, SCI, Crash Reporting Sampling System (CRSS), and FARS.

For the standard investigation-based crash data studies acquisition process, once a crash has been selected for investigation, crash technicians locate, visit, measure, and photograph the crash scene; locate, visit, inspect, and photograph involved vehicle(s); conduct a telephone or personal interview with the involved individuals or a surrogate (another person who can provide occupant or crash information, such as parents for a minor or parent or spouse for a deceased individual); and obtain and record crash injury information received from various medical data sources. These data are used to describe and analyze circumstances, mechanisms, and consequences of a cross section of towed, light passenger motor vehicle crashes in the United States. The collection of interview data aids in this effort.

For the special studies, the data is typically gathered following similar procedures, but is targeted to a specific issue (*e.g.,* child occupant protection, crash causation factors) as opposed to an entire investigation. Special Studies investigations also typically only involve obtaining information from law enforcement, who provide access to and a copy of the crash report where the data is not electronic. They do not involve interviewing people involved in crashes, obtaining medical records or inspecting the vehicles. Each special study has specific requirements (*i.e.,* types of crashes and/or data collected); however, the gathering of crash reports for these studies is similar to the gathering of crash reports in the CISS and SCI programs.

Description of the Need for the Information and Proposed Use of the Information

NHTSA investigates real-world crashes and collects detailed crash data through CISS, SCI, and Special Studies data collection programs to identify the primary factors related to the source of crashes and their injury outcomes. These detailed factors are utilized to develop and evaluate effective safety countermeasures including the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes. The data collected also give motor vehicle researchers an opportunity to specify areas in which improvements may be possible, design countermeasure programs, and evaluate the effects of existing and proposed safety measures.

Burden to Respondents

NHTSA has provided a description of the affected public, estimated number of respondents, description of frequency, and estimates of the total burden hours and costs for each of the three Investigation-Based Crash Data Acquisition Systems (CISS, SCI, and Special Studies) below. In aggregate, NHTSA estimates that the total annual burden is 7,012 hours and $0.

Program: CISS

Affected Public: People involved in select motor vehicle crashes, law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic; hospitals that provide a copy of the injured occupant's medical treatment of injuries; and tow or salvage lot facilities that provide access to the storage facility to inspect the vehicle.

Estimated Number of Respondents: 13,841.

Frequency: On Occasion.

Estimated Total Annual Burden Hours: 6,736 hours (3,975 + 471 + 170 + 1,590 + 530).

The CISS crash data acquisition system includes 5 information collections. The first information collection covers the collection of information from individuals involved in crashes via interview. The estimated number of interview respondents is obtained by multiplying the approximate number of crashes investigated each year by the average number of interviews per crash. Based on existing data, each CISS crash involves an average of approximately 2.25 individuals. NHTSA estimates that CISS conducts investigations on 5,300 crashes per year. Therefore, NHTSA estimates that there will be 11,925 respondents per year (5,300 crashes × 2.25 respondents per crash).

The respondents are contacted only once; however, in rare circumstances follow-up questions may be needed to clarify data. The interview requires approximately 20 minutes of a

respondent's time on average. CISS conducts interviews for approximately 5,300 crashes per year, which NHTSA estimates takes about 45 minutes per crash (2.25 respondents × 20 minutes). Therefore, the estimated total annual burden hours for the collection of information from individuals involved in crashes for CISS is 3,975 hours ((5,300 crashes × 45 minutes) ÷ 60 minutes/hour).

In addition to interviews, crash technicians and investigators must obtain official records to initiate and complete the cases. These records include police crash reports and medical records. The second information collection under CISS is for the collection of crash records from sampled police jurisdictions. NHTSA estimates that there are 181 sample police jurisdictions annually. To estimate the burden to sampled police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of police jurisdictions. On average, each of the 181 sampled police jurisdictions are queried weekly (or 52 times per year) and each query is estimated to take 3 minutes. Accordingly, NHTSA estimates the total annual burden for sampled police jurisdictions to be 2.6 hours per respondent (3 minutes × 52 visits) and 471 hours for all respondents (2.6 hours × 181 police jurisdictions = 470.6 hours).

The third information collection under CISS is for the collection of crash records from non-sampled police jurisdictions. Based on existing CISS data, there are 340 non-sampled jurisdictions annually. To estimate the burden to non-sample police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of non-sampled police jurisdictions. On average, each of the 340 non-sampled police jurisdictions are visited twice annually and each query is estimated to take 15 minutes. Accordingly, NHTSA estimates the total burden for non-sampled police jurisdictions to be 30 minutes per respondent (15 minutes × 2 visits) and 170 hours for all respondents ((30 minutes × 340 non-sampled police jurisdictions) ÷ 60 minutes/hour) = 170 hours).

The fourth information collection under CISS is for the collection of medical records from hospitals. Based on existing data, CISS collects an average of 9,540 records each year from an average of 275 hospitals. NHTSA estimates that a hospital spends 10 minutes for each record requested. Accordingly, NHTSA estimates the total annual burden to be 1,590 hours ((9,540 records × 10 minutes) ÷ 60 minutes/hour) and estimates that each hospital will, on average, spend 5.78 hours providing the requested information each year (1,590 hours ÷ 275 hospitals).

The fifth information collection under CISS is for the collection from tow yards necessary to gain access to and locate a vehicle that was involved in a crash. Typically, a tow facility operator just needs to give the crash technician permission to enter the yard to inspect the vehicle and involves approximately 5 minutes of staff time. CISS data shows an average of 6,360 visits to tow facilities per year, and NHTSA estimates 1,120 tow facilities will be visited annually. Accordingly, NHTSA estimates the total annual burden to be 530 hours ((6,360 visits × 5 minutes) ÷ 60 minutes/hour) and estimates that each tow facility will, on average, spend 28.39 minutes providing the requested information each year ((530 hours × 60 minutes) ÷ 1,120 facilities).

Accordingly, NHTSA estimates that the total burden associated with the CISS data acquisition system is 6,736 hours (3,975 + 471 + 170 + 1,590 + 530).

Estimated Total Annual Burden Cost: $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the opportunity or labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Program: Special Crash Investigation (SCI)

Affected Public: People involved in select motor vehicle crashes, law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic; hospitals that provide a copy of the injured occupant's medical treatment of injuries; and tow or salvage lot facilities that provide access to the storage facility to inspect the vehicle.

Estimated Number of Respondents: 500.

Frequency: On occasion (typically once per year).

Estimated Total Annual Burden Hours: 109 hours (67 + 17 + 17 + 8).

The SCI crash data acquisition system includes 4 information collections. The first information collection covers the collection of information from individuals involved in crashes via interview. The estimated number of interview respondents is obtained by multiplying the approximate number of crashes investigated each year by the average number of interviews per crash. Based on existing data, each SCI crash involves an average of approximately 2 individuals. NHTSA estimates that SCI conducts investigations on approximately 100 crashes per year. Therefore, NHTSA estimates that there will be 200 respondents per year (100 crashes × 2 respondents per crash).

The respondents are contacted only once; however, in rare circumstances follow-up questions may be needed to clarify data. The interview requires approximately 20 minutes of a respondent's time on average. SCI conducts interviews for approximately 100 crashes per year, which NHTSA estimates takes about 40 minutes per crash (2 respondents × 20 minutes). Therefore, the estimated total annual burden hours for the collection of information from individuals involved in crashes for SCI is approximately 67 hours ((100 crashes × 40 minutes) ÷ 60 minutes/hour = 66.67).

In addition to interviews, crash technicians and investigators must obtain official records to initiate and complete the cases. These records include police crash reports and medical records. The second information collection under SCI is for the collection of crash records from police jurisdictions. The SCI investigators contact an estimated 100 police jurisdictions once per year and require approximately 10 minutes of staff time per police jurisdiction. To estimate the burden to these police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of police jurisdictions. Accordingly, NHTSA estimates the total annual burden for police jurisdictions to be 10 minutes per respondent (10 minutes × 1 query per year) and 17 hours for all respondents ((10 minutes × 100 police jurisdictions) ÷ 60 minutes/hour = 16.67 hours).

The third information collection under SCI is for the collection of medical records from hospitals. Based on existing data, SCI collects an average of 100 records each year from 100 hospitals (1 request per hospital per year). NHTSA estimates that a hospital spends 10 minutes for each record requested. Accordingly, NHTSA estimates the total annual burden to be 17 hours ((100 records × 10 minutes) ÷ 60 minutes/hour = 16.67 hours) and estimates that each hospital will, on average, spend 10 minutes providing the requested information each year (10 minutes × 1 record request per year).

The fourth information collection under SCI is for the collection from tow

yards necessary to gain access to and locate a vehicle that was involved in a crash. Typically, a tow facility operator just needs to give the crash technician permission to enter the yard to inspect the vehicle and involves approximately 5 minutes of staff time. SCI conducts approximately 100 visits to tow facilities per year, and NHTSA estimates that 100 tow facilities will be visited annually (1 request per facility per year). Accordingly, NHTSA estimates the total annual burden to be 8 hours ((100 visits × 5 minutes) ÷ 60 minutes/hour = 8.33 hours) and estimates that each tow facility will, on average, spend 5 minutes providing the requested information each year.

Accordingly, NHTSA estimates that the total burden associated with the SCI data acquisition system is 109 hours (67 + 17 + 17 + 8).

Estimated Total Annual Burden Cost: $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the opportunity or labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Special Studies

Affected Public: Law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic.

Estimated Number of Respondents: 1,000.

Frequency: On occasion (typically once per year).

Estimated Total Annual Burden Hours: 167 hours.

There is only one information collection for Special Studies in this ICR. This ICR only covers special studies involving remote-level investigations.[1] Accordingly, these remote-level investigations do not involve interviews of individuals involved in crashes, collection of medical records from hospitals, or visits to tow facilities. Instead, these special studies only involve the collection of information from police jurisdictions.

NHTSA estimates that the special studies will involve, on average, 1,000 police jurisdictions each year and require approximately 10 minutes of staff time per police jurisdiction. The total annual hour burden on jurisdictions for special studies information is estimated to be 167 hours (1 visit × 10 minutes × 1,000 jurisdictions ÷ 60 minutes/hour = 166.67).

Estimated Total Annual Burden Cost: $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Estimated Total Annual Burden Hours All Programs: 7,012 hours.

The total estimated annual burden hours to all respondents for this ICR is 7,012 hours. The table below provides a summary of the estimated annual burden hours.

TABLE 2—SUMMARY OF BURDEN HOUR ESTIMATES

Information collection title	Number of respondents	Number of responses (per respondent)	Burden per response	Burden per respondent	Total burden
CISS: Interviews with Individuals Involved in Crashes	11,925	11,925 (*1*)	20 minutes	20 minutes	3,975 hours.
CISS: Collection of Police Records from Sampled Jurisdictions.	181	9,412 (*52*)	3 minutes	156 minutes (2.6 hours)	470.6 hours. 471 hours.
CISS: Collection of Police Records from Non-Sampled Jurisdictions.	340	680 (*2*)	15 minutes	30 minutes	170 hours.
CISS: Collection of Medical Records	275	9,540 (*34.69*)	10 minutes	5.78 hours	1,590 hours.
CISS: Access to Tow Yards	1,120	6,360 (*5.68*)	5 minutes	28.39 minutes	530 hours.
SCI: Interviews with Individuals Involved in Crashes	200	200 (*1*)	20 minutes	20 minutes	67 hours.
SCI: Collection of Police Records	100	100 (*1*)	10 minutes	10 minutes	17 hours.
SCI: Collection of Medical Records	100	100 (*1*)	10 minutes	10 minutes	17 hours.
SCI: Access to Tow Yards	100	100 (*1*)	5 minutes	5 minutes	8 hours.
Special Studies: Collection of Police Records	1,000	1,000 (*1*)	10 minutes	10 minutes	167 hours.
Total					7,012

Estimated Total Annual Burden Cost All Programs: $0

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued on January 20, 2022.

Chou Lin Chen,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2022–01436 Filed 1–25–22; 8:45 am]

BILLING CODE 4910–59–P

[1] If NHTSA intends to conduct a special study that is not remote, it will seek separate clearance.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of three individuals and one entity that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on

OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On January 11, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

BILLING CODE 4810–AL–P

1. ‘ALAMAH, Jihad Salim (Arabic: جهاد سالم علامه) (a.k.a. ALAME, Jihad Salem), Lebanon; DOB 02 Jul 1956; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR0162690 (Lebanon); Identification Number 3864865468 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,” 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, “Modernizing Sanctions To Combat Terrorism,” 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. DAOUN, Ali Mohamad (a.k.a. DA’UN, Ali Muhammad; a.k.a. DA’UN, ‘Ali Muhammad (Arabic: علی محمد ضعون)), Lebanon; DOB 10 Dec 1956; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 1000644893 (Lebanon) expires 03 Jan 2023 (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. DIAB, Adel (a.k.a. DHIYAB, ‘Adil ‘Ali (Arabic: عادل علی ذیاب); a.k.a. DIYAB, Adil ‘Ali; a.k.a. DIYAB, Hajj ‘Adil), Lebanon; DOB 10 Dec 1960; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224; Identification Number 32983326 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entity

1. DAR AL SALAM FOR TRAVEL & TOURISM (a.k.a. DAR AL SALAM FOR TRAVEL AND TOURISM (Arabic: دار السلا للسیا ة و السفر)), Lebanon; Website

daralsalam-lb.com; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Company Number 66002 (Lebanon) [SDGT] (Linked To: DAOUN, Ali Mohamad).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, ALI MOHAMAD DAOUN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: January 18, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–01445 Filed 1–25–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen to Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending December 31, 2021. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABELA	RONALD.	
ABERCROMBIE	STUART	CHRISTOPHER
AFFONSO	ANA	LUIZA TORREALBA
AHMED	RUMMAN.	
AHN	EUNSOOK.	
AKIYAMA	SANAE.	
ALAZET	ANNE-EMMANUELLE	M
ALEXANDER	JAN.	
AMBELANG-KLAUSS	ANGELIKA.	
ANDERSON	CARL	L
ANDERSON	DONNA	MARGARET
ARORA	DEEPALI.	
ARTS	HERMANUS	M
ASABUSHI	YUKO.	
ATA	FUJIKO.	
ATA	HISASHI.	
ATKINSON	HELEN	MARY
BALLON	NAOMI	LYNN
BASHAM	CURTIS	J
BASSAN	EUGENIO.	
BELL	THOMAS.	
BENNING	RUPAL	SINGH
BERG	CHRISTER	BENGT
BHATIA	RINA.	
BHOJWANI	GAUTAM	JAIKIRSHIN
BIKOV	ARKADI	HASKEL
BIORNSTAD-FARNUNG	CARIN	LILLY
BIRCH	SIMON	JAMES
BODHANKAR	RUPALI	VITHALRAO
BONOMINI	MARIA	TERESA
BOSSE	CHRISTIAN.	
BOTTELIER	BEATRIZ	B M
BOUZIANE	YASMINA	GHIZLAINE
BOWDEN	ALISON	M
BOWER	ROBERT	GEORGE
BOWIE	DAWN	ADRIENNE
BOWIE	ROBERT	ALEXANDER
BOYD	PETER	G
BOZ	YAKUP	CEKI
BRANDER	DAVID	ROSS
BRIANCON	MICHELE	JACQUELINE
BRIERE	DYANNE.	
BRIERE	JEAN	CHARLES

Last name	First name	Middle name/initials
BROWN	ALEXANDRA.	
BROWN	GARRY	L
BRUN	LOUIS	GEORGES HERVE
BRYERS	NORMAN	PAUL
BUDASHEWITZ	SAYAKA.	
BURGESS	DANIEL	ROBERT
BURGESS	LYNN	IDA INKERI
BUSTAMANTE	DANIEL.	
CALLEBAUT	LUC	RENE
CAMRASS	JULIA.	
CANNAN	JUANITA	EUNICE
CARDELLI	LUCA	ANDREA
CARO	PATRICIA.	
CARTER	KENNETH.	
CARTER	LINDA	RAE
CASTELLANI	MARGHERITA.	
CELEN	CEYLAN.	
CELZO	FROILAN	GONZALES
CHALLAGULLA	SARITA.	
CHAN	WING	KUEN
CHATTOPADHYAYA	ARUNDHATI	MURDESHWAR
CHEN	JAN	KU
CHEN	KAN.	
CHENG	PAN	PATRICIA
CHIA	EELAN	GERALDINE
CHIANG	CHIH	FENG
CHIN	EDWIN	K
CHIU	CHANEL	MUN LUM
CHO	SOO	HYUN
CHONG	JIAYI.	
CHOUDHARY	HEERALAL.	
CHUNG	CHANYOUNG.	
CHUNG	YEONSEOK.	
CONNOLLY	JOSEPH	W
CONVERS	PASCAL	BERNARD
COOK	JANE	NICOLA
CORK	FRANCES	MARGARET
COSSARINI	SANDRA	LYNNE
CREED	RICHARD	ZACHARY
CUFF	RACHEL	SUSANNA
CUI	JINGHUI.	
CUMMINS	TIMOTHY	D
CURRAN	JOHN	WILLIAM
CURRAN	KAORI.	
CURRAN	MIYAKO	EMILY
CZERANKO	SUSSANNA	CYNTHIA
DAMOISEAUX	KATINKA	AGNES
DAMOISEAUX	MICHAEL	JOZEF
DAN	TOMIKO.	
DARLING	NEIL	MURRAY
DARROCH	JAMES	ALEXANDER
DAWSON	BRAM	EUGENE
DAWSON	JOHN	ANDREW
DE VRIES	ROSA	LEONORA ANDREA
DEAN	LYNDSEY	KATE
DELGADO	GIEDRE.	
DEMBECKA-MORGAN	JOANNA	M
DICKSON	ALEXANDER	GEORGE
DIESER	CHRISTINA	H
DING	QIAN.	
DOBBELSTEIJN	FRANK	PIETER JOZEF
DOEGLAS	ALEXANDRA	A
DOI	KAZU.	
DONOS	CHRISTINA.	
DOUFOU	PERCEFONI	GEORGIOS
DOWLING	TIFFANY	ADELE
DRESSO	PAOLA	MARIA
DU	FANGYONG.	
DUBASH	ARDASHIR	BURJOR
DYCK	LESLIE	H
DYCK	WAYNE	D
ECHEVERS	REBECCA	MERCEDES
EDWARDS	CHRISTEL	MARIA
EMMERS	TOMAS	JAN EDMOND

Last name	First name	Middle name/initials
ESCALANTE	ROBERTO	L
ESCAMILLA	HIROKO.	
FABIAN	CHRISTIAN	KLAUS
FALCON	ANNE	HOMMELGAARD
FARRELL	STEPHEN	FRANCIS
FELTEN	EMMA	J
FINNEGAN	KEITH	J
FISHER	DONALD	ROBERT
FREDRICKS	ERIKO.	
FRIBERG	ANNA	KARI HELENA
FRIBERG	PER	ERIC
FROHBERG	JOBST	HERBERT
FUKUDA	NARUMI.	
GALARCE	ALBERTO	CESAR
GALARCE	GIGLIA	MARIA
GALLAGHER	JOHN	HARRIS
GALLANAGH	EUGENE	PATRICK
GALLAND	VIOLAINE.	
GAY	ANDREW.	
GAY	JANETTE	MARIE
GEORGE	ANDREW.	
GIJSEN	JORRIT	JACOB ANDRE
GILBERT	BRETT	DAVID
GILBERT-RAMIREZ	KAREN	MARIA
GINSBERG	SIMON.	
GINTER	THOMAS	STEPHEN
GOLDSMITH	GEOFFREY	C
Gore	Sujata	DHANANJAY
GRANT	THOMAS	M
GREVE	TODD.	
GRIFFITHS	SIAN	LOUISE
GUILBERT	MURIEL.	
GUST	SCOTT	WILLIAM
HALAND	ANN	KATRIN
HANRAHAN	GERALD	CYRIL
HARADA	NORIKO.	
HARDING	PAUL	NELSON
HARRINGTON	THOMAS	BERNARD
HASSENSTEIN	CHARLOTTE	URSULA
HAYASHI	TOMOHIDE.	
HEAD	NICHOLAS	DAVID
HENSCHEL	EMMA	M.
HERPERGER	DUANE	STEVEN
HERROU	JULIEN.	
HICKEY	MARK.	
HILBERT	GASTON	ANTOINE
HILBERT	SABINE.	
HILL	SANDRA	CHRISTINE
HILTI	BIRGIT.	
HISASHIGE	REIKO.	
HOELZER	JOACHIM	WILFRIED
HOFMAN	ADRIANA	P
HOFMAN	MARINLIS	C
HOLST	TOROD	PETER
HORIKAWA	MOTOZO.	
HOW	ANGELA	SIEW BING
HOWARD	JOHN	JAMES
HUANG	JUN.	
HUANG	TZU	LING
HUNG	MIN	YING
HUNTER	SARAH	MARGARET
ICHIKAWA	FUMIYO.	
IDE	YUTAKA.	
IKEHATA	MIEKO.	
IKEHATA	NAOAKI.	
INABA	YOSHIMITSU.	
INNIS	JENNIFER	ANNE
INOUE	MARIKO.	
INSUASTY	JORGE	HUMBERTO
ISHIZU	FUMIKO.	
ISHIZU	YOSHIAKI.	
ITO	CHIZUKO.	
ITO	TSUTOMU.	
ITOZU	MORIO.	

Last name	First name	Middle name/initials
ITOZU	SANAE.	
JACK	NANCY	A
JACKSON	BARBARA	MARY
JACOBSEN	LORI	HELEN
JASIM	ZAID	F
JIM	HENRY.	
JO	YEONG	SEOP
JOERNLID	HANS	F
JOHANSSON	ANETTE	MARGARETA
JONES	DARYN	MICHAEL
JONES	GHAZALA	ROOHI SATAR
JONES	MARTYN	RICHARD
JOSI	CLAUDIA	DANIELA
JURJAHN	STEPHAN.	
KAHRA-WUESTEMANN	VIVIAN	BRITT
KALASKAR	RAHUL.	
KAMIDE	MICHIKO.	
KAPSI	ROGER.	
KARIM	ZAHEED	SADRUDIN
KASHIMA	KAORL.	
KASTNER	ELSA	M
KATAYAMA	YOSHITO.	
KATSUI	TOMIO.	
KAWAKAMI	TAKAYOSHI.	
KEATING	TAMARA	A
KEITEL	JUERGEN.	
KELLY	SANDRA	DOMINGUES
KELLY-RABOLT	SHERI	LOUISE
KESZEI	MARTON.	
KEW	ANTONI	JASON
KIKUCHI	HIDEMI.	
KIM	HEE	KYUNG
KIM	MANDEUK.	
KIM	SE	IL
KIMOTO	HIROSHI.	
KIMOTO	MIHO.	
KIMURA	ETSUKO.	
KIND	ADAM	L JAZHWAN
KIND	AGNES	M INGEBORG
KIND	ANNA	M KRISTINA
KIPFERLER	ARTHUR	WILLI
KITABAYASHI	KAZUYA.	
KNAUSS	ZENIJA.	
KOCHMANN	DENNIS	MICHAEL
KOKUBO	CHIKAKO.	
KOKUBO	KAZUO.	
KOMARAGIRI	VIHARI	VENKATA
KROL	ANTONIA	H
KRUAKANOK	JITTRAPORN.	
KUBOTA	CHINAMI.	
KUME	NANA	HASEGAWA
LALIBERTE	WENDELIN	C
LALONDE	DANIEL	ALEXIS
LAMBERS	REMCO	ERWIN
LAMBIE	TIMOTHY	J.
LAMY	LOUISE	MATHILDE
LEE	BYUNG	KAG
LEE	JOON	HYUNG
LEE	SANGSIK.	
LEE	YUI-WAH.	
LEECH	SUSAN	MARY
LEFEBVRE	CHANTAL.	
LEINEWEBER	JOERG.	
LENAERTS	ANNE	JOZEF MARIA AGNES
LEONG MA	LI.	
LEPPARD	JEANNE	CHRISTINE
LESUFFLEUR	ANTOINE	DANIEL EMMANUEL
LEVY	KATYA.	
LI	BIN.	
LI	FANGHONG.	
LI	WENYU.	
LIAO	SHIRLEY	H
LIPCHIN	JUDD.	
LIU	HUI.	

Last name	First name	Middle name/initials
LIU	QUANYING.	
LIVAR	NICOLE	FRANCOISE
LLOYD	JENNIFER	HELEN
LLOYD	MATTHEW	DAVID
LLOYDS	SALLY	ANN
LODGE	ANDREW	STEPHEN
LOVASZ	AGNES	EDIT
LOWE	WILLIAM.	
LUENEBURGER	ANNE	ELISABETH
LUX	MATTHIAS.	
MACDONALD	DOUGLAS	ALAN
MACDONALD	SALAMAH.	
MACHIDA	YOSHIDA.	
MAEDA	TOMIO.	
MAGNAY	SCOTT	TROY
MALFITANI	ALEXANDRE	W
MALLON	MONIQUE	E
MANGAT	INDERJIT	SINGH
MANGAT	SURINDER	R
MANSION	BENJAMIN	M
MANSUKHANI	MARTIN.	
MAO	KEVIN	JIA YU
MARTINEZ ANGLES	VICTOR	MANUEL
MASUDA	YURI.	
MATHUKUMALLI	VIDYASAGAR.	
MAWANI	ZAHEED.	
MAXTED	BRIAN	F
MAXTED	HELVI	T
MCDONALD	THOMAS	ALEXANDER
MCKEAN	GERALDINE	ELIZABETH
MCKEAN	IAN.	
MCTAGGART	BETTY	ANN
MCTAGGART	ROY	FORTUNE
MEAKIN	DOUGLAS	BOYD
MELANCON	PAUL	RICHARD
MENADZHIEV	VADIM	TIMUROVICH
MESHORER	TALI.	
MESHORER	YOAV.	
METZLER	PATRIZIA.	
MINE	SUSUMU.	
MINE	YUMIKO.	
MIRANDA	DAVINA.	
MITSUMOTO	MASAKI	M
MOHAN	UDAY.	
MOOLENAAR	DENNIS	NORBERTUS
MORE	HEATHER	DIANE
MORIKAWA	ATSUKO.	
MORRIS	CHRISTINA	JANE
MOSES	IAN	WARWICK
MULCHANDANI	SIDDARTH	J
MUNECHIKA	ROGER	MINORU
MUNRO	LYNNE	J
MURALIDHAR	SRIKANTAIAH.	
MURPHY	BRIAN	GERARD
MUSHKIN	STANISLAV.	
NAGATA	KANAKO.	
NAGY	GYULA	JOZSEF
NAH	GIN	BENG
NAKAMURA	YUSUKE.	
NEBE	PATRICIA	SANDRA
NEBE	THOMAS.	
NEMOTO	JUMPEI.	
NEVE DE MEVERGNIES	CHARLOTTE	X
NG	YONG	HOON
NICCOLLS	LUKE	LLOYD CAMERON
NICKEL	JUDITH.	
NISHAR	DEVANGI.	
NOBLE	MARY	I
NOBS	STEFAN	LOTHAR
NOGUCHI	SACHIE.	
NOLET	ROBERT	WILLEM
NOMOTO	KAZUYUKI.	
NOZAKI	HDETOSHI.	
NOZAWA	SHINOBU.	

Last name	First name	Middle name/initials
OH	JAE-HYUK.	
OKIYAMA	TAKAKO.	
OKSAY	TAMER	M
OLSEN	JANE	J
OM	KISUN	SUN
ONG	MATILDA	CHAI MEI
ONOSE	MASAYUKI.	
ONOSE	TOWAKO.	
ORUI	CHIAKI.	
ORUI	TSUKASA.	
OSHIMA	KUNIO.	
OSHIMA	SACHIKO.	
OTANI	SHIE.	
OTEVREL	TOMAS.	
OTSUBO	AKIO.	
OTSUKA	TAKEO.	
PALANISAMY	SIVASALAPATHY.	
PASSEY	DEBORAH	L
PATTERSON	BOOJA	KIM
PAYER	ANNA	BARBARA
PAYER	MATHIAS	JOSEF
PEASE	SANDRA.	
PEH	WEI	SIN
PERRY	DANIEL	JOSEPH
PETRECCA	FRANK.	
PHIMSTER	TAKEKO.	
PIERCE	BEVERLY	DALE
PIGEON	JEAN.	
PITRE	EVELYN.	
PIVRNEC	JAN.	
POOLIS	CERYS	EMILLIA
POWELL	MICHAEL.	
PRICE	CATHERINE	JOYCE
PRINGLE	CAROLINE	ALEXANDRA
PRISMAN	DESIREE.	
PULLEN	CURTIS	IVAN
QIAO	XIAO	JUN
QUAN	DEREK	SAI WAI
RANGASAMY	SAMPOORNAM.	
REICHLE	FLORENCE	SWEE LOON
RILEY	NICHOLAS	C
ROBERTSON	ALEXANDER	R
ROBERTSON	ANGUS	D
ROBINSON	NATASHA.	
ROBINSON	SHAUN	A
RODINA	HERTA.	
ROELS	GUILLAUME	YVES MARIES
RONTANI	DAMIEN	JEAN XAVIER
ROSS	DAVID	JOHN
ROZATI	MOHAMMAD	MASOUD
RUGGERO	MARIO	ALFREDO
RUSSELL	JUNKO	TOGO
RYALI	SATHYAVATHI.	
SAHAKIAN	TALIN.	
SAJNANI	SHEREEN	MOHAN
SAKANO	IZUMI.	
SALIM	SONIA.	
SAMURA	AI.	
SAMURA	KEI.	
SASAHARA	ATSUSHI.	
SAYEGH	BACHIR	CARL RAYMOND
SCARCELLA	DAVID	L. A.
SCHLEICH	DAVID	JOHN
SCHRAMKE	JAN	R
SCOTT	COLIN	THOMAS
SCOTT	PATRICIA	FAY
SHARPE	DAVID	G
SHELBOURNE	KAREN	MARY
SHELBOURNE	RALPH	PETER
SHERRINGTON	SIMON	RICHARD
SHIKA	YASUO.	
SHIMADA	KEIKO.	
SHIMIZU	MASAKO.	
SHIN	HEE	KYUNG

Last name	First name	Middle name/initials
SHINOHARA	TOYOHIRO.	
SHINOSE	TAKAAKI.	
SHINOSE	TAMAKI.	
SHIRAYA	EMIKO.	
SHISHKOV	ANGEL	KOSTADINOV
SIDHU	NAIB	SINGH
SILVER	SUSAN	CAROLINE
SIMMLER	CHARLOTTE	REBECCA MARIE
SIMON	ELISHEVA	L
SIMON	PIERRE	MICHEL GERMAIN RAYMOND
SINGH	AVINASH	C
SOH	JANE	JIAYING
SOLLIE	DIRK	CLEMENT CELINE
SONGHURST	CHARLES	MAXIM
SRINIVASAN	VIGNESH.	
ST PIERRE	MELANIE.	
STAGGERS	OLIVIA	ANNE
STANANOUGHT	COLIN.	
STANANOUGHT	LESLEY	J
STEWART	CHARLES	GRAHAM
STRAPOC	DARIUSZ	JERZY
STREET	PENELOPE	JANE
STUCKENBERGER	ANJA	NICOLE
SUNG	PUI	LING ADA
SWEDBERG	RICHARD	HANS ALBIN
TALBOT	PAMELA	S
TAMMANA	PRAVEEN	K
TAMURA	KEIKO.	
TAMURA	MORIYUKI.	
TAMURA	TOMOKO.	
TAN	TAT	YAN
TAYLOR-THEOBALDS	SONIA	M
THOMAS	TRACEY	HEATHER
TILLEY	JANETTE	M
TREASURYVALA	SHENAZ	HOMI
TRITT	YOSHIE.	
TROESCH	SEVERIN	T
TRUTCH	KENNETH	J
TSUCHIDA	TAKUO.	
TU	HSIU	CHEN
TURLEJ	KRZYSZTOT.	
UCHIDA	TOMOKO.	
UJII	KENJI.	
UJII	YOKO.	
VAISH	ANJU	DAVE
VAISH	SANJUL.	
VAN ANDERS	SARI	MICHELLE
VAN DEN BERG	GERARDUS	HENDRIKUS JOHANNES
VAN DEN ELZEN	HENRIETTE	WILHELMINA
VAN WEZEL	WOUTER	WILLIAM
VASILEV	TANJA.	
VELDMAN	JEREMY	JOHN
VEMER	HENDRICUS	MARIA
VESSEY	MERIEL	CATRIN
VICAT-BLANC	PASCALE	AMI
VISINI	BETTINA.	
VOGEL	ANNE.	
VON DER HUDE	KAREN	VIBEKE
VON PAUMGARTTEN	LEILA	HOUAISS
VOORTHUIJSEN	WILLEM.	
VYAS	LAURENCE	MARIE
WALSH	ROBERT	P
WALTON	HEATHER	JEAN
WANG	CHULIANG.	
WANG	GUOFENG.	
WATANABE	TOMOKO.	
WEBER	KUNIKO	A
WEIDINGER-HOELZER	SUSANNA	L
WEINMANN	RUDOLF	M
WEISS	ANTONIA	SOPHIE
WEISS	SILKE.	
WEISS	THORSTEN.	
WILKERSON	KYOKO	TAKASHI
WORTHINGTON	IAN.	

Last name	First name	Middle name/initials
YANAGIMOTO	HIROYUKI.	

Dated: January 21, 2022.

Steven B. Levine,

Manager Team 1940, CDSC—Compliance Support, Development & Communications.

[FR Doc. 2022–01510 Filed 1–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee February 15, 2022, Public Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public teleconference meeting scheduled for February 15, 2022.

Date: February 15, 2022.

Time: 1:00 p.m. (EST).

Location: This meeting will occur via teleconference. Interested members of the public may dial in to listen to the meeting at (888) 330–1716; Access Code: 1137147.

Subject: Review and discussion of obverse and reverse candidate designs for the 2023 American Liberty High Relief 24k Gold Coin and Silver Medal.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

For Accommodation Request: If you need an accommodation to listen to the CCAC meeting, please contact the Diversity Management and Civil Rights Office by February 8, 2022, at 202–354–7260 or 1–888–646–8369 (TYY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW, Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–01473 Filed 1–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Education Services, Veterans Benefits Administration, Department of Veterans Affairs (VA).

ACTION: Rescindment of a System of Records.

SUMMARY: Veterans Information Solution (VIS) is an intranet web-based application that provides a consolidated view of comprehensive eligibility utilization data from across the Veterans Benefit Administration (VBA) and Department of Defense (DoD). VIS provides access to Veteran/Service Member profile, service, rating and award information, Medals and Awards, benefits payments data and other miscellaneous information. VIS is an active application but does not store data and all the systems from which data is retrieved are covered by system of records notices (SORNs). Therefore, there is no need for VIS to have a SORN.

DATES: Comments on this rescindment notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to Veterans Information Solutions (VIS)—VA (137VA005Q). Comments received will be available at *regulations.gov* for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Any questions can be emailed to Alex Torres, System Owner, (703) 300–5511, *Alexander.Torres@va.gov;* or Rhonda Sims, System Steward, (512) 981–4695, *Rhonda.Sims@va.gov,* 812 Gilardi Dr., Petaluma, CA 94952.

SUPPLEMENTARY INFORMATION: Veterans Information Solution (VIS) is an intranet web-based application that provides a consolidated view of comprehensive eligibility utilization data from across the Veterans Benefit Administration (VBA) and Department of Defense (DoD). VIS provides access to Veteran/Service Member profile, service, rating and award information, Medals and Awards, benefits payments data and other miscellaneous information. VIS is an active application but does not store data and all the systems from which data is retrieved are covered by SORNs.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on January 20, 2022 for publication.

Dated: January 21, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Veterans Information Solutions (VIS)—VA (137VA005Q)

HISTORY:

74 FR 37309 (July 28, 2009).

[FR Doc. 2022–01489 Filed 1–25–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 17 January 26, 2022

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2022–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2022–04; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2022–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at *malissa.jones@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–04, FAR Case 2021–014.

Rule Listed in FAC 2022–04

Subject: Increasing the Minimum Wage for Contractors.

FAR Case: 2021–014.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2022–04 amends the FAR as follows:

Increasing the Minimum Wage for Contractors (FAR Case 2021–014)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, and a final rule issued by the Department of Labor (DOL). E.O. 14026 seeks to raise the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. This rule makes revisions to the existing FAR coverage regarding minimum wage requirements for Federal contractors by increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts; referencing DOL's new requirements for tipped workers; expanding the geographical scope of the minimum wage requirements by defining United States as including U.S. territories and possessions; and removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements. DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities, because DOL has determined that their rule would not have a significant impact on a substantial number of small entities. DoD, GSA, and NASA agree with this assessment.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2022–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2022–04 is effective January 26, 2022 except for FAR Case 2021–014, which is effective January 30, 2022.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2022–01506 Filed 1–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2022–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2022–04; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2022–04, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2022–04, which precedes this document.

DATES: January 26, 2022.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at *malissa.jones@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–04, FAR Case 2021–014.

Rule Listed in FAC 2022–04

Subject: Increasing the Minimum Wage for Contractors.

FAR Case: 2021–014.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2022–04 amends the FAR as follows:

Increasing the Minimum Wage for Contractors (FAR Case 2021–014)

This interim rule amends the Federal Acquisition Regulation (FAR) to

implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, and a final rule issued by the Department of Labor (DOL). E.O. 14026 seeks to raise the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. This rule makes revisions to the existing FAR coverage regarding minimum wage requirements for Federal contractors by increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts; referencing DOL's new requirements for tipped workers; expanding the geographical scope of the minimum wage requirements by defining United States as including U.S. territories and possessions; and removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements. DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities, because DOL has determined that their rule would not have a significant impact on a substantial number of small entities. DoD, GSA, and NASA agree with this assessment.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–01508 Filed 1–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2022–04; FAR Case 2021–014, Docket No. FAR–2021–0014, Sequence No. 1]

RIN 9000–AO31

Federal Acquisition Regulation: Increasing the Minimum Wage for Contractors

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement an Executive Order titled ''Increasing the Minimum Wage for Federal Contractors'' and a final rule issued by the Department of Labor. This Executive Order seeks to raise the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor.

DATES:

Effective: January 30, 2022.

Applicability: This rule applies as follows:

1. To solicitations issued on or after January 30, 2022, and their resulting contracts.

2. To new contracts awarded without a prior solicitation (*e.g.,* a purchase order under part 13), on or after January 30, 2022.

3. To new contracts with a prior solicitation awarded on or after March 31, 2022.

4. To existing contracts, including procurements for recreational services, when extending, renewing, or exercising an option on the existing contract on or after the effective date of the rule. Contracting officers shall incorporate the amended clause in this rule at 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, in the existing contracts through bilateral modifications. In such a circumstance, if the contracting officer is unable to incorporate the clause in an existing contract through bilateral modification, then the contracting officer shall decline to extend, renew, or exercise the option on the existing contract.

5. In accordance with FAR 1.108(d), contracting officers are strongly encouraged to include the amended clause in other contracts awarded before March 31, 2022, with appropriate consideration.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before March 28, 2022 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2022–04, FAR Case 2021–014 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2021–014''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2021–014''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2021–014'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2021–014'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at *malissa.jones@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–04, FAR Case 2021–014.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, signed April 27, 2021, and published in the **Federal Register** at 86 FR 22835, on April 30, 2021. The interim rule also implements a final rule issued by the Wage and Hour Division of the Department of Labor (DOL), published at 86 FR 67126, on November 24, 2021, also entitled ''Increasing the Minimum Wage for Federal Contractors.'' The DOL rule added a new 29 CFR part 23. The DOL rule covers FAR-based contracts, non-FAR-based contracts, and contract-like instruments; this interim rule only applies to FAR-based contracts.

The hourly minimum wage paid to workers on specified Federal contracts was first established by E.O. 13658, Establishing a Minimum Wage for Contractors, which was signed February 12, 2014, and published in the **Federal Register** at 79 FR 9851, on February 20, 2014. E.O. 13658 established an hourly minimum wage of $10.10 beginning January 1, 2015, and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The DOL implemented E.O. 13658 through a final rule published at 79 FR 60634, on October 7, 2014, also

entitled ''Establishing a Minimum Wage for Contractors.'' The 2014 DOL final rule added a new 29 CFR part 10. An interim FAR rule was published in the **Federal Register** at 79 FR 74544 on December 15, 2014. The 2014 interim rule added new FAR subpart 22.19 and new FAR clause 52.222–55, Minimum Wages Under Executive Order 13658. A final rule was published at 80 FR 75915 on December 4, 2015.

Annual increases were announced by DOL. The most recent increases were to $10.95 on January 1, 2021 (August 31, 2020, 85 FR 53850) and to $11.25 on January 1, 2022 (September 16, 2021, 86 FR 51683).

Subsequent to E.O. 13658, E.O. 13838, Exemption From Executive Order 13658 for Recreational Services on Federal Lands, was signed on May 25, 2018, and published in the **Federal Register** at 83 FR 25341 on June 1, 2018. E.O. 13838 exempted contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from the minimum wage requirements of E.O. 13658. The DOL published a rule in the **Federal Register** at 83 FR 48537 on September 26, 2018, to implement the exemption authorized by E.O. 13838. The FAR implemented E.O. 13838 and the 2018 DOL rule through a final rule published in the **Federal Register** at 85 FR 67626 on October 23, 2020. The FAR amended subpart 22.19 and the clause 52.222–55 to implement the exemption for contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands.

E.O. 14026 revokes E.O. 13838 as of January 30, 2022. E.O. 14026 also supersedes E.O. 13658 as of January 30, 2022, but only to the extent it is inconsistent with E.O. 14026. E.O. 14026 raises the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. E.O. 14026 also raises the cash wages to be paid to tipped workers. The higher minimum wage rate(s) for workers are reflected in the 2021 DOL final rule implementing E.O. 14026 (in 29 CFR part 23) as compared to the DOL final rule implementing E.O. 13658 (in 29 CFR part 10). There are some substantive differences between DOL's final rules implementing E.O. 13658 and E.O. 14026. For example, in the 2021 DOL final rule (86 FR 67126), the definition of ''United States'' is expanded to include specified U.S. territories and possessions. These differences are the basis for the revisions made to FAR subpart 22.19 and FAR clause 52.222–55 via this interim rule.

II. Discussion and Analysis

Due to the similarities between E.O. 13658 and 14026, and the similarities between DOL's implementing regulations at 29 CFR part 10 and part 23 respectively, there are limited changes being made to the FAR. (For details on the E.O 13658 implementation see the DOL final rule at 79 FR 60634. See 79 FR 74544 for the interim FAR rule implementing E.O. 13658 published in the **Federal Register** on December 15, 2014, and 80 FR 75915 for the final rule published on December 4, 2015).

The following are a list of those changes:

A. *References to the E.O. and DOL regulations*—The FAR is either replacing the reference to E.O. 13658 with E.O. 14026 or adding references to E.O. 14026, as appropriate, throughout parts 22 and 52. Similarly, the citations to DOL's implementing regulations of E.O. 13658 at 29 CFR part 10 are either being replaced with citations to DOL's implementing regulations of E.O. 14026 at 29 CFR part 23, or citations to 29 CFR part 23 are being added.

B. *Increasing the minimum wage*—Throughout subpart 22.19 and the clause 52.222–55, the initial minimum wage of $10.10 established by E.O. 13658 is replaced with the minimum wage of $15.00 specified by E.O. 14026. This update to the minimum wage resulted in revisions to the price adjustment examples provided in FAR 22.1904(b)(2). The calculation process in FAR 22.1904(b)(2) may be used for calculating a contract modification for the changeover from the E.O. 13658 rate to the E.O. 14026 rate of $15.00. For this example, the E.O. rate as of January 1, 2022, is $11.25. If the current service or construction wage determination rate applicable to this worker under the contract is $11.55, and if the actual wage currently paid to the worker is $12.25, then the price adjustment calculation for this worker is $2.75 ($15.00 minus $12.25 = $2.75). Some employees who are not covered by the E.O., such as supervisors, may be making close to $15 an hour. The contractor may wish to voluntarily raise the wages of such employees to avoid wage compression or maintain fairness; however, doing so is not a requirement of compliance with E.O. 14026. While agencies are not required to do so, the clause language and examples in 22.1904(b)(2) do not prohibit an agency from permitting a price increase (*e.g.,* as prescribed at FAR part 43) to address wage compression impacts of modifying the contract to include the new minimum wage rate of E.O. 14026, if the agency determines such an adjustment will result in better contract performance. The contractor should present to the agency the calculations for those employees separate from the calculations for workers covered by the E.O.

C. *New requirements for tipped workers*—FAR 22.1902(c) addresses the policies and procedures implemented in accordance with the DOL regulations at 29 CFR 23.240(b) and 23.280 that address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

D. *Dates*—Throughout subpart 22.19 and the clause 52.222–55, the January 1, 2015, and January 1, 2016, dates associated with implementation of E.O. 13658 are being replaced with the January 30, 2022, and January 1, 2023, dates associated with implementation of E.O. 14026.

E. *Definition of ''worker''*—Clarification is added to the definition of ''worker'' at FAR 22.1901 and 52.222–55(a) to explain what it means for a worker to perform *on* a contract and to perform *in connection with* a contract. This clarification is consistent with the definition of ''worker'' in DOL's final rule implementing E.O. 14026 and the definition of ''employee'' in FAR subpart 22.21, which implements E.O. 13706, Establishing Paid Sick Leave for Federal Contractors.

F. *Definition of ''United States''*—The definition of ''United States'' is added to FAR 22.1901, and revised at 52.222–55(a), to include Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf. The expansion of the definition beyond the 50 states and the District of Columbia is consistent with DOL's final rule implementing E.O. 14026.

G. *Revocation of recreational services exemption*—Deletions are made throughout subpart 22.19 and the clause 52.222–55 to remove the exemption authorized by E.O. 13838 for seasonal recreational services or seasonal recreational equipment rental. Consistent with E.O. 14026 revoking E.O. 13838, DOL's implementing regulations at 29 CFR part 23 do not contain the exemption to the minimum wage requirements for seasonal

recreational services or seasonal recreational equipment rental. Recreational services contracts should be modified, similar to other existing contracts, according to the Applicability section of this rule.

H. *New title for the clause*—The title of the clause has been changed to emphasize that, although using the same clause number, the clause implements a different Executive Order.

I. *Conforming changes*—Minor conforming changes are made to the clauses at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.222–62, Paid Sick Leave Under Executive Order 13706; and 52.244–6, Subcontracts for Commercial Products and Commercial Services.

J. *Option exercise*—DOL's final rule implementing E.O. 14026 included a definition for ''new contract'' at 29 CFR 23.20. The FAR rule did not adopt this definition. However, when FAR rules apply to existing contracts, application is addressed in the Effective Date/Applicability section of the preamble, not in the Code of Federal Regulations. Treatment of bilateral modifications to existing contracts is addressed in the Applicability section at the beginning of this preamble. As a result, in the Effective Date/Applicability section of the preamble, contracting officers are required to incorporate the clause 52.222–55 into existing contracts during option exercise via a bilateral modification. If the contracting officer is unable to incorporate the clause 52.222–55 in an existing contract during option exercise via a bilateral modification, then the contracting officer shall decline to extend, renew, or exercise the option on the existing contract.

K. *Exclusion from 29 CFR part 23*—Section 9(b) of Executive Order 14026 provides that as an ''exception'' to the general coverage of new contracts, where agencies have issued a solicitation before January 30, 2022, and entered into a new contract resulting from such solicitation within 60 days of such date, agencies are strongly encouraged but not required to ensure that the E.O. 14026 minimum wage rates are paid under the new contract. However, if such contract is later extended or renewed, or an option is subsequently exercised under that contract, the E.O. 14026 minimum wage requirements will apply to that extension, renewal, or option. Accordingly, DOL's final rule included an exclusion providing that 29 CFR part 23 does not apply to contracts that result from a solicitation issued prior to January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022. Consistent with section 9(b) of the order, the exclusion states that, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order and part 23 would apply to that extension, renewal, or option. The Department noted that this exclusion is only applicable to contracts resulting from solicitations that are issued prior to January 30, 2022, and that are entered into by March 30, 2022. Any covered contract entered into on or after March 31, 2022, will be subject to E.O. 14026 and part 23 regardless of when the solicitation was issued.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or Commercial Services

This rule amends the clause at FAR 52.222–55. As a result of the amendment to the clause 52.222–55, minor conforming changes are also being made to other clauses (see Section II). The clause continues to apply to acquisitions at or below the SAT and to acquisitions for commercial services.

IV. Expected Impact of the Rule

This rule implements the increased minimum wage requirements for Federal contractors in E.O. 14026 and the associated Department of Labor (DOL) implementing regulations at 29 CFR part 23. This rule makes revisions to the existing FAR coverage regarding minimum wage requirements for Federal contractors by—

- Increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour, beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter increasing the hourly minimum wage paid by, an amount determined by the Secretary of Labor;
- Referencing DOL's new requirements for tipped workers at 29 CFR part 23, which incorporates the increased hourly minimum cash wage paid to tipped workers as authorized by E.O. 14026;
- Expanding the geographical scope of the minimum wage requirements by defining United States as including specified U.S. territories and possessions; and
- Removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements.

These revisions will drive employer costs such as those for regulatory familiarization, implementation, and compliance. These costs may translate into higher contract pricing which results in cost to the taxpayer. These revisions are expected to result in benefits such as improved Government services, increased morale and productivity of contractor staff, and reduced turnover and absenteeism in contractor staff. For more detail on the impacts associated with these revisions, see Section IV of the DOL final rule implementing E.O. 14026 and creating 29 CFR part 23, published at 86 FR 67127, on November 24, 2021, entitled ''Increasing the Minimum Wage for Federal Contractors.''

The revisions listed above drive costs and benefits that are the result of the implementation of DOL's final rule in the FAR. Therefore, those costs and benefits are attributable to the DOL final rule. The impacts of this FAR rule that are attributable to the FAR are no more than de minimis.

V. 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 a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the Department of Labor has determined that their rule would not have a significant impact on a substantial number of small entities. DoD, GSA, and NASA agree with this assessment. DOL has strived to have the final rule implement the minimum wage requirements of E.O. 14026 with the least possible burden for small entities. The DOL final rule provides several efficient and informal alternative dispute mechanisms to resolve concerns about contractor compliance, including having the contracting agency provide compliance assistance to the contractor about the minimum wage requirements and allowing for DOL to attempt an informal conciliation of complaints instead of engaging in extensive investigations. These tools will provide contractors with an opportunity to resolve inadvertent errors rapidly and before significant liabilities develop. Additionally, much of the cost associated with the DOL final rule will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) to implement an Executive Order, which increases the minimum wage for Federal contractors, and associated Department of Labor (DOL) regulatory requirements at 29 CFR part 23.

The objective of this rule is to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, signed April 27, 2021, and published in the **Federal Register** at 86 FR 22835, on April 30, 2021, as well as the associated DOL regulatory requirements at 29 CFR part 23. In accordance with E.O. 14026 and DOL regulations at 29 CFR part 23, this rule updates the FAR by—

- Increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour, beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor;
- Referencing DOL's new requirements for tipped workers at 29 CFR part 23, which incorporates the increased hourly minimum cash wage paid to tipped workers as authorized by E.O. 14026;
- Expanding the geographical scope of the minimum wage requirements by defining United States as including U.S. territories and possessions; and
- Removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements.

This rule applies to contracts awarded under FAR procedures and covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67; see FAR subpart 22.10), including contracts for the acquisition of commercial services, and the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31 subchapter IV; see FAR subpart 22.4). The minimum wage requirements of E.O. 14026 are implemented through revised FAR clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, which is prescribed for solicitations and contracts that include the clause at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States. FAR clause 52.222–55 flows down to covered subcontractors at all tiers.

As already specified in the existing FAR at 22.1903(b)(2), this rule does not apply to—

- Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.,* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
- Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—
  - Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);
  - Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and
  - Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

Small businesses in the service or construction industry with FAR-based contracts or subcontracts subject to revised FAR clause 52.222–55 will be impacted unless an exclusion listed above applies. The rule will require these contractors and subcontractors to raise their employees' minimum hourly rate to $15.00 per hour, beginning January 30, 2022, then annually adjust it thereafter, if necessary, based on the annual minimum wage rate determined by the DOL.

Data available through the Federal Procurement Data System (FPDS) for fiscal year 2020 reveals 21,895 contracts were awarded for services which contained the clause at 52.222–41, Labor Standards, or for construction which contained the clause at 52.222–6, Construction Wage Rate Requirements, to 11,820 unique small businesses.

Subcontract data is available from the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *www.USASpending.gov.* However, this system does not distinguish small businesses from other than small businesses and the data does not separate out construction and services subject to the minimum wage requirements. Data for fiscal year 2020 show there were a total of 79,218 subcontracts for services and construction reported; these subcontracts were awarded to 20,120 unique entities. For estimating purposes, DoD, GSA, and NASA assumed that 20 percent of subcontracts have a second-tier subcontractor, 10 percent of second-tier subcontractors have a third–tier subcontractor, and 5 percent of third-tier subcontractors have a fourth–tier subcontractor. This calculation estimates the total number of unique subcontractors is 24,567. However, since the FSRS data does not distinguish small businesses from other than small businesses, products from services, or professional services from those services subject to the minimum wage requirements, this number is an overestimate of the small entities to which this rule will apply.

The DOL noted in their final rule (86 FR 67126 at 67193) that the rule did not impose any additional notice or recordkeeping requirements on contractors, and therefore, the burden for complying with the recordkeeping requirements was not adjusted. However, DOL submitted a revised information collection request to OMB to revise the existing information collection for control number 1235–0018 to incorporate the recordkeeping regulatory citations in its final rule.

The Department of Labor found that, ''Small entities will have regulatory familiarization, implementation, and payroll costs (*i.e.,* transfers). Average Year 1 costs and transfers per small contractor with affected employees range from $4,578 to $14,221 by industry. Additionally, much of this cost will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. Therefore, the Department believes this final rule will not have a significant impact on small businesses.''

Section 1 of E.O. 14026 explains that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, effort; reducing absenteeism and turnover; and lowering supervisory and training costs.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives that would meet the requirements of E.O. 14026 and DOL regulation.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2021–014), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Number 1235–0018, Records to be Kept by Employers—Fair Labor Standards Act.

IX. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 14026, Increasing the Minimum Wage for Federal Contractors, requires DoD, GSA, and NASA to issue regulations within 60 days of the Department of Labor (DOL) rule and to include a clause that specifies the new $15.00 per hour minimum wage will be paid to workers performing on or in connection with covered contracts beginning January 30, 2022. The DOL final rule was published November 24, 2021. The DOL rule was published for public comment prior to publication of the final rule. This action is largely a ministerial implementation of the DOL final rule at 86 FR 67126; therefore, prior notice and comment is unnecessary given that DOL took full comment. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2), in the definition of ''United States'' by—

■ a. Redesignating paragraphs (8) through (11) as paragraphs (9) through (12);

■ b. Adding a new paragraph (8); and

■ c. Removing from the newly redesignated paragraph (11) the word ''Part'' and adding ''part'' in its place.

The addition reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(8) For use in subpart 22.19, see the definition at 22.1901.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Revise section 22.403–4 to read as follows:

22.403–4 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at $10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to $11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to $15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222–55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.4 statutory wage determination amount.

■ 4. Revise section 22.1002–5 to read as follows:

22.1002–5 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at $10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to $11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to $15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222–55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.10 statutory wage determination amount.

Subpart 22.19—Increasing the Minimum Wage for Contractors

■ 5. Revise the heading of subpart 22.19 to read as set forth above.

■ 6. Revise section 22.1900 to read as follows:

22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the

Minimum Wage for Federal Contractors, which requires minimum wages for certain workers; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

■ 7. Amend section 22.1901 by—

■ a. Removing the definitions of ''*Seasonal recreational equipment rental*'' and ''*Seasonal recreational services*'';

■ b. Adding in alphabetical order a definition for ''*United States*''; and

■ c. Revising the definition of ''*Worker*''.

The addition and revision read as follows:

22.1901 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker (in accordance with 29 CFR 23.20)—

(1)(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

■ 8. Amend section 22.1902 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b)(1) the phrase ''ordinance establishing'' and adding ''ordinance or any applicable contract establishing'' in its place; and

■ c. Removing from paragraph (c) the phrase ''29 CFR 10.24(b) and 10.28'' and adding ''29 CFR 23.240(b) and 23.280'' in its place.

The revision reads as follows:

22.1902 Policy.

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The Administrator of the Wage and Hour Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See 22.1904.)

* * * * *

■ 9. Amend section 22.1903 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b)(2)(ii)(C) the phrase ''29 CFR part 541); or'' and adding ''29 CFR part 541).'' in its place; and

■ c. Removing paragraph (b)(2)(iii).

The revision reads as follows:

22.1903 Applicability.

(a) This subpart applies to contracts covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4), that require performance in whole or in part within the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*)). When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States.

* * * * *

■ 10. Amend section 22.1904 by—

■ a. Removing from paragraph (a) introductory text the date ''January 1, 2016'' and adding ''January 30, 2022'' in its place; and

■ b. Revising the table in paragraph (b)(2).

The revision reads as follows:

22.1904 Annual Executive Order Minimum Wage Rate.

* * * * *

(b) * * * *

(2) * * *

(i) Example 1—New E.O. wage rate is $16.10.

Previous E.O. wage rate is $15.70.	Analysis: The calculation is $16.10 − $15.80 = $.30. The price adjustment for this worker is $.30.
The current service or construction wage determination rate applicable to this worker under the contract is $15.75.	
The actual wage currently paid to the worker is $15.80.	

(ii) Example 2—New E.O. wage rate is $15.50.

Previous E.O. wage rate is $15.10.	Analysis: The calculation is $15.50 − $15.80 = −$.30. There is no price adjustment for this worker.
The current service or construction wage determination rate applicable to this worker under the contract is $15.75.	
The actual wage currently paid to the worker is $15.80.	

* * * * *

22.1905 [Amended]

■ 11. Amend section 22.1905 by—
■ a. Removing from paragraph (a)(1) the phrase ''29 CFR part 10'' and adding ''29 CFR part 10 or part 23'' in its place;
■ b. Removing from paragraph (a)(3) the phrase ''Minimum Wages Under Executive Order 13658'' and adding ''Minimum Wages for Contractor Workers Under Executive Order 14026'' in its place;
■ c. Revising paragraph (b)(3)(iii);
■ d. Removing from paragraph (c) the phrase ''29 CFR part 10.43'' and adding ''29 CFR part 23.430'' in its place;
■ e. Revising paragraphs (d)(2) and (d)(3)(i); and
■ f. Removing from paragraph (d)(4) the phrase ''which the E.O. applies'' and adding ''which E.O. 14026 applies'' in its place.

The revisions read as follows:

22.1905 Enforcement of Executive Order Minimum Wage Requirements.

* * * * *

(b) * * *

(3) * * *

(iii) Evidence that clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

* * * * *

(d) * * *

(2) *Antiretaliation.* When a contractor has been found to have violated paragraph (i) of clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, the Administrator may provide for relief to the worker in accordance with 29 CFR 23.440.

(3) * * *

(i) The Department of Labor may initiate debarment proceedings under 29 CFR 23.520 whenever a contractor is found to have disregarded its obligations under 29 CFR part 23.

* * * * *

22.1906 [Amended]

■ 12. Amend section 22.1906 by—
■ a. Removing the phrase ''Minimum Wages Under Executive Order 13658'' and adding ''Minimum Wages for Contractor Workers Under Executive Order 14026'' in its place; and
■ b. Removing the phrase ''(the 50 States and the District of Columbia)''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (c)(7);
■ c. Removing from paragraph (c)(8) ''JAN 2017'' and adding ''JAN 2022'' in its place;
■ d. Revising paragraph (e)(1)(xvii);
■ e. Removing from paragraph (e)(1)(xviii) ''JAN 2017'' and adding ''JAN 2022'' in its place; and
■ f. In Alternate II:
■ i. Revising the date of the Alternate;
■ ii. Revising paragraph (e)(1)(ii)(P); and
■ iii. Removing from paragraph (e)(1)(ii)(Q) ''JAN 2017'' and adding ''JAN 2022'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2022)

* * * * *

(c) * * *

____(7) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

(e)(1) * * *

* * * * *

(xvii) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

Alternate II (JAN 2022). * * *

(e)(1) * * *

(ii) * * *

(P) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

■ 14. Amend section 52.213–4 by—
■ a. Revising the date of the clause;
■ b. Revising paragraphs (a)(2)(viii) and (b)(1)(ix); and
■ c. Removing from paragraph (b)(1)(x) the phrase ''(JAN 2017)'' and adding ''(JAN 2022)'' in its place.

The revisions read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services). (JAN 2022)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Products and Commercial Services (JAN 2022).

* * * * *

(b) * * *

(1) * * *

(ix) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022) (Applies when 52.222–6 or 52.222–41 are in the contract and performance in whole or in part is in the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*))).

* * * * *

■ 15. Amend section 52.222–55 by—
■ a. Revising the section heading, the clause heading, and the date of the clause;
■ b. In paragraph (a)—
■ i. Removing the definitions of ''Seasonal recreational equipment rental'' and ''Seasonal recreational services'';
■ ii. Revising the definition of ''United States'';
■ iii. In the definition of ''Worker''—
■ A. Redesignating paragraph (1) introductory text as (1)(i), redesignating paragraphs (1)(i) through (iii) as paragraphs (1)(i)(A) through (C), and redesignating paragraphs (2) and (3) as paragraphs (1)(ii) and (iii);
■ B. Removing from the newly redesignated paragraph (1)(i) introductory text the phrase ''13658'' and adding ''14026'' in its place; and
■ C. Adding a new paragraph (2);
■ c. Removing from paragraph (b)(1) the phrases ''$10.10'' and ''January 1, 2015'' and adding ''$15.00'' and ''January 30, 2022'' in their places, respectively;
■ d. Removing from paragraph (b)(2) the date ''January 1, 2016'' and adding ''January 1, 2023'' in its place;
■ e. Removing from paragraph (b)(6) the phrase ''29 CFR 10.23'' and adding ''29 CFR 23.230'' in its place;
■ f. Removing from paragraph (b)(8) the phrase ''ordinance establishing a minimum wage higher than the E.O.'' and adding ''ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026'' in its place;
■ g. Removing from paragraph (b)(10) the phrase ''29 CFR 10.24(b) and 10.28'' and adding ''29 CFR 23.240(b) and 23.280'' in its place;
■ h. Removing from paragraph (c)(2)(ii)(C) the phrase ''29 CFR part 541); or'' and adding ''29 CFR part 541).'' in its place;

■ i. Removing paragraph (c)(2)(iii);
■ j. Removing from paragraph (d) the phrase ''*www.dol.gov/whd/govcontracts*'' and adding ''*www.dol.gov/agencies/whd/government-contracts*'' in its place;
■ k. Removing from paragraph (e)(4) the phrases ''29 CFR 10.26'' and adding ''29 CFR 23.260'' in its place; and
■ l. Removing from paragraph (h) the phrase ''29 CFR 10.51'' and ''29 CFR part 10'' and adding ''29 CFR 23.510'' and ''29 CFR part 23'' in their places, respectively.

The revisions and additions read as follows:

52.222–55 Minimum Wages for Contractor Workers Under Executive Order 14026.

* * * * *

Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022)

(a) * * *

''United States'' means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

''Worker''—

* * * * *

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

* * * * *

■ 16. Amend section 52.222–62 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (i)(6) the phrase ''E.O. 13658'' and adding ''E.O. 14026'' in its place.

The revision reads as follows:

52.222–62 Paid Sick Leave Under Executive Order 13706.

* * * * *

Paid Sick Leave Under Executive Order 13706 (JAN 2022)

* * * * *

■ 17. Amend section 52.244–6 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (c)(1)(xv) the phrase ''Wages under Executive Order 13658'' and adding ''Wages for Contractor Workers under Executive Order 14026'' in its place; and
■ c. Removing from paragraph (c)(1)(xvi) the phrase ''(JAN 2017)'' and adding ''(JAN 2022)'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (JAN 2022)

* * * * *

[FR Doc. 2022–01507 Filed 1–25–22; 8:45 am]

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